

THE BALTIC CODE

2003

**Guidance for brokers in the
Baltic Exchange market**

Our Word Our Bond

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INTRODUCTION

The Code

This Code is based on the distilled experience of Baltic brokers over many years and is approved by the Board of Directors of the Exchange under Rule 3.2 of the Rules of the Exchange dated January 1998. It contains guidance for brokers who operate within the self-regulated market of the Exchange and is relevant to both new members of the Exchange and existing members for reference. The Code was first produced in 1983, revised in 1988, 1996, 2000 and 2002 and 2003. All members are required by the rules of the Exchange to have a thorough knowledge of and to comply with the provisions of the Code. A breach of the Code by a member may be considered by the Directors of the Exchange to constitute a breach of the Rules of the Exchange, resulting in suspension or expulsion from membership of the Exchange. This edition, published in October 2003, supersedes the earlier versions.

New members of the Exchange need to be conversant with the principles and details of the Code. For new members it is a requirement of the Exchange that they satisfy Directors on this account, usually by successfully completing within the first year of membership, a test, using the Code as a syllabus.

This Code applies to members of the Baltic Exchange only. There is no international code covering shipbrokers specifically.

The text of the Code should not be regarded as definitive or necessarily comprehensive, and it may be supplemented by Directors by notices to members. Any interpretation of the text or spirit of the code is at the sole discretion of the Directors.

THE BALTIC EXCHANGE

The Role and Organisation of the Exchange

The Baltic is the world's premier and oldest shipping market. It traces its name to the Virginia and Baltick Coffee House, established in 1744. It was then used mainly by merchants who had a major trade in tallow from the Baltic seaboard. From those informal meetings the Baltic has developed into the world's most prestigious and only truly international, self-regulated market for matching ships and cargoes and buying or selling ships. Commodity dealing, formerly a major element in the Exchange's business, is now limited to a small number of members. "The Baltic", "the Baltic Exchange" and "the Exchange" are also used to describe the unincorporated association whose members participate in this market.

A large part of the world's maritime cargo chartering and sale and purchase business is negotiated at some stage by members of the Baltic. The Baltic publishes several daily indices which indicate the state of the markets. As well as providing vital guidance to brokers these form the price mechanisms in the freight futures market which is used for risk management.

Members of an associated body, the Baltic Air Charter Association, include specialist brokers who charter aircraft. The Corn Exchange holds a Bourse at the Exchange occasionally.

Baltic members represent worldwide interests through over 500 companies. Around 1,600 men and women represent these companies on the Exchange, all individually elected to do so. There are some 45 different nationalities represented on the Exchange. Member companies of the Baltic Exchange contribute significantly to the UK's balance of payments, recording some £320 million of overseas earnings from commissions in 2002.

The Baltic Exchange Limited ("The Company") is a company limited by shares and owned by its shareholders most of whom are the member companies. Some are individuals who trade in their own right. They are required to hold a minimum number of shares. The Company is governed by a Board of between 12 and 15 Directors with up to 12 elected by shareholders and up to three elected by members of the Exchange (who do not need to be shareholders). The Board has disciplinary powers of censure, suspension and expulsion over members and is responsible for maintaining proper, ethical standards in trading. Disputes involving members are referred to the Exchange for assistance with mediation. Defaults by non-members against members are pursued.

The Exchange derives its income from membership subscriptions, rents of offices in the St Mary Axe Exchange, government chartering, the sale of market data, its club facilities for members and catering/function facilities for non-members, in addition to investments.

Membership of the Exchange is available in one of three broad groups:

- Principals who trade on their own account. They either own or control ships or have cargoes to move;
- Brokers, who act as intermediaries between shipowners and cargo interests, and do not trade on their own behalf;
- Other members who, whilst not trading in the Exchange market, wish to be associated with this hub of international shipping. They include maritime lawyers, arbitrators, ship financiers and other maritime institutions.

The Exchange categorises its members so that all those in the market know the status of those with whom they trade. For example, members who will be acting as an intermediary only, and will not trade on their own behalf, sign an undertaking to trade in the market only as a broker and are denoted as such in the official List of Members. Those who are principals may act both on their own behalf, and as brokers. Different entrance requirements need to be satisfied for the two categories.

Those acting as brokers can represent:

- Shipowners, sometimes exclusively, in which case they are referred to as “owners brokers”;
- The Charterer, sometimes exclusively, in which case they are referred to as “charterers’ agents”;
- Either the Shipowner or Charterer on a non-exclusive basis, when they are referred to as “competitive broker(s)”.

Members of the Exchange acting as brokers are required to operate a separate bank account for clients and must effect appropriate insurance cover against errors and omissions, and Breach of Warranty of Authority. In addition, minimum levels of financial standing are needed.

Information is made available for the guidance of members who are expected to conform with directives made by the Directors from time to time in the interests of the market as a whole.

Administration

The Board appoints a Chief Executive to manage the membership administration, organisation of the Exchange and its staff, the club facilities and the other services for members and facilities for non-members.

ETHICS AND MARKET PRACTICES

Basic Principles

The motto of the Exchange - 'Our Word Our Bond' - symbolises the importance of ethics in trading. Members need to rely on each other and, in turn, on their principals for many contracts verbally expressed and only subsequently confirmed in writing. Ethical trading is regarded by The Baltic Exchange as essential.

Over the years the following basic tenets have been developed:

1. In the conduct of his profession a broker shall exercise great care to avoid misrepresentation and shall be guided by the principles of honesty and fair dealing.
2. No broker has authority to offer a vessel or a cargo unless duly authorised by a principal or by brokers acting on the instructions of principals. Under no circumstances may a broker avail himself of, or make use of an authority if he does not actually hold it. Neither can he alter the terms of an authority without the approval of the principal concerned.
3. An owner's broker should offer his vessel 'firm' only for one cargo at a time. A charterer's agent should similarly offer his cargo 'firm' to only one vessel at a time.
4. A broker can receive more than one firm offer for a vessel or cargo but must make it quite clear to others who wish to make him an offer that he has already received one or more firm offers for the particular vessel or order concerned.
5. An unsolicited offer or proposal does not necessarily establish the channel of negotiation. A broker should respect the channel or channels through which a vessel or cargo has been quoted to him but the principal may direct which of those channels to use should he enter into firm negotiations.
6. Before a broker quotes business from a source whose bona fides is unknown, it is expected that he makes reasonable investigations and communicates the result of those investigations to anyone considering entering into negotiations. If such checks have not been made or completed this fact should be conveyed clearly to the other principal or his broker.

Unacceptable Practices

The Directors have highlighted, from time to time, certain practices, which they consider unacceptable in the Baltic market. These include:

1. Organisations operating as Freight Contractors/Freight Speculators offering named tonnage against tenders without the authority of owners/disponent owners.
2. Agents/brokers implying that they hold a ship/cargo firm or exclusively when they do not, in order to secure a response from another party.
3. Off-setting against hire or freight payment(s), amounts representing unspecified or vague claims.
4. Withholding payment of commissions in respect of hire/freight/deadfreight/demurrage earned and paid.

5. Using information obtained from Exchange members for business transacted directly with or between non-Baltic members. This practice involves the use of market-sensitive information given by another member, but being used outside the Baltic market.
6. Passing market-sensitive information gained through the Exchange to non-Baltic brokers or agents so that they can deal directly with Baltic members' principals or their brokers. This has the effect of diluting the value of the market and runs the risk of an agreement being concluded with someone who may not be fully familiar with the practices of the market and may not observe the same standards of business ethics.
7. Owners offering their vessel firm for business when they hold a firm offer from another charterer. The unwanted offer should be declined before the owner makes another offer.
8. Charterers fixing two vessels for one cargo and then holding both vessels over a period of time on "subjects".
9. The distribution of route or index rates, produced by the Exchange from its panel reporting companies, for the purposes of pricing charters or contracts without an appropriate commission to the broker.

If a member of the Exchange fails to comply with any of the above terms or practices he may be disciplined by the Directors under the Rules. The Directors have power to censure, suspend or expel a member from the Exchange in these circumstances.

The Exchange has arrangements for investigating disputes between members, and between members and non-members, which arise from the breach of these basic principles or the employment of unacceptable practices and market ethics generally. These are set out on pages 25 and 26. Members are encouraged to bring such instances to the attention of the Exchange in writing so that they can be investigated.

The Maritime Industry Charter on Quality

The Baltic Exchange recognises and endorses the aims of the Maritime Industry Charter on Quality (as set out below for guidance only), and fully supports the European Union's quality shipping campaign. It is, however, of the opinion that the role of members of the Baltic exchange does not always permit total compliance with the Charter, in view of their role as intermediaries.

