



Compliance with anti-corruption legislation

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Vessels sometimes receive demands for bribes, yet companies are increasingly required to implement proper anti-bribery procedures. The BIMCO Anti-Corruption Clause seeks to help parties balance the risk of delay caused by corruption.

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The problem

Vessels are provided with services by many different agents and officials, some of whom take advantage of the opportunity that this provides to extract bribes. Corruption can range from an expectation of receiving cigarettes as a *gift*, to demands for substantial cash payments. If not met, these demands can result in delay, additional costs and even substantial *fin*es .

Corruption has long been a problem for parts of the shipping industry. For example, charterers commonly pay a separate sum for *communication/victuals/entertainment* and this has previously been described as partly to cover the costs of a Master serving drinks/cigarettes to pilots/customs officers/foremen “if deemed necessary”, which is not an idea that fits comfortably with modern practices. There have also been [well reported problems](#) with the payment of charterparty commissions.

Vessel owners may feel that they face an impossible dilemma when receiving demands for bribes. If they refuse to pay, the vessel may be unfairly targeted or delayed, with an immediate cost to the owners (e.g. a fine). It can then be difficult for the owners to prove that the cost was in fact caused by local corruption – eg. because the fine is based on a minor infringement found by local officials. As a result, in practice, much of the cost and risk of port corruption has often fallen upon vessel owners, and in particular vessels’ Masters.

Anti-corruption legislation

Anti-bribery legislation is not new, but many countries are taking increasingly tough stances against bribery, even if it occurs on the other side of the world. The US Foreign Corrupt Practices Act imposes standards on conduct abroad, as does the UK’s Bribery Act 2010 (the Bribery Act).

One feature of anti-corruption legislation particularly relevant to shipping is that it may prohibit *facilitation payments* (i.e. payments demanded by officials for doing what they are already required to do).

Under the Bribery Act, a company can be guilty of a criminal offence if an employee bribes another person intending to obtain or retain a business advantage. This could include a *facilitation payment* . It is a defence to show that despite a particular case of bribery, the company nevertheless had procedures designed to prevent it. Conviction for failing to prevent bribery can result in [large fines against a company](#) . Some useful guidance can be found [here](#) .

As a result, many companies are reviewing their internal anti-corruption policies to avoid criminal sanctions if something does go wrong. This is leading to an increasing demand for counterparties to agree to comply with applicable anti-corruption standards.

The BIMCO anti-corruption clause for charterparties

Tailor-made anti-corruption clauses have been in use for some time, but they have often been most favourable to the drafting party. For example, many clauses that we see require both parties to fully comply with anti corruption legislation, but make no provision for how in practice corrupt demands should be dealt with. The BIMCO Clause is an attempt to re-address the balance between owners and charterers, and deal more with the practical side of such demands.

Sub-clause (a): The parties agree to comply with *all applicable anti-corruption legislation* , which includes all jurisdictions in which the parties and the vessel operate. They must also both have procedures designed to prevent offences being committed under applicable legislation.

Sub-clause (b) : If the owner or Master receives a demand for something of value from an official or contractor (e.g. pilot or hold inspector), and it appears that meeting the demand would breach anti-corruption legislation, then the Master shall notify the charterers as soon as practicable, and all must work together to resist the demand.

Sub-clause (c) : If the demand is not withdrawn, the Master may issue a Letter of Protest. Unless there is clear evidence to the contrary, any delay to the vessel is deemed to be the result of the corrupt demand, and the vessel will remain on hire/ laytime shall run.

Taken together, sub-clauses (b) and (c) make it clear that where charterers order the vessel to a port where there is corruption, the charterers should bear the cost of resulting delays. If the vessel loses time for some reason other than the corrupt demand then the vessel can still be placed off-hire.

Sub-clause (d) : The parties indemnify each other for losses caused by a failure to comply with applicable anti-corruption legislation.

Sub-clause (e) : Either party may promptly terminate the charterparty if the other has breached applicable anti-corruption legislation, which in turn causes the innocent party to itself be in breach of anti-corruption legislation.

This provision will no doubt be an incentive for both parties to comply with the Clause.

Sub-clause (f) : Both parties warrant that they did not breach anti-corruption legislation during the negotiation of the charterparty.

Summary

Even with increasing opposition to bribery, and the growth of organisations like the [Maritime Anti-Corruption Network](#) , problems with corruption will continue to occur in some places for the foreseeable future. It is therefore important for Members to understand the requirements of applicable anti-corruption legislation and to ensure that they have appropriate anti-corruption policies and safeguards in place to comply with such legislation. This may in some cases include incorporation of the new Bimco clause into charterparties.

We recommend that the Bimco Clause is used where appropriate, both as a tool for opposing corruption and as part of a general compliance with anti-corruption requirements and risk management. If the Clause is used, it is important for charterers and owners to understand its operation and effect. Masters should be informed if the Clause is being used, and consider providing crew with training on applicable anti-corruption legislation, so that they know what to do if they experience it.

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