



SEMAPHORE

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Force Majeure Clause from BIMCO

Shipping industry representative body, BIMCO, has released the free-standing [Force Majeure Clause 2022](#) for use in a variety of contracts.

The organisation, whose global membership ranges from the largest shipowners to small local port agents and law firms, observed that in recent years “extreme events have emphasised the need to provide contractually for the unexpected”.

“When a force majeure event occurs that prevents a party from performing, the parties will need the protection of a clause to avoid claims for breach of contract and to provide a mechanism for handling the situation,” it stated.

“The philosophy behind the clause is that in a force majeure situation the parties should communicate and co-operate to handle the situation together. Termination should only be the last resort.”

Previewing the clause drafting in an online [post](#) on September 4 last year, BIMCO spokesperson Anna Wollin observed that successfully invoking force majeure under a charter party or other contract was dependent on many factors.

“One essential element for contracts governed by English Law is that the agreement must contain a clause that defines what constitutes a force majeure event and sets out the circumstances under which the clause can be invoked to excuse liability for non-performance,” posted Ms Wollin.

“That is because force majeure is not a free-standing legal concept under English Law, as opposed to some civil law countries such as France, where it is written into the Code Civil. English Law operates instead with frustration, which has a reputation of being almost impossible to attain.”

Ms Wollin noted that although several BIMCO contracts include a force majeure clause, such clause has never previously been published as a standalone in BIMCO’s clause library.

Issues to have been considered by the clause-drafting team are understood to have included:

- who the clause should benefit and what the threshold for invoking force majeure should be
- what should qualify as a force majeure event for the purpose of the clause. Generally, force majeure events fall into two groups – natural events and political events. Natural events may include earthquakes, floods and other natural disasters. Political events may include terrorism, war (whether declared or not), riots, strikes, changes of laws or government policies
- what the consequences of a force majeure event should be – for example, non-liability for damages, suspension of performance or termination
- whether different force majeure clauses should be developed for different types of contracts. A force majeure clause in a voyage charter party would need to provide for different consequences than in a ship sale and purchase contract due to the nature of these contracts

Ms Wollin noted that the clause-drafting team was to draw inspiration from the ICC (International Chamber of Commerce) Force Majeure Clause 2020.

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