"The undersigned representatives of the international maritime related industries:

Endorsing fully the aim of the Quality Shipping Campaign to promote a quality culture throughout the maritime industry as a whole;

Recognising that the current international regulations set a standard which, if properly implemented by all operators and effectively enforced by all flag States, would ensure shipping services of high technical, safety and environmental quality;

Acknowledging that the acceptance of substandard practices by any sector of the maritime industry including its customers is detrimental to the protection of people and the environment, ship safety and fair

competition, and that the elimination of such practices would benefit all responsible participants in the market and contribute to an enhanced safety and quality culture throughout the industry;

Recognising that all industry sectors, both through their associations and as individual entities, have a role to play in promoting quality, and that co-operation between all links in the maritime responsibility chain is crucial for achieving effective results;

Appreciating the contributory effects of industry self-regulation through voluntary codes of best practice and guidelines;

Welcoming the initiatives already undertaken to this effect by several maritime industry interests;

Emphasising, however, the importance that negotiation of world-wide rules in IMO and other relevant organisations plays in relation to safety and the free movement of ships; emphasising further that the main responsibility for ships safety rests with flag States and shipowners, and that flag States must take the necessary measures to enforce and control compliances of all internationally binding regulations;

Being aware that quality shipping needs quality seafarers and that compliance with internationally agreed training, competence and working standards are integral to ship safety, the promotion of a safety culture and to quality shipping;

Urging public authorities to increase their efforts to raise quality awareness and harmonise port State control and focus it particularly on substandard ships, to ensure more transparent and accurate information on the quality of ships obtained through port State control and to exercise restraint in introducing new and additional technical requirements for ships and crews;

Have agreed to subscribe to the following principles:

1. Each link in the maritime responsibility chain, be it at sea or on shore, should make safety considerations an integral part of its activities.
2. Industry participants should take reasonable care to ensure that the ships with which they are dealing are of good standards of quality. Accordingly, they should avoid using, servicing, supplying or otherwise doing business with ships which clearly do not meet the internationally applicable requirements.
3. Industry participants should resist substandard practices in any part of the maritime industry. In doing so they should promote dialogue and co-operation with other links in the maritime responsibility chain and with public authorities.
4. Industry participants should, where appropriate and on a voluntary basis, share relevant information relating to compliance with international regulations and thus contribute to greater transparency in the maritime industry.
5. In their joint and individual participation in this Charter, industry associations and participants should ensure that their conduct always remains within applicable legal constraints.

6. Industry associations should reflect the principles stated herein in any Charter and/or Code of conduct and should encourage their members to observe those principles at all times.

7. The maritime industry, in co-operation with the relevant public authorities, should observe and evaluate developments within the context of this Charter at regular intervals.

(Internationally applicable requirements refers to those international instruments that are generally applicable to all ships, irrespective of flag, relating to safety, protection of the marine environment and the crew.)"

CHARTERING

Knowledge Required

Trading members should have a reasonable knowledge of world port geography, and principal trading areas including main types of cargo shipped.

Main Types Of Vessels

Modern cargo vessels range from small coasters to very large tankers but generally fall into a number of groups, for example:

Bulk Carrier (Dry Cargo)	-	Handysize	About 20/35,000 dwt
		Handymax	About 35/50,000 dwt
		Panamax	About 50/78,000 dwt (Capable of transiting the Panama Canal)
		Capesize	About 79,000 dwt plus
		All these vessels are single deckers with a varying number of holds for the carriage of bulk cargoes such as grain, iron ore, coal, steel etc.	
Tanker	-	VLCC/ULCC	About 200/500,000 dwt
		Suezmax	About 120/200,000 dwt
		Aframax	About 80/120,000 dwt
		Panamax	About 60/80,000 dwt
		Handysize	About 10/60,000 dwt
	Cargoes include crude oil and refined dirty products, refined clean products, chemicals and gas.		
OO	-	Ore/Oil carrier capable of taking either ore or oil on a specific voyage.	
OBO	-	Ore/Bulk/Oil carrier capable of taking one of the three types of cargo on a specific voyage.	
Tweendecker/MPP	-	A vessel of two or more decks for the carriage of general cargo including bagged and/or mixed general cargoes and containers. Most tweendeckers are also suitable for bulk cargoes.	
Reefer	-	Specialist refrigerated ship, for fruit, vegetables, fish, meat, etc.	
Ro-Ro	-	Roll on-Roll off vessel with ramps for wheeled/tracked cargo. Also for the carriage of unitised/palletised cargo, and forest products.	

PCC/PCTC	-	Pure car and pure car/truck carrier, multi-deck drive on/drive-off vessels used specifically for carrying passenger cars, light commercial vehicles and trucks.
Containership	-	Carrying general cargo including high-value cargo in containers (boxes), some of which may be refrigerated. Capacity is expressed as the equivalent number of TEUs (twenty foot equivalent units) or FEUs (forty foot equivalent units). Some container ships are fitted with cells.

Role of the Ship's Master

The burden of responsibility resting upon the Master is much reduced in modern times with improved communication between the ship and the owner and marine superintendent, and because authority for routine matters is often vested in the port agent, particularly by liner companies.

However, the Master retains the duty of care for the safety of the ship and of the cargo placed in his charge. He cannot delegate this responsibility. In the exercise of his duty he has powers to bind owner and cargo-owner by his actions in case of need. The Master is the agent of the shipowner. Thus the shipowner is bound by acts of the Master, which are within the authority of a Master; and third parties with whom the Master deals are entitled to be guided accordingly unless they are aware that the Master's authority has been limited.

If the Master signs bills of lading which are incorrectly dated or knowingly false in any other respect, or for goods which are not on board, or if he unjustifiably deviates from the ordinary course of the voyage, he may incur personal liability.

A Master has to be very careful about the description and condition of cargo and also where a charter-party calls for the release of 'freight prepaid' bills of lading. Before releasing such bills he or his agents must have the owner's confirmation that they have received the freight. If signed bills of lading stamped 'freight prepaid' are released, the Master has an obligation, having signed the bills of lading, to deliver the cargo whether freight is paid or not.

Main Components of a Vessel's Costs

For the purpose of estimating and accounting, the expenses of a vessel are usually divided into voyage costs and daily running costs.

The former are those expenses which are incurred solely when a vessel is engaged on a voyage, such as bunkers, port disbursements, stevedoring (if gross or berth terms), canal dues, commissions, etc. Additionally, there may be other expenses, such as war risk, over-age insurance, freight tax, local taxes and/or dues, income tax and despatch money etc.

The remainder of the operating expenses are those which accrue regardless of whether the vessel is engaged on a freight-earning voyage or not. Even when a vessel is idle awaiting orders these costs continue to be incurred. Even laid-up ships continue to cost money.

Listed below are the main components which make up the 'operating expenses' :

1. Crew wages, overtime, pension contributions, insurance, travelling costs.
2. Victualling.
3. Insurance (Hull and Machinery and P&I).

4. Deck and engine room stores and spares, lubricating oil.
5. A suitable daily allowance to cover periodic costs such as dry-docking, special surveys, running repairs.
6. Office and/or management costs.

Owners will also need to take into account interest on capital or loans and depreciation.

Main Charterparties

A Charterparty is a contract of agreed terms and conditions between the shipowner, disponent owner or operator and the charterer, for the carriage of goods or hire of the vessel in return for payment of an agreed freight or rate of hire.

Charterparties fall into three main categories:

1. Voyage Charters

- a) The charterer employs the vessel for a specific voyage or voyages, with cargo which is customarily loaded and discharged at his expense within a specified time (see Laytime) in return for freight calculated on an agreed rate per ton of cargo or as a lump sum. The owner pays for fuel, port disbursements and operating expenses of the vessel.
- b) **Contract of Affreightment (COA)**
This form of contract is an agreement by an owner or operator to lift an agreed number of cargoes over a period of time.

2. Time Charters

The charterer has the use of the ship for a specific trip or a period of time. Charterers may direct the vessel within the trading limits agreed, and, in normal circumstances, the Master must obey these orders.

Whilst the time charterer has the commercial control, the owner retains responsibility for the vessel and the Master and crew remain in his employment. The hire, usually calculated per day, is paid in advance at regular, agreed intervals, normally semi-monthly or monthly.

Normally, the charterer pays for the fuel on board at the time he accepts delivery and for fuel supplied while the vessel is on hire. When the vessel is redelivered the owner pays for bunkers remaining on board. The prices applicable on delivery and redelivery and the respective quantities are normally agreed during negotiations.

The owner pays for the operating expenses of the vessel.

If the ship breaks down or, as a result of the shipowner's fault, the charterer does not have the use of the vessel, the vessel goes 'off-hire' for that period subject to any terms in the charter-party.

