

Proposed changes to the NYPE form



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The proposed draft amendment to the NYPE 93 form of charterparty is expected to incorporate a number of additional clauses with which parties will be familiar.

The New York Produce Exchange (NYPE) form is one of the most common forms used for the carriage of dry cargoes by a time charter party, the other being the BALTIME. With 47 years between publication of the first version in 1946 and the second version in 1993, the next version is perhaps not strictly due, but reflects the impact of some key intervening decisions. We refer to these below:

- The *ASTRA [2013] 2 Lloyd's Rep 69*
We can anticipate that Clause 11(b) 'Hire Payment – Grace Period' will be amended to reflect the decision in the *ASTRA*. In this case, it was decided that failure to effect even one payment of hire promptly is capable of being repudiatory. The Drafting Committee is yet to decide precisely how this is to be formulated to interact with the anti-technicality notice provisions to ensure that a party that innocently pays for hire more than three days late on one occasion is not put in a worse position than a party that persistently pays for hire, say, two days after the due date.
- The *ZENOVIA [2009] 2 Lloyd's Rep 139*
In this case, it was held that the charterer was not bound by its approximate Notice of Redelivery. The proposed new provisions for redelivery in Clause 4 are likely to require the charterer to take reasonable steps not to hinder redelivery by the date set out in any notice given. We trust that the final version will make clear whether this applies to both approximate ('advance') and definite notices.
- The *KITSA [2005] 1 Lloyd's Rep 432*
The issues that arise in relation to hull fouling and consequential speed and performance issues when a vessel stays for prolonged periods in tropical waters, including the right of the owner to rely on the implied indemnity, seem to have been in mind when the new BIMCO Hull Fouling Clause for Time Charterparties was drafted. This is likely to appear in the new form and expressly provides that if the ship is 'stuck' in a tropical zone, the responsibility for the maintenance of the hull in an efficient state transfers to the charterer. It will be up to the parties to negotiate how long the ship can remain in one place in a tropical zone, with the default position being 15 days.
- Some changes, including those relating to the obligation for performance of voyages (changed from 'due' to 'the utmost' despatch), and speed and performance, appear helpful to owners. The proposed addition in the standard form of a 'Slow Steaming Clause', in response to the increased cost of bunkers, will be welcomed by charterers.
- As part of the standard form, we may also see an acceptance of electronic bills of lading, with the addition of the BIMCO Electronic Bills of Lading clause.

The current indications are that the new NYPE form will be available later this year. A copy of the current draft of NYPE 2014 is available to download from the [BIMCO website](#). The industry is invited to comment on any of the proposed revisions.