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ANALYSIS OF SANCTION REGIMES – CHARTERPARTY ASPECT

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1. A General Overview on Time Charters

Nature of Time Charters

- Time charter is a contract for **the use of the vessel and her crew** within agreed trading limits **as directed by the charterer** in consideration **for the payment of hire**.

Shipowner -----Charterer

- It is made for a particular duration such as 5 months, 10 years. – period contract
- The duration of the charter commences with delivery of the vessel to the charterer.
- At the end of the duration, the charterer is required to redeliver the vessel to the owner

Delivery

Redelivery



During this period, the ship is employed by the charterer
During this period, the charterer is required to pay charter hire.

What is an
employment order?
How do we identify
it?

- “Employment embraces **the economic aspect – the exploitation of the earning potential of the vessel.**” (*The Hill Harmony* (2001) 1 AC 638)

Examples:

- the selection of the ports of loading and discharge,
 - instructions relating to the loading, carriage and delivery of the cargo.
 - The selection of the cargo that will be loaded on the board of the vessel
- If the order is **an illegal** or committing a fraud, it is required to be refused by the shipowner.

2. Analysis of Sanction Regimes

1. A General Overview on Sanctions

“coercive measures imposed by one country or coalition of countries, against another country, its government or individual entities therein, to bring about a change in behaviour or policies”

“Sanctions are penalties imposed by one country on another, to stop it acting aggressively, or breaking international law”

- Sanction examples:

- UK has banned Russian vessels to **enter into UK ports**
- In March, seven Russian banks **were removed from Swift** including Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, Vnesheconombank (VEB) and VTB Bank. The EU, US, UK and others have said that cutting banks out of Swift will ensure they "are disconnected from the international financial system and harm their ability to operate globally".

1. A General Overview on Sanctions

Compliance with sanctions laws and regulations are important. Otherwise, breaching party might have incurred significant fines and reputational damage.

Types of Sanctions Applied

- Types of the sanctions applied to the particular county might change depending on the wording of the regime.
- In a general sense, restrictions applied can be analyzed under three groups;
 1. Restriction based on place
 2. Restriction based on -- banking sector and – people
 3. Restriction based on activity

1. Restrictions based on Place

- This is related to the restrictions imposed with regard to geographical area!!!
- The purchase, export and transportation of prescribed commodities such as petroleum, petrochemicals and natural gas from Russia.

2. Restrictions based on Banking Sector and People

2.1. Restrictions on the Banking Sector

- It does not affect the traders directly but it affects how they get to be paid and how they make payment.
- In terms of banking sector, there are **3 types of restrictions** applied. Level of those are different.

1.1. Asset freezing a ban on all transactions related to the management of its reserves and assets

1.2. Limited restrictions

1.3. De-Swift

2. Restrictions based on Banking Sector and People

2.2. Restrictions on People

- This is the most popular one. It can be against natural person or legal person
- These people are known as a **designated entity**

Example;

- The US, EU and UK have together sanctioned over 1,000 Russian individuals and businesses [companies in the aviation, military and dual use, shipbuilding and machine building sectors]

3. Restrictions based on Activities

- regardless of the geography or people here **the activity** itself is restricted

Examples:

- **shipping activities** to Iran was prohibited by USA (still continues in some extent) - an on **selling aircraft and repair parts** to Iranian aviation companies.
- The US is banning all Russian **oil and gas imports** and the UK will phase out **Russian oil imports** by the end of 2022.
- EU sanction --> Closure of EU airspace to all Russian-owned, registered or controlled aircraft, including private jets of oligarchs. – **flying**

Example;

- The US, EU and UK have together sanctioned over 1,000 Russian individuals and businesses[companies in the aviation, military and dual use, shipbuilding and machine building sectors]

3. The Impact of Sanction Regimes on Time Charters

The Impact of Sanction Regimes on Time Charters


- Sanction related Problems that Might Arise at The Beginning Stage under Time Charters – Solutions
- Sanctions related Problems that Might Arise at Later Stage under Time Charters – Solutions

Analyses of Problems That Might Arise at the Beginning Stage

- Beginning stage?
- Sanction problems at the beginning stage → mostly restrictions based on people
- During the sanction regimes, charterers should be careful regarding who the owner of the ship is and the nationality of the ship!!! Similarly, the shipowner will be careful who the charterer is!!!

chartering a ship or carriage contract with one of the designated identities is a problem!!

Analyses of Problems That Might Arise at the Beginning Stage

- . If the charterer **charters a ship on whose nationality or ownership sanctions are imposed**, it may be in breach of sanction regulations depending on the scope of the sanction regime
- The shipowner should be careful about **chartering their ship to the targets of such restrictions**. Otherwise, he may be in breach of sanction regulations.
- Following breach  pay a fine and be prohibited from trade.
- How would he/she avoid from such a situation?
 - the best way is for the charterer to check the Specially Designated Nationals (SDN) List published by a sanctioning country
 - if the ship is not related with any of the individuals or companies in the list, he may feel secure and enter into a charter

Is it just
enough to
check the list
to feel
secure? NO!!

Why? → because designated entities find a way to keep themselves out of the list so the list might not reflect the accurate situation

For example Iranian companies !!! □ at the beginning of sanctions imposed by the US against Iran, 123 ships of Iranian Shipping Lines were on the SDN list but now a majority of them seem to be owned by other companies that are not on the list

Analyses of Problems That Might Arise at the Beginning Stage

- ➔ What is happening as a consequence!!! → All these tactics help the shipowner to escape from sanction regulations but on the other hand create a risk for the innocent charterer with regard to breach of sanction regulations.
- ➔ Once this is figured out, the charterer might not find any rule that might he rely on under common law rules.