Time charterers may be owners who want to temporarily augment their own fleet; charterers who have a variety of commitments to meet; charterers who believe long-term chartering will hedge the market; operators who see a profit by taking voyage contracts from charterers and time chartering vessels themselves to cover those contracts.

Where a time charterer issues and signs his own bill of lading, he may be held to be a 'carrier' for the purposes of the Carriage of Goods by Sea Act 1971.

3. **Bareboat Charters (charterparties by demise)**

The registered owner passes over to the demise charterer the complete control and management of the ship. The demise charterer becomes, for all effective purposes, the owner during the currency of the contract. The Master and crew are his servants and may be appointed by him. The demise charterer is a 'carrier' for the purposes of the Carriage of Goods by Sea Act 1971.

This form of charterparty is not as common as the first two. It very often involves new buildings and long-term employment.

Law of Contract

Generally the parties to a charterparty have freedom to contract on such terms as they may agree during negotiation. The aim should be clarity of expression and the avoidance of ambiguity and inconsistency of clauses. If disputes arise which eventually come before the Court for decision the judgement will probably reflect the presumed intent of the parties. The case (or unwritten) law thus made (unwritten in the sense that it is not an Act made by Parliament) represents the common law which may develop according to the changing needs of commerce. One may contract out of common law but not out of statute law. From time to time an accumulation of common law has been codified into Acts of Parliament; the Merchant Shipping Acts and the Marine Insurance Act are examples.

The terms of a contract may be:

- a condition, the breach of which entitles an aggrieved party to elect to be released from further performance and claim damages for any loss suffered, or maintain the contract and sue for damages; or
- a warranty, the breach of which carries only the entitlement to sue for damages.

However, since the Hong Kong Fir Case (1962) the courts have refined the effect of the distinction between a warranty and a condition. An intermediate distinction has emerged. If this is breached, the legal effect depends on the gravity of the breach rather than whether the term is technically a warranty or a condition. The parties may of course expressly make a term a condition if they wish.

(Note: The term 'warranty' used in connection with marine insurance has the same meaning as 'condition' in other contracts.)

Bills of Lading

A bill of lading has the following functions:

1. It is a receipt for the goods, signed by the Master or agent on behalf of the carrier, with admission as to condition and quantity of the goods.
2. It is a document of title to the goods, by which the property in the goods may be transferred.
3. It is prima facie evidence of the terms and conditions of carriage.

The charterparty is the contract between the charterer and the owner. However, the lawful holder of a bill of lading has vested in him all rights and liabilities under the contract of carriage as if such holder had been a party to the contract of carriage. Usually, the bill of lading contains a suitable clause to

incorporate the terms of the charterparty pursuant to which it is issued. Should that bill of lading purport to involve the shipowner in a liability greater than agreed in the charterparty, it is considered that the charterer indemnifies the shipowner to the extent of this greater liability towards the cargo. If charterers are also the bill of lading holder then it is the charterparty and not the bill of lading that is the contract of carriage.

Letters of Indemnity

A situation may arise in connection with the signing of bills of lading where the shipper desires to obtain a condition expressed in the sale of goods contract, but where the condition of the goods shipped is not such as would strictly warrant a clean bill of lading being issued.

A bill of lading is intended to express 'the apparent order and condition of the goods and the date of shipment' and a representation so made which is knowingly false has all the elements of fraud. Consequently, a letter of indemnity from shipper to shipowner in exchange for a clean or incorrectly dated bill of lading in such circumstances is not legally enforceable.

Delivery of cargo at a port of discharge without production of the bills of lading by the receiver is another malpractice fraught with serious consequences to the shipowner, as well as the port agent, if in so doing the cargo is 'converted' from its legal ownership to that of others. Indemnities in such cases would need to be absolute and according to a P&I Club's guidance.

CHARTERING NEGOTIATIONS

General Principles

Negotiating must be conducted with care and accuracy. There has to be complete agreement on all of the terms and details between the two principals for an enforceable contract to come into being.

A day book together with some kind of firm offer check-list which can be amended as negotiations proceed should always be used by brokers to record important details of the course of negotiations and safeguard their position. If agreement is reached a recapitulation (recap) should be exchanged between all parties summarising the final agreement.

Verbal communications outside chartering negotiations, when a broker has to act, for example passing on orders to ships, should be re-confirmed in writing back to the instructing company.

A broker authorised to sign a charterparty on behalf of his principal should indicate the source of authority for example by telex/telephonic authority of [principal's name] 'As Agents Only'. When signing on behalf of a principal the basic rule is that with a signature qualified in this way a broker will not be held personally liable for the performance of the contract. If the name of the principal is not disclosed then even the qualification of "as Agents only" would not absolve the broker from liability for the performance of the contract.

Firm Offers

A 'Fixture' is arrived at by the exchange of 'firm offers' between brokers acting on behalf of their principals, an owner and a charterer, and when concluded, that is all terms and details agreed and subjects (if any) lifted, it is an enforceable contract.

A 'firm offer' should be limited as to time, and be definite as to terms. Opening 'firm offers' are normally based on the main terms and such offers are made subject to agreement of further terms and conditions of charter and in many cases contain a variety of subjects.

When a fixture is concluded on main terms with 'subjects', it is up to the brokers to ensure that both principals do their utmost to lift 'subjects' as soon as possible. It is important to note that no fixture has been concluded until all 'subjects' have been lifted.

A 'firm offer' or 'firm counter offer' can be declined by the recipient. He is then free to work his vessel or cargo elsewhere. This is a very important point for a broker to bear in mind. If a principal says: 'I want the ship or business, don't lose it but try and get another day on the cancelling or another 5 cents on the rate', a counter offer, no matter how small the variation, can be declined by the recipient who is then free to work elsewhere. No firm offer shall be made by a broker without full authority of a principal.

Subject Details

Negotiations on details are similar to those on main terms and may include time limits for reply. Brokers exchange offers and counter offers on behalf of their principals until such time as both parties are in agreement on all details that will eventually form the charterparty. It is important that brokers ensure that their principals are kept fully advised on the status of outstanding 'subjects' when confirming that details are in order.

Court decisions in the USA have determined that a binding fixture had resulted when the main terms had been agreed despite the fact that it was still 'subject to details'. The USA Courts' view is not shared by the markets in London or in New York and a judgement of the Commercial Court in London has affirmed that at that stage there is no binding contract.

It is common and wise practice wherever possible among brokers to use the phrase 'subject agreement of charterparty terms and conditions'. When parties find it mutually convenient to negotiate with a 'subject details' proviso, or any other 'subject', this should be made crystal clear and there should be a reasonable time limit for the clearance of the 'subject' matter(s). It is important that such time limits are clearly expressed, as explained in Time Limits below. As far as 'subject details' are concerned, both owner and charterer are expected to negotiate until agreement has been reached or the parties have agreed to differ. It is also expected of Baltic brokers that they endeavour to persuade their principals to make every reasonable effort to conclude fixtures when the main terms have been agreed.

Subject Stem

This subject is to give charterers time to put the vessel to their shippers to confirm that they can accept the vessel to load the agreed quantity of cargo on the agreed laydays. 'Subject Stem' is only to be used to determine availability of cargo.

Subject Shipper's or Subject Receiver's Approval

This subject is used when the shippers or receivers of the cargo have to give their approval of the *vessel*.

Subject Head Charterer's Approval

This subject will normally indicate that the cargo in question is a relet or sublet and charterers have to get approval of the vessel from their head charterers. Most contract voyage charters have a relet or sublet clause in them.

Subject Board Approval

This subject is used when the board of Directors of either principal has to approve the final fixture, but should be viewed with caution as such approval can be refused without a specific reason being given.

Time Limits on Offers and Subjects

When exchanging offers, it should be understood by both parties that the reply time stipulated is either with the party making the offer (who would therefore have the authority to conclude a fixture if an acceptance is made to them within time), or the reply time is with another broker or the principal.

Therefore, if the authority is perhaps held overseas, and there could be communication difficulties or time differences, allowances should be made, otherwise the reply or acceptance could be 'out of time', with the risk that one party believes they have fixed because they have replied within time, but in fact the other party who had the authority to make the offer has not been contacted.

It is important that precise reply times are given on offers and the lifting of subjects, rather than generalities such as 'one business day', 'close of business' or '24 hours after fixing'. State, for example, reply 0900 (local time) London or perhaps 0900 (local time) Tokyo, and make it clear whether the reply is to be made to a broker or the principal.

Abuse of Subjects

This area needs careful monitoring, and instances of abuse, for example the fixing of two vessels for one cargo, holding both subject head charterer's approval, are not uncommon, even with major charterers. Owners should report any such verifiable occurrences to the Chief Executive, to enable the practice, which is contrary to the Baltic Code, to be monitored, and dealt with as necessary.

