

## LNG Time charters – duty to maintain

An essential feature of any charter of a vessel is the owner's obligation to maintain the vessel in good condition during the charter period. This is particularly important for an LNG charter, where only the highest standards of maintenance are acceptable. It is common for the parties to allow the charterer potent remedies if the owner fails to comply with the maintenance obligations, including rights to reduce payment of hire, to place the vessel off-hire and ultimately to terminate. Such remedies apply in addition to the charterer's general right to place the vessel off-hire where there has been an interruption in the vessel's service or a reduction of the vessel's performance.

Whilst an owner may be willing to accept that such remedies may be appropriate in the event of a serious breach of its maintenance obligations, the question arises whether these remedies are appropriate or reasonable in the event of a minor failure. By way of example, if a spare generator fails and needs to be replaced, this cannot be done quickly. Thus, until the generator is replaced, the vessel is not maintained in the same condition as on delivery. The charterer argues that the owner is in breach of its maintenance obligations, and reserves its rights to reduce hire, suspend hire and ultimately to terminate.

It is usual, as found in ShellLNGTime, that the charterer's rights to place the vessel off-hire and to terminate are subject to a notice requiring the owner to demonstrate, within a specified time, to the charterer's reasonable satisfaction that it has remedied, or exercised due diligence to remedy, the maintenance failure. Note that, in order to exercise this remedy, the charterer does not have to show an interruption in the vessel's service or reduction in the vessel's performance in order to establish an event of off-hire. Thus, it would appear that the charterer is within its rights to exercise the remedies even though the deficiency relied upon is only minor, and does not cause the charterer loss.

In such circumstances, may the charterer continue to benefit from the service of the vessel, by requiring cargoes to be carried, whilst putting the vessel off-hire and reserving the right to terminate? Under the general off-hire provision, that would not be so: even though the vessel may be in a poor condition, the vessel is not off-hire unless there is loss of time. Thus, if the charterer has no cargo for the vessel, there is no loss of time, and hire continues to be paid. However, where a maintenance failure is alleged, the opposite appears to apply: the charterer may be entitled to refuse to pay hire even though the owner is providing the required service. Unsurprisingly, this point may be hotly debated during contract negotiations. The owner would argue it is potentially penal. Owner's position may be that hire should be paid and there should be no right of termination whenever service is being provided, or capable of being provided. Charterer's position would be that there is no justification for failing to achieve the highest standard of maintenance of LNG vessels.

One further point to note: ShellLNGTime2 introduces a provision that, if the charter is for a single voyage, the vessel shall be off-hire under clause 2 immediately upon notice to the owner, without any notice period for the owner to demonstrate that it has exercised due diligence to rectify the maintenance failure. As the charter also gives the charterer the right to terminate if the vessel is off-hire under clause 2, the owner may be wary of using this form without amendment for single voyages. Further analysis of the changes brought in by ShellLNGTime2 will be considered in the next edition of Well Heeled.



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