

# IMSBC Code - Charterparty clause for solid bulk cargoes that may liquefy

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## Introduction and background

Reference is made to various circulars<sup>1</sup> and articles published by the Association on the liquefaction of solid bulk cargoes<sup>2</sup>.

The Association has seen various charterparty clauses that attempt to weaken, avoid, and/or restrain owners from taking the necessary precautions with regard to cargoes that may liquefy, as set out in the IMSBC Code (which is mandatory under the provisions of SOLAS). With a view to preserving a Member's rights, protecting their interests and to assist in achieving contract certainty on this important safety matter, the International Group of P&I Clubs ("IG") has produced a standard charterparty clause (set out below).

## The Association's Recommendations

The Association recommends that Members incorporate IG's clause in time charterparties that allow for carriage of cargoes that may liquefy and voyage charterparties fixed for such cargoes.

Members ordered/fixed to carry such cargoes are often faced with significant commercial pressures to load before carrying out precautionary checks, as recommended by the IG circulars. A key recommendation is to have owners' own representative samples taken for testing at an independent competent laboratory, which is often located overseas<sup>3</sup>. This in itself can cause significant delays and costs, for which P&I cover is unlikely to respond. Moreover, the Association has seen numerous cases where shippers have denied access to stockpiles for sampling, obstructed the removal of samples from the vessel and denied access to owners' chosen surveyors/experts. Charterparty clauses preventing the appointment of certain surveyors/experts have also been seen in circulation.

In a number of cases, where independent testing has been carried out, the shipper's own tests and certificates have been found to be unreliable. Independent testing of samples at a reliable laboratory, preferably before loading, therefore remains a key recommendation to Members. The practical difficulties often faced with discharging unsafe cargo back to shippers in remote locations often causes further delays, costs and legal disputes. It is hoped therefore that the clause will assist members in being able to resist commercial pressures that could lead to the IMSBC Code provisions and precautions related thereto being compromised.

The Association can be contacted for further advice on the recommended charterparty clause and for more general advice on cargoes that may liquefy. Members with orders/fixtures to load such cargoes are encouraged to make swift contact with the Association so that sampling and independent testing can be arranged so as to try and minimise delay.

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<sup>1</sup> See in particular P&I Member circulars [16/10](#) (iron ore fines) and [23/10](#) (nickel ore) and Loss Prevention Circular [6/11](#) (sinter feed). It is worth noting that, since issuing P&I Member Circular 23/10, China has made a submission to the IMO in relation to nickel ore from Indonesia, which was carried by the three vessels lost, along with 45 seafarers, as referred to in that Circular. In the submission it is stated by China that "According to the evidence available, the direct cause of these accidents was the loss of stability as a result of cargo liquefaction..."

<sup>2</sup> In addition to those cargoes referred to in circulars, others cargoes which are, more recently, understood to pose a risk of liquefaction include chromite ore (which is listed in the IMSBC Code as a Group C cargo not liable to liquefy) and mill scale (which is not listed in the Code)

<sup>3</sup> Whilst 'can tests' may indicate if cargo is unfit for shipment they cannot determine if a cargo is fit to be loaded – this can only be determined by laboratory testing.

### **Charterparty clause for solid bulk cargoes that may liquefy**

The following clause has been prepared by the IG to protect members' interests:

*“Solid bulk cargoes are to be presented for carriage, loaded, (and where necessary trimmed) only so far as lawful and harmless, and always in compliance with all applicable international regulations, including IMSBC Code 2009 (as may be amended from time to time). All time taken in complying with such regulations, or as a result of non-compliance shall be for Charterers sole time and expense (whether as hire or as laytime/demurrage as applicable). Charterers shall be responsible for any and all additional costs, expenses and liabilities whatsoever incurred in such compliance or as a result of any non-compliance. For IMSBC Code Group A cargoes the Charterers are to provide certificate(s) of test from a laboratory which must be approved in advance by Owners at Owners absolute discretion, and such certificate(s) of test must show the Transportable Moisture Limit (TML) and Flow Moisture Point (FMP) and moisture content. Such certificate(s) are to be presented to Owners and Master prior to, and as a condition, of the commencement of loading. The Master shall also have the right in his absolute discretion to refuse to accept cargo on board or, after loading, to refuse to sail, where in his reasonable opinion, there is a risk (including but not limited to the risk of liquefaction of the cargo) which could jeopardise the safety of the crew, the vessel or the cargo on the voyage. The Master shall also have the right in his absolute discretion to demand that such cargo be offloaded from the vessel. Such refusal and/or demand to offload shall not be a breach of charter and Charterers shall be responsible at their sole time and expense (whether as hire or as laytime/demurrage as applicable) for all steps required to make the cargo safe and/or to allow the vessel to sail to the satisfaction of the Master. In any event, Charterers are to allow Owners or their representatives to take samples of cargoes prior to, and as a condition, of loading and Owners shall be entitled to test such samples and/or appoint surveyors and/or experts to act on their behalf always at Owner’s discretion. Charterers agree to pay and indemnify owners for all costs and consequences incurred as a result of Charterers orders to load solid bulk cargoes and all the time taken up by the steps outlined in this clause shall be for Charterers account and Charterers shall be responsible at their sole time and expense (whether as hire or as laytime/demurrage as applicable). This clause is always without prejudice to the obligations of Charterers to provide a safe cargo and in relation to loading and nothing done or omitted to be done by the Master or Owners pursuant to this clause shall amount to a waiver of any rights of Owners.”*