Voyage Estimate - Dry Cargo or Tanker

The ability to carry out an accurate voyage calculation is an important skill for a broker. Voyage estimates allow comparison between one piece of voyage business with another, as well as with a voyage performed under timecharter. In this way, the broker can advise his principal of market alternatives.

There are many formats for a voyage calculation, including software packages. The layout below is just one example, basis Free-in Free-out (FIO) terms and full laytime which is used for both dry cargo or tanker business.

Vessel.....
Ballast Port (commencement of empty leg).....
Loadport(s).....
Discharge port(s).....
Distance (including ballast leg)..... Vessel's speed/consumption.....
Expected Bunker Price.....
Fuel oil..... Diesel..... Days at sea..... Days in port.....
Total voyage time
Income Freight.....metric or long ton at.....

	Less Commission.....%		Net freight
			
Costs	Loading port(s) costs		
	Bunkering port(s) costs		
	Discharge port(s) costs		
	Fuel oil	days x	metric or long ton x	\$ per metric or long ton.....
	Diesel oil	days x	metric or long ton x	\$ per metric or long ton.....
	Canal costs		
	Taxes/dues		
	Other costs		
			Gross voyage costs
			Net voyage income	
			(freight less costs).....	
	Voyage income	divided by.....days =	per day	(net timecharter equivalent)
	Vessel's daily operating expenses		
			Profit or Loss per day	
			(income less costs)	

Firm Offer - Voyage

The following formats are a useful checklist when making or receiving an offer.

For reply by

For account of as charterers

Name of ship:

See description as per Baltic Exchange Drycargo Questionnaire Baltic 99 (B99) which is available separately from the Secretariat.

Cargo quantity:

Cargo description:

Rate of freight: Where and how paid: to:

FIOS/FIOT/FIO SPOUT TRIMMED:

Loading port(s)/Discharging port(s):

Laydays/cancelling:

Position and expected date of readiness to load:

Loading rate/Discharging rate or days permitted:

Demurrage/Despatch:

Dues/taxes (for account of):

Owners/Charterers to appoint/nominate Agents both ends (Delete as applicable):

Extra Insurance (for account of):

Total commission including address:

Form of charterparty: Gencon, C(ore)7, Norgrain or BFC etc.

Subject further terms and conditions and any other subjects required.

Most trades today are on FIO terms with the occasional trade still using gross terms, and some charterers still fix cargoes on COP, CQD or liner terms.

Firm Offer - Time Charter

Firm for reply by

For account of as charterers

Description of vessel:

as per Baltic Exchange Drycargo Questionnaire Baltic 99 (B99) which is available separately from the Secretariat.

Delivery port/area:

Redelivery port/area:

Laydays/cancelling Date:

Position and expected date of readiness to deliver:

Duration of time charter or description of trip:

Trading limits permitted:

Cargo exclusions/permitted cargoes:

Rate of hire: (per day)

When/how payable:

Bunker quantities/prices on delivery/redelivery:

Total commission including address:

Form of charterparty: BALTIME, NYPE etc.

Subject further terms and conditions and any other subjects required.

Charter-Party and Laytime Terminology and Abbreviations

1. **PORT** - an area, within which vessels load or discharge cargo whether at berths, anchorages, buoys, or the like, and shall in most cases also include the usual places where the vessels wait for their turn or are ordered or obliged to wait for their turn no matter the distance from that area. If the word PORT is not used, but the port is (or is to be) identified by its name, this definition shall still apply.
2. **BERTH/ANCHORAGE** – in most cases the place within a port where the vessel is to load or discharge. If the word BERTH is not used, but the specific place is (or is to be) identified by its name this definition shall still apply.
3. **REACHABLE ON HER ARRIVAL or ALWAYS ACCESSIBLE** – means that the charterer undertakes that an available and accessible loading or discharging berth will be provided to the vessel on her arrival at or off the port which she can reach safely without delay proceeding normally. Where the charterer undertakes the berth will be ALWAYS ACCESSIBLE, he additionally undertakes that the vessel will be able to depart safely from the berth without delay at any time during or on completion of loading or discharging.
4. **LAYTIME** - the period of time agreed between the parties during which the owner will make and keep the vessel available for loading or discharging without payment additional to the freight.

5. **PER HATCH PER DAY** - means that the laytime is to be calculated by dividing the quantity of cargo (A) by the result of multiplying the agreed daily rate per hatch by the number of the vessel's hatches (B).

$$\text{Laytime} = \frac{\text{Quantity of cargo (A)}}{\text{Daily Rate} \times \text{Number of Hatches (B)}} = \text{Days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

6. **PER WORKING HATCH PER DAY or PER WORKABLE HATCH PER DAY** - means that the laytime is to be calculated by dividing the quantity of cargo in the hold with the largest quantity (A) by the result of multiplying the agreed daily rate per working or workable hatch by the number of hatches serving that hold (B).

$$\text{Laytime} = \frac{\text{Largest quantity in one hold (A)}}{\text{Daily Rate per Hatch} \times \text{Number of Hatches serving that hold (B)}} = \text{Days}$$

Each pair of parallel twin hatches shall count as one hatch regardless of the number of gangs that are capable of operating in that hatch. (Nevertheless, a hatch that is capable of being worked by two gangs simultaneously can, if agreed, be counted as two hatches.)

7. **DAY** - a period of 24 consecutive hours running from 0001 hours to 2400 hours. Any part of a day shall be counted pro rata.
8. **CLEAR DAYS** - consecutive days commencing at 0001 hours on the day following that day on which a notice is given and ending at 2400 hours in the last day of the number of days stipulated.
9. **HOLIDAY** - a day other than the normal weekly day(s) of rest, or part thereof, when by local law or practice the relevant work during what would otherwise be ordinary working hours is not normally carried out.
10. **WORKING DAYS (WD)** - days not expressly excluded from laytime.
11. **RUNNING DAYS or CONSECUTIVE DAYS** - days which follow one immediately after the other.
12. **WEATHER WORKING DAY (WWD)** - a working day or part of a working day during which it is or, if the vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interference due to the weather. If such interference occurs (or would have occurred if work had been in progress), there shall be excluded from the laytime a period calculated by reference to the ratio which the duration of the interference bears to the time which would have or could have been worked but for the interference.
13. **WEATHER WORKING DAY OF 24 CONSECUTIVE HOURS** - a working day of 24 consecutive hours except for any time when weather prevents the loading or discharging of the vessel or would have prevented it had work been in progress, whether the vessel is in berth or still waiting for her turn.
14. **WEATHER WORKING DAY OF 24 HOURS** - a period of 24 hours made up of one or more working days during which it is or, if the vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interference due to the weather. If such interference occurs (or would have occurred if work had been in progress), there shall be excluded from laytime the actual period of such interference.

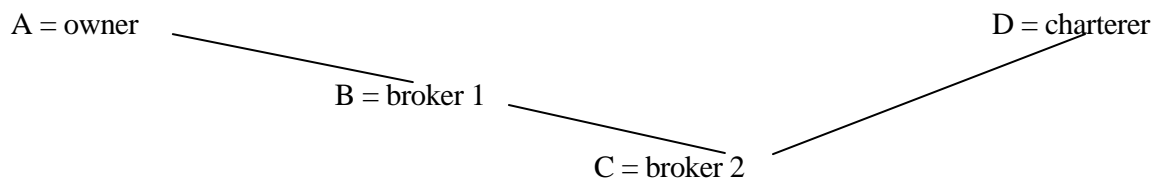
15. **WEATHER PERMITTING (WP)** - any time when weather prevents the loading or discharging of the vessel, or would have prevented work if the vessel is still waiting for her turn, shall not count as laytime.
16. **EXCEPTED or EXCLUDED** - the days specified do not count as laytime even if loading or discharging is carried out on them.
17. **UNLESS SOONER COMMENCED** - if laytime has not commenced but loading or discharging is carried out, time used shall count against laytime.
18. **UNLESS USED (UU)** - if laytime has commenced but loading or discharging is carried out during periods excepted from it, such time shall count.
19. **TO AVERAGE LAYTIME** - separate calculations are to be made for loading and discharging and any time saved in one operation is to be set off against any excess time used in the other.
20. **REVERSIBLE LAYTIME** - an option given to the charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a total time being specified to cover both operations.
21. **NOTICE OF READINESS (NOR)** - the notice to charterer, shipper, receiver or other person as required by the charter-party that the vessel has arrived at the port or berth, as the case may be, and is ready to load or discharge. [Alternatively: the notice may be specified to relate to the vessel arriving **at/off** the port or berth.]
22. **IN WRITING** - any visibly expressed form of reproducing words; the medium of transmission can include electronic communications such as radio communications and telecommunications.
23. **TIME LOST WAITING FOR BERTH TO COUNT AS LOADING OR DISCHARGING TIME or AS LAYTIME** - if no loading or discharging berth is available and the vessel is unable to tender notice of readiness at the waiting-place then any time lost to the vessel is counted as if laytime were running, or as time on demurrage if laytime has expired. Such time ceases to count once the berth becomes available. When the vessel reaches a place where she is able to tender notice of readiness, laytime or time on demurrage resumes after such tender and, in respect of laytime, on expiry of any notice time provided in the charter-party.
24. **WHETHER IN BERTH OR NOT (WIBON) or BERTH OR NO BERTH** – if the designated loading or discharging berth is not available on her arrival, the vessel on reaching any usual waiting place within the port, shall be entitled to tender notice of readiness from it and laytime shall commence as provided under the charterparty.
25. **VESSEL BEING IN FREE PRATIQUE and/or HAVING BEEN ENTERED AT THE CUSTOM HOUSE** - the completion of these formalities shall not be a condition precedent to tendering notice of readiness, unless the charterparty expressly requires their completion before notice is tendered. If it does not, any time lost by reason of delay on the part of the vessel in the completion of either of these formalities shall not count as laytime or time on demurrage.

