

The Baltic Code



THE BALTIC CODE 2014

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INTRODUCTION

This document, substantially revised in 2012, was first produced in 1983 under the consolidated heading of the Baltic Code. It has now been divided into three main sections, namely an introduction to the Baltic Exchange, the Code of Ethics and Market Practice (the core Code) and an introductory guide to modern shipping practice and terminology which many new and young Baltic members have found useful.

The Baltic Exchange

The Role and Organisation of the Exchange

The Baltic is the world's oldest shipping market. It traces its name to the Virginia and Baltick Coffee House, established in 1744. It was then used mainly by merchants who had a major trade in tallow from the Baltic seaboard. The Baltic Exchange was reorganised into its modern corporate form at the time of the construction of the Baltic Exchange building in St Mary Axe which opened in 1903. The Baltic developed into the world's most prestigious and only international, self-regulated market for matching ships and cargoes and buying and selling ships. Although in the light of modern business practice and international communications a trading floor is no longer necessary, the Baltic's global members continue to operate as a shipping marketplace and to apply the highest standards of ethics.

A large part of the world's maritime cargo chartering and sale and purchase business is negotiated at some stage by members of the Baltic. The Baltic publishes numerous daily indices which indicate the state of the markets. As well as providing guidance to brokers these form the settlement mechanisms in the Forward Freight Agreement (FFA) market which is used for risk management.

Members of an associated body, the Baltic Air Charter Association, include specialist brokers who charter aircraft.

At the time of writing in 2014 Baltic members represented worldwide interests through over 600 companies. Around 2,400 men and women represent these companies on the Exchange, all individually elected to do so. There are some 63 different nationalities represented on the Exchange. Member companies of the Baltic Exchange contribute significantly to the UK's balance of payments, recording some £ 840 million of overseas earnings from commissions in 2011.

The Baltic Exchange Limited ("The Company") is a company limited by shares and owned by its shareholders most of whom are the member companies. Some are individuals who trade in their own right and Retired Members. In the past all members of the Baltic were required to hold a certain number of shares. Although this is no longer a requirement, the result is that the Baltic has approximately 440 shareholders. This diversity of shareholding is considered by the Board to be a strength and there are restrictions in place to avoid any single shareholder or interest group being able to vote too many shares.

The independence of the Baltic is vital to its business and this is safeguarded both by the shareholding structure and restrictions and by the strength of its balance sheet (currently over £25 million). The Company is governed by a Board of between 12 and 15 Directors

with up to 12 elected by shareholders (and who must themselves be shareholders) and up to three elected by members of the Exchange. The Board has disciplinary powers of censure, suspension and expulsion over members and is responsible for maintaining proper, ethical standards in trading. Disputes involving members are referred to the Exchange for assistance with mediation. Defaults by non-members against members are pursued.

At any time one Director is elected by the others to serve in the prestigious position of Chairman of the Baltic Exchange, with a second serving as Vice-Chairman. By custom the Chairman serves a two year term and is usually replaced by the then Vice-Chairman.

The Exchange derives its income from membership subscriptions, the sale of its market data, transaction revenue from its Baltex marketplace for FFAs, rents for offices in its building in 38 St. Mary Axe and its facilities for members and catering/function facilities for non-members. It also receives income from its portfolio of investments.

Membership of the Exchange is available in one of four broad groups:

- **Principals** who trade on their own account. They either own or control ships or have cargoes to move;
- **Brokers**, who act as intermediaries between shipowners and cargo interests, and do not trade on their own behalf;
- **FFA Trading members** who may be in either of the above categories but are also participants in the FFA market;
- **Non-Market Members** who, whilst not trading in the Baltic Exchange market, wish to be associated with this hub of international shipping. They include maritime lawyers, arbitrators, ship financiers and other maritime institutions.

The Exchange categorises its members so that all those in the market know the status of those with whom they trade. For example, members who will be acting as an intermediary only, and will not trade on their own behalf, sign an undertaking to trade in the market only as a broker and are denoted as such in the official List of Members. Those who are principals may act both on their own behalf, and as brokers.

Those acting as brokers can represent:

- **Shipowners**, sometimes exclusively, in which case they are referred to as “owners’ brokers”;
- **The charterer**, sometimes exclusively, in which case they are referred to as “chartering brokers”;
- Either the **shipowner or charterer** on a non-exclusive basis, when they are referred to as “competitive broker(s)”.

