

## COVID-19 Q&A ON BIMCO'S INFECTIOUS OR CONTAGIOUS DISEASES CLAUSES

### Overview

The outbreak of COVID-19 and its impact on business and society is unprecedented. We are learning day by day how we must adapt to these new circumstances. Ports around the world are handling the situation in different ways and it is difficult to provide a one-size-fits-all contractual solution. What one port in one country of the world is doing, restricting or prohibiting, is not necessarily the same as a port in a neighbouring country does. BIMCO urges the industry to be pragmatic and work together to find solutions. Not every answer will be found in the contract and parties should do their best to communicate openly about the issues they face and identify compromise solutions to find a way through these difficult times.

This Q&A is a list of commonly asked questions together with our answers. We will update this Q&A on a regular basis to share the guidance we provide on BIMCO's Infectious or Contagious Diseases (IOCD) Clauses.

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## IOCD Clause - Focus on voyage charter parties

### Q1. Under what circumstances can the IOCD clause be triggered?

A1: The voyage charter party clause can only be triggered when the two interdependent definitions of "Disease" and "Affected Area" are fulfilled. There should be no argument that COVID-19 falls within the definition. In terms of the "Affected Area" it should be noted that the clause can only be invoked if the risk of exposure to Disease and/or a risk of quarantine arose after the date of the charter party. The "Affected Area" can be two distinct places – where the ship calls at a place where there is a risk of infection to the crew and, secondly, where the ship calls subsequently where there is a risk that the ship will be quarantined or subject to other measures that may delay the ship as a result of a previous port call.

### Q2. BIMCO's Infections or Contagious Diseases Clause talks about "Affected Area". As the World Health Organisation (WHO) already declared this a pandemic (a global scale epidemic), does the "Affected Area" definition not lose its value as this epidemic affects the entire world?

A2: The definition of "Affected Area" does not refer to areas declared by the WHO but to ports and places where there is a "risk of exposure" to the Disease. It is not an arbitrary decision for the owner or master to decide what constitutes a "safe port" in this context. It is a matter of fact and sound judgement. If a port has not been declared by a public health authority as a risk to visiting ships, then we believe it would be difficult to define it as an "Affected Area". Provided the crew and shoreside personnel follow recommended protective measures then the risk to the crew should be minimal (and evidence suggests that ship's crew are presently one of the lowest risk groups).

### Q3. What rights do the parties have if owners invoke the IOCD Clause and cancel the voyage charter party before loading commences?

A3: If the owners cancel the voyage charter party before loading has commenced the clause is only intended to let the owners “walk away” from the contract without any further financial liabilities towards the charterers, and vice versa.

If the loading port was already a known “Affected Area” when the charter party was concluded, the owners would not be entitled to cancel the charter party and charterers would have a claim against the owners for breach of contract. If the loading port becomes an “Affected Area” only after the date of the charter party, then the owners’ cancellation would be in accordance with the clause and the charterers would not have a basis for a claim against the owners.

### Q4. Can the owners cancel the voyage charter party if there is a risk that the vessel will be quarantined at the load port?

A4: Under the voyage charter party clause, subclause (c)(i) allows the owners to cancel the charter party before loading has commenced if the vessel is at risk of being quarantined at the load port only if this risk did not exist at the date of the charter party. However, if the charter party provides for a range of load and discharge ports, the owners can only cancel if the charterers have failed to nominate alternative safe ports within the range.

### Q5. If the owners agree to let the ship proceed to a load port which is an “affected area” due to the risk of quarantine, who will be responsible for the time lost during the quarantine?

A5: The charterers will be responsible because under subclause (f)(iii), any time lost will count as laytime (or demurrage).

### Q6. If a ship arrives at an “affected area”, when can it tender a valid notice of readiness (NOR)?

A6: The normal charter party requirements for tendering a valid NOR apply – the ship must have arrived and be physically and legally ready. In respect of the readiness requirement, the ship will not be ready if it is quarantined because of an infection among the crew. However, if the crew is free of the virus then many ports will give the ship health clearance which in most cases will permit a NOR to be given.

### Q7. If a ship arrives at the load port and is quarantined because of a previous port call, can the charterers cancel the charter party if the owners are unable to tender a valid NOR by the cancelling date in the charter party?

A7: The charterers’ right to cancel under the charter party is an absolute right if the cancellation date is missed. However, we have not seen any cases where this has occurred as many ports have imposed 14 day “self-isolation” requirements that can often be absorbed during the voyage from the previous port to reduce delays on arrival.

### Q8. Which party pays for the waiting time during quarantine?

A8: Subclause (f)(iii) provides that any time lost will count as laytime or time on demurrage. The intention is that time will be counted from the point at which the ship would have tendered NOR but for the quarantine restriction until such time the quarantine ends. At this point the terms of the charter relating to where and when the notice can be tendered will come into effect, NOR will be given, notice time (if any) will run, following which laytime will commence.

Feedback or a question about this information?

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