26. **DEMURRAGE** - an agreed amount payable to the owner in respect of delay to the vessel beyond the laytime, for which the owner is not responsible. Demurrage shall not be subject to exceptions which apply to Laytime unless specifically stated in the charter-party.
27. **DESPATCH MONEY or DESPATCH** - an agreed amount payable by the owner if the vessel completes loading or discharging before the laytime has expired.
28. **DESPATCH ON (ALL) WORKING TIME SAVED (WTS) or ON (ALL) LAYTIME SAVED (LTS)** - despatch money shall be payable for the time from the completion of loading or discharging to the expiry of the laytime excluding any periods excepted from the laytime.
29. **DESPATCH ON ALL TIME SAVED (ATS)** - despatch money shall be payable for the time from the completion of loading or discharging to the expiry of the laytime including periods excepted from the laytime.
30. **STRIKE** - a concerted industrial action by workmen causing a complete stoppage of their work which directly interferes with the working of the vessel. Refusal to work overtime, go-slow or working to rule and comparable actions not causing a complete stoppage shall not be considered a strike. A strike shall be understood to exclude its consequences when it has ended, such as congestion in the port or effects upon the means of transportation bringing or taking the cargo to or from the port.

Warranty of Authority

A shipbroker negotiating as intermediary between shipowner and charterer is deemed to warrant that he has the full authority of a principal to contract on the terms of an offer which he transmits. If for some reason it transpires that he did not have the necessary full authority he may be liable in an action brought by the person who receives the offer and accepts it. To ensure professional indemnity cover given by a broker's Insurers/P & I Club is not compromised it is regrettably necessary that a broker does not admit liability.

Some of the problems which can arise are shown in these simplified examples:



A offers his ship to B who passes it on correctly to C, at \$33. C mistakenly passes the offer to D at \$30. D accepts it.

There is no contract between A and D because they are not ad idem (of the same mind, agreed) but C could be liable in an action for breach of warranty of authority with negligence.

A offers his ship at \$33 to B. B mistakenly passes the offer to C at \$30. C passes the offer to D exactly as received from B and D accepts it.

There is no contract between A and D but C could be liable in the first instance in an action for breach of warranty of authority without negligence. C may have a recourse action against B which B will no doubt satisfy if he is a man of good reputation and financially sound; if he is not, the liability would remain with C.

In the first example, the lesson for brokers is that care must be exercised and adequate broker's professional indemnity insurance held.

In the second example, as well as the necessary broker's professional indemnity insurance, Baltic brokers must take care to deal with reputable people.

Commission (Brokerage)

Unless otherwise expressly agreed, commission is payable only on freight or hire earned and paid; it is customary in a voyage charter for this to be extended by agreement to allow commission to be payable on deadfreight and/or demurrage, if any. On time charter similarly it can be extended to a ballast bonus.

In chartering it is the usual (though not invariable) practice for a commission clause to appear in the contract (the charterparty) and the commission is customarily payable by the shipowner to the charterer's agent as well as to the owner's broker.

The Contracts (Rights of Third Parties) Act 1999 has changed the way in which shipbrokers can take legal proceedings to enforce their right to commission. The Act applies to contracts entered into after 11 May 1999. It is important to note that the relevant date is a date upon which the contract is made. The pre Act position will continue to be relevant while contracts entered into before the application of the Act continue to run. In relation to long term time charters this could be for a number of years.

The Act reforms the Doctrine of Privity of Contract a rule of English law which provides that only parties of the contract, such as the owners and charterers under a charterparty, can have rights under the contract which they can enforce. A person such as a shipbroker who is not a party to the contract ("a third party") can not enforce a term of the contract even if, like a commission clause, it names him and states he will receive a benefit such as the payment of commission. Shipbrokers were not, however, left without a remedy before the Act. The courts held that the charterers had entered into the charterparty commission clause as trustees for the broker. The broker is therefore entitled to demand that the charterers take action to enforce the commission clause. If the charterer refused to take action then the broker had the option to sue the charterer as a second defendant to enforce the trust. These remedies were often commercially undesirable.

The Contracts (Rights of Third Parties) Act 1999 has removed the need to involve the charterer. The Act provides that a third party has the right to enforce a term of the contract if either the contract provides that he may or "the term purports to confer a benefit upon him". Commission clauses in charterparties clearly fit within this latter description. The Act therefore grants shipbrokers the right to take action to sue for their unpaid commission in their own name.

The Act also provides that the right is subject to other clauses in the contract. Shipbrokers may be able to pursue their claims by arbitration if the arbitration clause is drafted sufficiently widely to include a claim for commission by the broker. An example of such an arbitration clause is the Bimco/LMAA arbitration clause.

Commissions deducted at source

Whilst Owners are responsible for paying all commissions, in many cases charterers do agree to deduct some or all broker's commissions from their payments to owners, as well as their own address commission. This has led to several complaints from brokers where statements issued at the start of a charter shows brokers commissions deducted, whereas when final balances are discussed a statement shows the opposite, leaving the question of who is actually holding their commission unclear. It is recommended that if charterers are deducting broker's commissions at source, then this

must first be agreed with owners. Secondly, brokers must have in writing that this will be the agreed method of payment of their commissions.

Brokers' commissions on direct continuations

Members should note that the occasional practice of owners or charterers avoiding the payment of commission due to brokers on direct continuations of time-charterparties in which a broker or brokers were originally involved and covered for commission, is considered by the Baltic Exchange as unacceptable. To avoid any dispute and possible legal consequences, it is recommended that brokers endeavour to have included in the original time-charterparty a clause specifying that they will receive not only a commission on any hire paid, but also upon any continuation of the charter.

TANKER CHARTERING

Tanker Negotiations

Whilst negotiations involving the fixtures of tankers are very similar to those in the dry cargo market, negotiations do tend to be rather less protracted. The main elements of the fixture are still the same - rate, size, laydays, demurrage and loading/discharge areas. All the major charterers have their standard forms to fix on, such as Shellvoy/BPvoy/Mobilvoy, with the most common non-oil company charters being the ASBATANKVOY.

Worldscale

Most oil industry fixtures are concluded under the auspices of the New World-wide Tanker Nominal Freight Scale, known as Worldscale. This publication is jointly sponsored and issued by the Worldscale Association (London) Limited and Worldscale Association (NYC) Inc. and it is virtually impossible to trade tankers without having access to this information. The Worldscale organisations issue an annually revised Scale of Rates and Differentials on 1 January each year covering almost every possible tanker voyage. The figures published are based on a standard sized vessel described in the Schedule and market levels of freight are expressed in terms of a percentage of the nominal printed freight rate.

Thus, Worldscale 100 means the rate for the voyage in question as calculated and issued by the Associations whilst Worldscale 175 means 175 per cent of that rate and Worldscale 75 means 75 per cent of that rate.

Worldscale rates are based on co-ordinates involving a tanker of 75,000 metric tons with an average service speed of 14.5 knots on 55 metric tons of bunker consumption for steaming and a fixed port time of four days, and aim to produce a common return.

Worldscale also encompasses demurrage and various other costs. Ships of different size ranges have differing demurrage rates. These are increased or decreased in line with the negotiated Worldscale freight rate but more and more both owners and charterers are tending to trade on a daily lumpsum dollar demurrage rate. Demurrage commences on the expiry of a usual 72 hours total laytime which is allowed for loading and discharging purposes but despatch money is not paid in the tanker industry.