Each person elected as a member is required to demonstrate to the satisfaction of the Board and at any time subsequently at the request of the Board that they are of sufficient financial standing to carry out with confidence the business in which they are engaged. At the time of their election to membership, the Board (represented by the Membership Committee) considers the reputation and standing in the market of the company and individual prospective members and usually consults the existing membership before approving the new member.

Administration and Management of the Exchange

The Board appoints a Chief Executive to manage the membership administration, organisation of the Exchange and its staff, the club facilities and the other services for members and facilities for non-members.

The Board delegates power to a number of Committees in order to expedite its work. All Committees include at least two Directors, but the relationship between those Committees and the Board is, ultimately, advisory and the Board may review any decision taken by a Committee.

The Membership Committee considers new membership applications, facilities for members, sports associations and social activities and manages the important dispute resolution activity of the Exchange referred to above. It may co-opt Members who are not Board Directors to provide additional expertise and shipping experience in support of its work.

The Finance Committee reviews the financial position of the Company and advises the Board on budgets. It also takes the leading role in supervising the management of the Baltic's substantial investment portfolio and the property on St Mary Axe.

The Freight Indices and Futures Committee (FIFC) supervises all matters related to the Baltic route assessments and indices, agreeing changes to definitions, vessels and routes and ensuring that the Baltic data always reflects the reality of the physical shipping market. It also reviews carefully the quality of the production process and approves any necessary changes to the Guide to the Specification, Production and Management of Benchmarks. To carry out this work the FIFC co-opts as advisors the Chairman of the FFA Brokers' Associations (both dry and wet) and the Chairman of the Freight Market Information Users' Groups (both dry and wet).

The Baltic Code of Ethics and Market Practice

The motto of the Exchange - 'Our Word Our Bond' - captures the importance of ethics in shipping. Members need to rely on each other and, in turn, on their principals, for contracts verbally expressed and only subsequently confirmed in writing. The terms of a contract, whether oral or written, are therefore considered sacrosanct and ethical business practice is an essential commitment of Baltic Members. In addition the Directors have highlighted certain matters which are worthy of close attention from members of the Baltic Exchange, and have given the following guidance on required standards.

These include, but are not limited to, the following basic principles:

1. All market participants are required to honour their contractual obligations in a timely manner.
2. In the conduct of their profession, members must exercise reasonable care to avoid misrepresentation and shall be guided by the principles of honesty and fair dealing.
3. A broker must only offer or bid a ship or cargo when duly authorized by a principal or by a broker acting on the instructions of, and with the authority of, the principal. A broker must not purport to hold or make use of authority where that authority is not in fact held, nor may a broker alter the substance of any authority without the approval of the principal concerned.
4. An owner or owner's broker may only offer his/her vessel 'firm' for one cargo at a time. Similarly, a charterer or charterer's broker may only offer his/her cargo 'firm' to one vessel at a time.
5. A principal may receive multiple firm offers for a vessel or cargo but must always make it clear at the time if he is already out firm elsewhere.
6. An unsolicited offer or proposal does not necessarily establish the channel of negotiation.
7. Prior to quoting business from a principal previously unknown to him, a broker should take reasonable steps to obtain the background and reputation of the principal concerned. However, where this has not been possible, the situation should be clearly communicated to any counterparty.
8. All parties must ensure there is absolute clarity regarding the payment of broker commissions. In the event it is anticipated that commissions will be deducted from hire and paid to the broker by the charterer, then this must be expressly stated in both recap and charterparty. Any subsequent change must be similarly documented.
9. Brokers who act as Baltic panellists are required to pay careful attention to the guidance offered by the Guide to the Specification, Production and Management of Benchmarks. Impeccable standards of honesty and integrity are critical to this role.