The better solution - an express clause - BIMCO Sanction Clause for Time Charterparties 2020.

Solutions for The Problems That Might Arise at The Beginning Stage

BIMCO Sanctions Clause for Time Charter Parties 2020

deals with both the sanctions related problems that might arise at the beginning stage

- Part of the clause that deals with the problems that might arise at the beginning as it is :

(b) Owners warrant that at the date of this Charter Party and throughout its duration they, the registered owners, bareboat charterers, **intermediate disponent owners, managers, the Vessel and any substitute** are not a Sanctioned Party.

(c) Charterers warrant that at the date of this Charter Party and throughout its duration **they and any sub-charterers, shippers, receivers and cargo interests** are not a Sanctioned Party.

(d) **If at any time either party is in breach of subclause (b) or (c) above** then the party not in breach may terminate and/or claim damages resulting from the breach

Analyses of Problems That Might Arise at Later Stage

- Later stage?

Imagine that → the party that you entered into a contract become designated later on?

→ Or activity that you have started doing not allowed

→ types of the cargo on the board is not allowed anymore.

→ Entering into a port which the ship is proceeding to not

allowed

What will
happen in such a
case ? →

- Answer of these questions are given depending on **the wording of the contract**
- If the contract is silent, **common law principles will be in consideration.**

Solution For The Problems That Might Arise At Later Stage - Common Law Solutions

1. Doctrine of Frustration

- Frustration occurs whenever the law recognises that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. Non haec in foedera veni. It was not this that I promised to do.

Lord Radcliffe in *Davis Contractors v Fareham UDC* [1956] AC at 728.

Solution For The Problems That Might Arise At Later Stage - Common Law Solutions

1. Doctrine of Frustration (cont.)

- if the court is satisfied that the facts constitute frustration:
 - termination of the contract automatically
 - releasing the parties from any future duties or obligations under the contract,
 - any rights arising before the frustration remain binding and enforceable.
 - any collateral contracts such as bills of lading will also be frustrated in such circumstances

Solution For The Problems That Might Arise At Later Stage - Common Law Solutions

2. Dangerous goods

- Under the common law, a charterer has the duty to ensure that the ship does not contain dangerous goods without giving notice to the carrier of the dangerous nature of the goods.
- Whether the goods is dangerous or not should be evaluated not only in a physical sense but also in **a political sense**.

Solution For The Problems That Might Arise At Later Stage - Common Law Solutions

2. Dangerous goods

Chandris v Isbrandtsen-Moller (1949) 83 Ll L Rep 385-- Should the charterers cause such cargo to be shipped, the shipowner has the right to terminate the contract when the goods become dangerous in a political sense and/or claim damages for any losses that he may have incurred as a result of such shipment

Solution For The Problems That Might Arise At Later Stage - Common Law Solutions

3. Unsafe Ports

- What is a safe port??
- a port can be dangerous in a legal or political sense even if not dangerous in any immediate physical sense.
- If the ship is sent to a port which is restricted under sanction regulations □ no reason in principle why a port should not be considered dangerous [for example entrance of Russian ships are not allowed to UK ports]
- the shipowner has the right to terminate the contract when he discovers the danger and/or claim damages for any losses that he may have incurred as a result of such shipment

Solution For The Problems That Might Arise At Later Stage – Contractual Solutions

■ BIMCO Sanctions Clause for Time Charter Parties 2020

“(e) Charterers shall not give any orders for the employment of the Vessel which involves a Sanctioned Party or a Sanctioned Activity.

(f) If the Vessel is already performing an employment which involves a Sanctioned Party or is a Sanctioned Activity, without prejudice to any other rights that may be available in subclause (d) above, Owners shall have the right to refuse to proceed with the employment and Charterers shall be obliged to issue alternative voyage orders within forty-eight (48) hours of receipt of Owners’ notification of their refusal to proceed. If Charterers do not issue such alternative voyage orders Owners may discharge any cargo already loaded at any safe port or place (including the port or place of loading). The Vessel shall remain on hire throughout and Charterers shall be responsible for all additional costs and expenses.

(g) If in compliance with subclause (f) above anything is done or not done, such shall not be deemed a deviation, but shall be considered due fulfilment of this Charter Party.

(h) Charterers shall indemnify Owners against any and all claims brought by the owners of the cargo and/or the holders of bills of lading, waybills or other documents evidencing contracts of carriage and/or subcharterers against Owners by reason of Owners’ compliance with such alternative voyage orders or discharge of the cargo in accordance with subclause (f) above.

(i) Charterers shall procure that this Clause shall be incorporated into all sub-charters and bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.”

Solution For The Problems That Might Arise At Later Stage – Contractual Solutions

- BIMCO Sanctions Clause for Time Charter Parties 2020 [Explanations as to the clause (from explanatory notes of the clause)]

”Subclause (e) sanctioned person or activity involved - This subclause prohibits the charterers from giving employment orders for the vessel which involve a Sanctioned Activity or a Sanctioned Party. The owners **have the right to reject such orders**. The purpose of this subclause is to ensure that the owners do not have to perform a voyage with a Sanctioned Party or where a Sanctioned Activity is involved. If the charterers continue giving orders in breach of this clause, the owners may rely on applicable common law remedies. (for example frustration)

Subclause (f) sanctioned person or activity involved in actual voyage - This sub-clause addresses a situation where the vessel is already performing a voyage when a party or activity becomes sanctioned. **The owners are entitled to refuse to continue the voyage and the charterers must issue alternative voyage orders**, failing which the owners are entitled to discharge or tranship any cargo already loaded. **The vessel remains on hire and the charterers are responsible for any additional costs**. The owners’ rights to terminate and/or claim damages under subclause (d) remain unaffected.



THANKS,
ANY
QUESTIONS?

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