Laydays and cancelling are generally very narrow, being probably no more than two or three days, but many principals are now insisting on a ship arriving at load port with only a 24 hour spread due to the limited availability of stems. Where a full cargo is not available, charterers usually ask owners to guarantee a minimum quantity, having the option to lift up to a full cargo.

This extra cargo is classified as 'overage' and freight for that extra portion of oil tends to be paid at 50 per cent of the charterparty rate. Freight on voyage charters is payable on delivery although charterers with an unproven track record would probably have to concede a freight remittance before breaking bulk or even arrange a bank guarantee, which is little different from dry cargo.

Time Charter

Time Charter for tankers is similar to dry cargo with either specific trips or for a period of time. Period charter can be used by oil companies/traders to hedge their long term contracts in what can sometimes be a very volatile market. As with voyage most of the major oil companies have their standard charterparties such as Shelltime and Exxontime, and the hire is usually agreed at a daily rate expressed in US Dollars, the same as in dry cargo. Worldscale is not used in time charters.

DISPUTES

General Principles

A broker should be familiar with the various types of dispute resolution so as to be in a position to advise a principal accordingly.

An arbitration hearing or mediation may take place some months or even years after the event and this emphasises the importance of having on file documents and records and one's own day book relating to a fixture. A broker who has written contemporaneous evidence of events is at an immediate advantage.

Referring Disputes to The Exchange

Within the self-regulated Exchange, it is the responsibility of the Directors to ensure that members transact their business with due regard to the ethics of the market. Where a dispute arises between members which cannot be resolved mutually, a member may refer the facts to the Exchange in writing, addressed to the Chief Executive. After investigation, and after consulting the party complained against, the matter may be referred to the Directors for a ruling. Members who do not conform to the Directors' ruling may be disciplined or, ultimately, expelled from the market.

Members may also notify the Chief Executive of disputes with non-members which will be pursued where possible. In addition, the Exchange wishes to receive information, which where confirmed, may be made available to its members, about defaults or malpractice by non-members.

Maritime Arbitration

Should disputes arise under a charter-party and the efforts of the parties and intermediate broker(s) fail to find a solution, it is usual for the matter to be referred to arbitration in accordance with a charterparty clause. The form of the clause is subject to the agreement of the parties and printed clauses are frequently amended to comply with their wishes, particularly as to the composition of the tribunal and the forum. However a charterparty clause is not essential to invoke arbitration; written evidence that the parties have agreed to submit disputes to arbitration is all that is required. It is open to either party to invoke the arbitration procedure.

Great confusion can arise where a contract does not state by which system of law, the contract as a whole is to be governed – "the proper law"- and the parties and their brokers should ensure that their charterparties and other contracts clearly state which law is to govern their agreements. If it

is English law and the seat of the arbitration is in England and Wales or Northern Ireland, then the Arbitration Act 1996 will now control the conduct of the case to the extent that the parties have not made their own provisions. The concept of the seat of arbitration is a new one and means the judicial seat of the arbitration. To avoid difficulties, any arbitration clause should therefore clearly state that “the seat of the arbitration is in England” if necessary by adding this phrase at the end of the arbitration clause.

BIMCO and the LMAA have produced a printed comprehensive arbitration clause, which is recommended by the Exchange for inclusion in charterparties (see below).

" *BIMCO Standard Law & Arbitration Clause 1998 - English Law, London Arbitration*

This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced."

In appointing an arbitrator a party is choosing a judge who, either in his capacity of sole arbitrator or together with his co-arbitrator(s), will decide the matter fairly and impartially without unnecessary delay or expense to the best of his or their ability on the documents and submissions made by each of the parties. Alternatively, depending upon the form of the arbitration clause, if the arbitrators appointed by each side cannot agree then an umpire can be appointed who will resolve the dispute by himself.

If a formal hearing is required, submissions may be made by the parties themselves or through representatives, for example, solicitors and perhaps counsel. The tribunal's award is final as to the facts and also as to law unless appealed to the Courts under the very restrictive conditions of the Arbitration Act 1996.

If a charterparty does not contain an arbitration clause then it is open to the parties subsequently to agree a suitable wording should a dispute arise (e.g. the BIMCO/LMAA Arbitration Clause). The parties may also agree to vary the wording of an existing clause, for example, to appoint a sole arbitrator in place of three arbitrators or to appoint a third arbitrator instead of an umpire.

It is usual for arbitrations in London to be conducted under “The LMAA terms (1997)” which may be described as the standard terms. There is, however, “The LMAA Small Claims Procedure” which is designed to provide a simplified, quick and inexpensive resolution of small claims and also “The LMAA FALCA Rules (1996)” which provide a ‘fast and low cost arbitration’, with a strict timetable under a single arbitrator, suited to the resolution of intermediate disputes. Any or all of the above may be incorporated in one arbitration clause to cover claims of prescribed amounts.

Small Claims

The LMAA Small Claims Procedure is designed to provide a simplified, quick and inexpensive procedure for the resolution of small claims.

Mediation

Alternative Dispute Resolution (ADR) in the form of mediation and conciliation by a neutral mediator, as opposed to litigation in the courts or arbitration, is making considerable inroads into the dispute resolution of other disciplines but so far has only made a limited impact on the maritime sector. A strength, and at the same time a weakness, of ADR is that the procedure is conducted on a ‘without prejudice’ basis unless and until mutually agreeable terms are reached and recorded in writing in which case the agreement is legally binding. ADR is encouraged by the courts.

GENERAL AVERAGE

General Average

There is a General Average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

A sacrifice is the loss of or damage to physical property, for instance jettison of cargo. An expenditure is a disbursement of money, for instance salvage costs or expenses entering and while at a port of refuge.

Contracts of carriage, charterparties and bills of lading, almost invariably specify that general averages shall be adjusted according to the York-Antwerp Rules : the most recent version is the 1994 Rules.

Ship, cargo and freight contribute to the general average and expenditures in proportion to their values at the end of the voyage.

The shipowner has a lien on the cargo at destination and therefore requires cargo interests to sign an average bond and their insurers an average guarantee before release of the cargo to consignees.

SALE AND PURCHASE

General Principles

London ranks as one of the world's leading sale and purchase markets. It is active both in fields of new buildings and second hand tonnage and features strongly in demolition sales.

The market is particularly significant in terms of value and turnover. Estimates for the total sales reported between September 2000 and August 2001 on a worldwide basis involved some 749 vessels amounting to about US\$10 billion, with a total deadweight of 43 million tons. A large percentage of this business is transacted via London brokers.

It is a general practice in the buying and selling of ships that owners will instruct brokers to place vessels on the market whilst the vessels are engaged in their normal trades. It is therefore an important part of the transactions that inspections and eventually deliveries under a sale contract are co-ordinated with the employment of the vessel. Although contrary to the printed Norwegian Sale Form, it is now more usual that vessels are inspected before being negotiated for sale as the value is very much dependent on a vessel's physical condition. An important part of the purchase is also an inspection of classification records which will show the history of the vessel since it was delivered.

A standard form of contract - the Norwegian Sale Form - is used in over 80% of transacted business. The latest edition, which was revised in 1993, has also been approved by BIMCO and incorporates further amendments to previous forms particularly with respect to terms applicable to delivery.

The Sale Form deals mainly with price, terms of payment, where and when the vessel is to be delivered, and the seller's obligation towards the status of class certificates, etc.

Sale and purchase also covers the contracting of new ship construction, and a broker's role in this market lies in obtaining the best available shipyard price, payment terms and specification for all types of vessels.

The scrapping of vessels at the end of their commercial life is dealt with by brokers who offer the ships for demolition mostly to countries in Asia and the Far East.

Sale and purchase brokers provide a service to the industry in estimating ships' values, and this is often formally done by way of certificates of valuation which are widely used by owners for insurance and banking requirements.

FREIGHT DERIVATIVES

Each working day the Baltic Exchange collates freight market information and publishes a range of indices and route information. The procedures, together with a good deal of useful background information, are contained in a manual (see below) which is updated regularly *and available on balticexchange.com*. Brokers should familiarise themselves with the latest edition of the manual so that they are fully conversant with Baltic freight *derivatives* data. The manual covers the indices, route definitions, the reporting companies and their procedures. Summary information is also available on the website.

In outline, the published information comprises:

The Baltic Dry Index

The Baltic Dry Index (BDI), is the average of the Baltic Handymax Index (BHMI), the Baltic Panamax Index (BPI) and the Baltic Capesize Index (BCI). The BDI provides a good general indicator of movement in the dry bulk market, and continues the established time series of the Baltic Freight Index (BFI) which was introduced in 1985.

