



Charterparty Risks and Legal Challenges Amid the Closure of the Strait of Hormuz

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A large number of ships have been affected by the current situation in and around the Strait of Hormuz. The situation is still fluid. Iran seems to have fluctuated between saying the straits are definitely closed and then definitely not closed. What is clear is that a bottleneck has developed in and around the region.

Shipping companies and the services that support them are highly adept at dealing with fast changing geopolitical events, whether that be covid or [war like operations](#) affecting ports and international waters. Nobody knows how long the current situation will last but it seems unlikely that things will settle down in a matter of weeks.

From a charterparty prospective the keys issues facing owners, managers and charterers right now centre around a few key areas:-

Insurance

Ships, cargoes and crew need a plethora of insurances to cover a variety of risks as ships move across international waters and [ports](#).

- Some insurers have cancelled policies including war risk policies which will then need to be renegotiated and new premiums or additional terms agreed before ships enter the affected area. The market reacted in the same way when Russia first invaded Ukraine.
- The amount of the policy increases is unclear, although many commentators have indicated that the increase will be much higher than the [Russian/Ukraine situation](#).
- Issues are likely to arise as to how that transition will be managed. Many time charters fix the level of premiums an owner can pass onto it, and the word “reasonable” appears in many charters. The unusual circumstances surrounding the current situation will leave many owners trying to rely on those clauses. For charterers, they should expect owners to try to pass new or increased premiums onto them, which might be unexpectedly high. Questions may arise as to whether a contract can be frustrated if insurance

cannot be obtained at reasonable rates.

Trading Restrictions and Unsafe Ports

- Issues concerning a vessel's ability to trade in the region, will also be a flash point for many parties. The complexities of vessels moving through the grain corridor to Ukraine opened up a number of difficult legal issues. Entering the Persian Gulf under an armed escort poses just as many issues. Immediate concerns centre around the activities occurring in the area, involving the UAE, Qatar, Oman, and Iran, and it is unclear whether the current activities are war-like. War has not been declared, so companies are being asked to make difficult decisions around the wording of their charterparty clauses.
- In addition, questions may arise as to whether a port-to-berth can be considered safe in light of current developments and whether a new port can be declared and who should be bearing the deviation costs of that exercise.

Time lost issues

- Hire, off-hire, [demurrage and detention](#) issues will be of immediate concern. If a charter does not contain appropriate wording for delays caused by the current operations, parties will try to assess whether their charterparty clauses set out where the risk allocation for delays lies, if the vessel is not at the load or discharge port. The intermittent use of drones by the Iranians and bombing flights by the USA may not count as warlike activities, and careful consideration will need to be given to the interplay around charterparty wording to the events in question.

Deviation

- Ships need fresh water, fuel and crews. If the delays continue, ships will need to take on extra provisions, such as fresh water and fuel, and arrange crew changes. Allocating those extra supply deviation costs can be complex.

Cargo discharge

- It is not unusual in our industry for ships to be used as floating warehouses by design or for matters outside of the parties' control.
- If the current situation continues, difficult decisions will need to be taken about what to do with cargoes on board, especially those with a limited shelf life.

Force majeure and impracticality

- The allocation of risk in [sale contracts](#) and charterparties is likely to be different. Parties to a charter may be left without a back-to-back recourse with shippers and receivers.

Liens

- As losses rise, the use of liens over cargo on board vessels is likely to increase.

Need Support with Charterparty or Contractual Issues?

Addressing these issues now, rather than waiting for the costly delays associated with current uncertainties, will save stress and money in the long run.

[LA Marine](#) has set up a dedicated help line for clients facing difficult contractual issues.

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