The Baltic Handymax Index

The Baltic Handymax Index (BHMI), is calculated from the weighted, average rates on major timecharter routes, as assessed by a panel of brokers.

The Baltic Panamax Index

The Baltic Panamax Index (BPI), is calculated from the weighted, average rates on major routes, both voyage and timecharter, as assessed by a panel of brokers.

The Baltic Capesize Index

The Baltic Capesize Index (BCI), is calculated from the weighted, average rates on major routes, both voyage and timecharter, as assessed by a panel of brokers.

The Baltic International Tanker Routes

The Baltic International Tanker Routes (BITR) are average rates, expressed in Worldscale, on major oil routes, both dirty and clean, as assessed by a panel of brokers.

The Baltic Dirty Tanker Index

The Baltic Dirty Tanker Index (BDTI) is the average of the rates on the dirty routes.

The Baltic Clean Tanker Index

The Baltic Clean Tanker Index (BCTI) is the average of the rates on the clean routes.

The Baltic Liquefied Petroleum Gas Route

The Baltic Liquefied Petroleum Gas Route (BLPG) is a single route assessment, assessed by a panel of brokers.

Baltic Ship Valuation Assessments

The Baltic Ship Valuation Assessments (BaSVA) are a bi-monthly average of the value of four vessel types as assessed by a panel of brokers.

Baltic Forward Assessment

The Baltic Forward Assessment (BFA) is a weekly average of the best bids and offers for forward prices as supplied by a panel of FFA brokers.

Manual for Panellists

The Baltic Exchange publishes a manual for panellists. This acts as the principal point of reference and guidance and is updated as needed.

The core obligation for panellists is to make and report a professional judgement of the prevailing open market level on each Baltic Index publication day for routes defined by the Baltic Exchange.

The Exchange uses reporting panels because there is no independently verifiable “right” or “wrong” rate. Market levels at any particular time are ultimately a matter of judgement. Great care is taken to ensure the daily route assessments provide a fair valuation of the current market. The manual for panellists details the Exchange’s quality assurance procedures. There are also regular audits at the workplace of the reporting companies.

Traded Options

Options are contracts that give their holder the right, but not the obligation, to buy or sell an underlying asset at an agreed price (called the strike price) at some time in the future (called the expiration time). For this right, the buyer pays an agreed sum to the seller, called the premium. There are two types of options contracts. Calls and Puts. Calls give the right to buy an asset and Puts give the right to sell an asset. Options can be used for speculation as well as for hedging. For instance, a charterer who fears that freight rates may rise will be a buyer of call options. Similarly a shipowner who wants to secure his freight income will be a buyer of put options.

To illustrate the use of options as hedging tools in the shipping markets, consider the following example:-

Assume that a charterer wants to cover the risk of rising freight rates on Route 1 of the BPI (55,000 tons light grain from USGulf to ARA). The market on April 14 stands at \$14.50 per ton but he expects this to rise substantially when he will be fixing a vessel in three months time. To cover his risk, he decides to buy a call option as follows:

Quantity 55,000 tons – Strike price \$16.00 per ton - Premium \$0.30 per ton payable immediately (i.e. \$16,500). On 14 July, when he eventually fixes a vessel, the market has risen to \$17.00 per ton. In this case he exercises his option and receives \$55,000 from the seller.

Therefore, a major part of the charterer's additional freight cost is covered by the profit from exercising the option.

Forward Freight Agreement Brokers Association

The Forward Freight Agreement Brokers Association (FFABA) was formed in 1997 by members of the Baltic Exchange, and acts within the framework of the Baltic Exchange and is serviced by the Secretariat. Members engaged in the trading of freight *derivatives* are obliged to conform to the current Rules of the FFABA as promulgated and published from time to time by the FFABA Committee. A copy of The Baltic Exchange Guide to Market Practice for members of the Forward Freight Agreement Brokers Association is on the website and printed copies can be obtained from the Secretariat. It is expected that any member engaged in the trading of freight *derivatives* will act in conformity with the spirit of this Baltic Code.

The FFABA seeks to promote trading of Forward Freight Agreements (FFAs) with high standards of conduct amongst market participants. FFAs provide a means of hedging exposure to freight market risk through the trading of specified timecharter and voyage rates for forward positions. Settlement is effected in cash against the relevant route assessment.

Members of the FFABA who act as brokers cannot be responsible for the performance of a contract. However they are expected to ensure that contracts are traded based on terms and conditions of the FFABA standard contract, amended as agreed between the Principals. The main terms of any contract will include the agreed route; day month and year of settlement; contract quantity; and the contract rate at which differences will be settled.

Freight Market Information Users' Group

The Baltic Exchange through the Freight Indices and Futures Committee (FIFC) coordinates a users' group for members who trade FFAs as principals. The Users' Group *aims to* meet at least once a year, with additional communication and consultation being conducted as required between meetings.

The Chairman of the Users' Group makes representations to the Freight Market and Futures Consultative Group to ensure appropriate comments and suggestions are put forward to the FIFC for action where appropriate.

Freight Indices and Futures Committee (FIFC)

The Baltic Exchange's freight market information, including all route assessments and production of its indices, is the responsibility of the FIFC. The committee comprises a chairman and at least two other members who are Directors of the Exchange, up to three nominated independent Baltic members appointed for their expertise *and the chair of the Consultative Group.*

Regulation of Brokers

Those members of the Baltic Exchange who also act as intermediaries for "contracts for difference" are expected to be regulated by the Financial Services Authority (FSA) if resident in the UK or, if not resident in the UK, by an equivalent body if required by the authorities in their jurisdiction.

INSURANCE

Protection & Indemnity (P&I) Clubs

The present P&I Clubs are the remote descendants of the many small hull insurance Clubs that were formed by British shipowners in the 18th century. These hull Clubs were essentially unincorporated associations or co-operatives of shipowners who came together to share with each other their hull risks on a mutual basis, each being at the same time an insured and an insurer of others - still the basic concept of the present P&I Clubs, despite the fact that they are now incorporated so that in law it is the Club and not the individual members who provide the insurance. Eventually, in 1855, the first protection association was formed - the Shipowners' Mutual Protection Society, the predecessor of the Britannia P&I Club. It was intended to operate like a mutual hull club, but to cover liabilities for loss of life and personal injury and also the collision risks excluded from the current marine policies, particularly the excess above the limits in those policies. Other similar associations followed.

While all the original P&I Clubs were based in various towns and cities within the United Kingdom, Clubs were subsequently established in other countries. Most of the major Clubs now belong to the International Group for reinsurance and other purposes. Moreover, many Clubs originally based in the UK have comparatively recently been re-formed in such places as Bermuda and Luxembourg in order to secure, in respect of Clubs' funds representing calls or premium paid by their members but not yet used for the payment of claims, freedom from exchange controls. Such freedom is demanded by the shipowners from all parts of the developed and developing world who now make up the truly international membership of the larger Clubs. The popularity of the Club system of insuring liability risks can be judged from the fact that approximately nine out of ten ocean going ships are currently entered in a P&I Club.

The full range of risks covered by the P&I Clubs include crew, stevedore and third party death and injury and other crew liabilities, collision liabilities, damage to docks, pollution, removal of wreck

(all of which are 'protection' risks), loss of or damage to cargo, ship's proportion of General Average, customs penalties and many types of fine (indemnity risks).

Freight, Demurrage and Defence Clubs are also run by some of the major P&I Clubs. These insure the legal and other costs of dealing with disputes that are otherwise uninsured. Typical claims are for freight, demurrage, collections of debt and the like. New building contracts or sale and purchase disputes are amongst the most expensive claims handled by Defence Clubs, who also give legal and commercial advice to their members.

Professional Indemnity (PI) Insurance

The Exchange requires members to obtain cover from one of the specialist insurers in this field some of which are mutual clubs. This insurance provides cover for its members acting in the exercise of their profession as agents in chartering, sale and purchase of ships, port agency, freight forwarding, liner agency, travel agency, airbroking, bunker broking and ship management. The clubs may assist in the recovery of brokerages and port disbursements, indemnify members against negligence and breach of warranty of authority (both with or without negligence) and provide general advice and assistance in connection with their members' activities. The Exchange requires that its brokers have a minimum level of cover of £100,000 for each and every occurrence.

ASSOCIATED SHIPPING ORGANISATIONS

United Nations International Maritime Organisation (IMO) - London

International shipping is regulated through a series of agreed conventions on safety, operations and pollution drawn up by this UN body. The conventions are implemented through national legislation. Within this inter-government body, specialist working groups review all aspects of ship construction and operation to establish internationally endorsed standards. Some examples are Safety of Life at Sea (SOLAS) and Marine Pollution (MARPOL) conventions.

The Institute of Chartered Shipbrokers (ICS) - London

The Institute has from its inception enjoyed a close relationship with the Exchange. Indeed, when the Institute was first formed in 1911, much of the initiative leading to its creation came from the members of the Baltic. By 1920 the education programme was well established and a Royal Charter, similar to those granted to universities and enabling Fellows of the Institute to refer to themselves as Chartered Shipbrokers, was granted.

Members must pass the Qualifying Examinations. There are exemptions for candidates with professional or academic qualification. The syllabus allows specialisation in, for example, dry cargo chartering, tanker chartering, sale and purchase, ship management, liner trades and port agency. Membership (MICS) also requires work experience in the shipping industry, which can include service at sea. The fellowship (FICS) may be granted to those who have reached a position of influence in the industry.

Membership is open to citizens of any country in the world. Company membership is also available.

The Institute's unique professional qualification, is recognised and respected throughout the world.

INTERCARGO (The International Association of Dry Cargo Shipowners) - London

INTERCARGO, based in London, was established in 1980 to represent and promote the interest of the dry bulk sector of shipping world-wide. The Association has consultative status with UNCTAD and with the IMO in London, where it has permanent representation.

Membership is open to all independent shipowners with dry bulk ships, provided that they support the principles of freedom of the seas, free enterprise and free competition. It currently has over 120 members from 25 countries, who control about 1,030 large bulk carriers, totalling in excess of 65 million dwt between them. Its associate members include shipbrokers, maritime law firms, shipping banks, P&I Clubs and classification societies.

The Association holds regular meetings and seminars in major shipping centres where it has members: London, Oslo, Piraeus, Hong Kong, Istanbul, Tokyo, Singapore, New York, Sydney and Beijing; it also participates in those held by others around the world.

INTERCARGO is concerned with a great variety of issues and produces a monthly bulletin, aimed at keeping management au fait with developments world-wide. Its continuing main preoccupation is, however, promotion of greater safety for bulk carriers and it publishes an annual analysis of shipping casualties every spring.

INTERTANKO (The International Association of Independent Tanker Owners) - Oslo

INTERTANKO represents 260 members operating over 2,100 tankers, which represents some 76% of the world's independently owned tankers. The members are spread across some 45 maritime countries. In addition, the Association has 300 associate members, including oil companies, brokers, agents and other companies engaged in the tanker business. INTERTANKO projects a strong and positive profile internationally for the independent tanker industry. It provides extensive information services and regular opportunities for industry-wide gatherings to discuss issues of concern to tanker operators. INTERTANKO also takes an active part in the IMO. The Association is striving for safe transport, cleaner seas and free competition. It is based in Oslo but also has six staff based at its London office, as well as offices in Singapore and Washington, DC.

BIMCO - Copenhagen

The Baltic and International Maritime Council (BIMCO) is the world's largest organisation of shipowners, brokers, agents, P&I Clubs and other companies with an interest in shipping, with over 2,600 members in 110 countries with 467.9 million dwt. It is BIMCO's aim to unite shipowners and to defend the interests of international shipping at large. Members may draw on BIMCO for information and guidance on matters relating to port calls, document-related problems, technical issues and other practical shipping matters. Members may also access BIMCO's On-Line Service for information. BIMCO is the acknowledged centre for the development of shipping documents, such as charterparties, bills of lading and other forms. BIMCO's subsidiary companies produce and sell publications on practical shipping matters and professional shipping software.

Lloyd's of London

Lloyd's is the most famous insurance market in the world. It is made up of syndicates or groups of underwriters backed by the personal wealth of individuals or 'names' and limited companies who have become specialists in various types of risks, marine and non-marine. There is competition between groups but the importance of the market as a cohesive whole is recognised. Edward Lloyd opened his coffee house in the 1680s; today the Corporation occupies sites on each side of Lime

Street in the City of London. The market is the Room and insurance may only be placed through brokers who make up roughly half of the people likely to be engaged in the daily business at any one time.

International Underwriting Association (IUA) - London

This Association is the representative body for international insurance and reinsurance companies trading across all classes of business through London. Formed at the end of 1998 from the merger of the Institute of London Underwriters (ILU), whose history in the marine, aviation and transport insurance markets dates back to 1884, and the London International Insurance and Reinsurance Market Association (LIRMA), it has 180 members across 40 countries. Its offices are at the London Underwriting Centre, Mincing Lane, London

FONASBA - London

The Federation of National Associations of Ship Brokers and Agents (FONASBA) was formed in 1969 by a group of European national associations of shipbrokers and agents. The interests encompassed at that time were predominately those of liner agents, tramp port agents and shipbrokers engaged in dry cargo chartering. While these are still very much a part of its concern, it also embraces tanker and sale and purchase brokers as well as ship managers through its international membership.

Full membership of FONASBA is confined to national associations of shipbrokers and/or agents. Other interested shipbroking and agency bodies including individual companies may join as Associates while specialists providing services to the professions, such as P&I Clubs, may join as club members. FONASBA membership currently comprises 37 full members representing 34 countries, 17 associate members representing a further 8 countries and 4 club members, (including the Baltic Exchange), while the geographical range extends right around the world. The United Kingdom is represented by the Institute of Chartered Shipbrokers.

Additionally, FONASBA has created the European Community Association of Shipbrokers and Agents (ECASBA) which represents the affairs of the 14 maritime EU member states in dealings with the European Commission, Directorates and other EU bodies.

FONASBA has consultative status with UNCTAD and also maintains a dialogue with other international maritime organisations such as BIMCO, INTERTANKO, INTERCARGO etc.

London Maritime Arbitrators Association - LMAA

The London Maritime Arbitrators Association is an association of about 40 maritime arbitrators who practise in London and who embrace a variety of disciplines and a corresponding breadth of expertise. The Association was founded in the Queen's Room of the old Baltic Exchange in 1960 but London maritime arbitration's roots and traditions stretch back over 300 years. In 1972 supporting membership was introduced. Such members now number many hundreds with many residing overseas. They are drawn from the commercial, nautical, technical, insurance and legal

branches of the shipping community and, in particular, from the Bar, solicitors and the P & I Clubs.

“The LMAA Terms”, last revised in 1997, provide, in a clear and convenient form, guidelines aimed at making for greater efficiency and despatch in the conduct of London arbitration. The LMAA also publishes a “Small Claims Procedure and Commentary”, last revised in 1998, which was introduced to provide a simplified, quick and inexpensive procedure for the resolution of small claims. Additionally, “The FALCA Rules Procedure and Commentary” was issued in 1996 for the fast and low cost resolution of what is usually termed as intermediate value claims.

Classification Societies

There are many ship classification societies throughout the world centred in the traditional maritime countries but the best known are the ten belonging to IACS, the International Association of Classification Societies, which has strict membership criteria and an audited Quality Management System. They are:

American Bureau of Shipping (USA)
Bureau Veritas (France)
China Classification Society (PRC)
Det Norske Veritas (Norway)
Germanischer Lloyd (Germany)
Korean Register of Shipping (Korea)
Lloyd’s Register of Shipping (UK)
Nippon Kaiji Kyokai (Japan)
Registro Italiano Navale (Italy)
Maritime Register of Shipping (Russian Federation)

There are also three associate organisations: Croatian Register of Shipping, the Indian Register of Shipping, and the Polish Register of Shipping.

Lloyd’s Register

Lloyd’s Register is an independent technical organisation that works to improve its clients’ quality, safety, environmental and business performances throughout the world. It has more than 200 offices and over 6,000 employees. Founded in 1760 to examine merchant ships and ‘classify’ them according to their condition, today the organisation’s expertise and activities extend far wider than the shipping field. Lloyd’s Register is a leading classification society and member of the International Association of Classification Societies. It classes over 103 million gross tons of merchant shipping, just over 18% of the world fleet. In addition to its marine activities, it has operations covering management systems, land-based industries, railways, and oil and gas. Through its constitution, Lloyd’s Register is directed ‘to secure, for the benefit of the community, high technical standards of design, manufacture, construction, maintenance, operation, and performance, for the purpose of enhancing the safety of life and property both at sea and on land’. It reinvests its profits in the development of services to benefit the industries

National Shipping Organisations

Most countries have a representative body for their owners - for example, the Union of Greek Shipowners. In the United Kingdom The Chamber of Shipping is the representative body of the British shipping industry nationally and internationally on issues affecting the interests of its members.

The Greek shipping community in London is focused on the Greek Shipping Co-operation Committee set up some 60 years ago and now located at the Baltic Exchange. There are also regional bodies such as the European Community Shipowners Association (ECSA) and the Council of European and Japanese National Shipowners' Associations (CENSA).