Unacceptable practices include, but are not limited to the following:

1. It is unacceptable to offer named tonnage against tenders without the authority of owners or disponent owners.
2. Brokers must not imply that they hold a ship cargo firm or exclusively when they do not, in order to secure a response from another party.
3. A vessel must not be held on "subjects" for the purpose of determining market direction. Failing a vessel on "subjects" for such spurious reasons is unacceptable.
4. It is never acceptable to attempt to manipulate prices in the FFA (freight derivatives) market through the abuse of "subjects" in the physical market.
5. Except where expressly contemplated in the charterparty, the offsetting of other claims against hire or freight payments is unacceptable.
6. Where a principal operates a company (whether wholly, partially or separately owned), great care must be taken in considering the company name. Where the name is similar to that of the parent company, market participants are likely to associate the goodwill of the parent with the subsidiary or separate company. In these circumstances, whatever the precise legal position, it is unacceptable if the 'subsidiary' fails to meet its obligations while the parent is in a position to meet those obligations or pay appropriate damages.
7. Withholding payment of undisputed sums, including commission to brokers, on any earnings received is unacceptable.
8. It is not acceptable for a charterer to fix two vessels or more for one cargo and then hold the vessels over a period of time on "subjects".
9. The distribution of route or index rates, produced by the Exchange from its panel reporting companies, for the purpose of pricing charters or contracts without an appropriate commission to a Baltic broker is unacceptable.
10. Redelivery of a vessel from timecharter at any time prior to the expiration of the minimum period, unless mutually agreed in advance with the owner, is unacceptable.
11. Failure to nominate cargoes or vessels when required under the terms of a Contract of Affreightment, is unacceptable.

A member of the Exchange who fails to comply with any of the above terms or practices of this Code may be disciplined by the Directors under the Rules. The Directors have power to censure, suspend or expel an individual member and his/her company from the Exchange.

The Exchange has arrangements for investigating disputes between members, and between members and non-members, which arise from the breach of this code. Members are encouraged to bring such instances to the attention of the Exchange in writing so that they can be investigated.

An Introductory Guide to Modern Shipping Market Practice and Terminology

This section sets out information which shipping market participants may be expected to know. In the past this part of the document was used as the basis of a test for new members to ensure they were appropriately knowledgeable. The test is no longer required, but the information is retained as many still find it a useful reference. It represents an introductory overview of the aspects covered and the reader should not consider it comprehensive.

The Baltic encourages all its members to study for exams with the Institute of Chartered Shipbrokers with a view to becoming a Member of the Institute.

Main Types of Vessels and Trades

Modern cargo vessels range from small coasters to very large bulk carriers and ultra large tankers, but generally fall into a number of types. The use of these terms evolves quickly and they are not precisely defined. Where terms are defined below this is intended to reflect current market practice rather than to impose a definition on the market. For the purpose of its information production the Baltic does operate specific definitions in order to provide clarity, which are set out overleaf. However, this does not imply that these broader definitions are erroneous.

Bulk Carriers (Dry Cargo)

All these vessels are single deckers with a varying number of holds for the carriage of bulk cargoes such as grain, ore, coal, steel etc.

Handysize

About 20/35,000 dwt, 4 holds/hatches or 5 holds/hatches. Geared with 25-35 ton cranes

Handymax

About 36/49,000 dwt, 5 holds/hatches. Geared with 25-35 ton cranes

Supramax

About 50/64,000 dwt, 25-36 ton cranes which are usually fitted with own grabs

Panamax/Kamsarmax

About 65/82,000 dwt, 7 holds/hatches. Usually gearless

Post Panamax/Mini Cape

About 87/115,000 dwt, 7 holds/hatches. Gearless

Capesize

About 120/200,000 dwt, 9 holds/hatches. Gearless

Very large Ore/Bulk, also Valemax, Chinamax

About 220/400,000 dwt, 9 holds/hatches. Gearless

There are also numerous specialised vessels, which include the following:

Specialist Vessels

OO

A vessel which is adapted to carry both oil and ore

OBO

A general purpose vessel which is adapted to carry oil, general bulk products and ore

Tweendecker/Multi-purpose (MPP)

A vessel of two or more decks for the carriage of general cargo including bagged and/or mixed general cargoes and containers.

Reefer

A refrigerated ship for meat, fish, fruit and vegetables, etc.

RO/RO (Roll on/Roll off), PCC (Pure Car Carrier), PCTC (Pure Car/Truck Carrier)

Roll on roll off vessels with ramps suitable for wheeled and tracked cargoes.

Containership

Vessels carrying general and high value cargoes in containers (commonly referred to as boxes), some of which may be refrigerated. Capacity is expressed as the equivalent number of TEUs (twenty foot equivalent units) or FEUs (forty foot of equivalent units).

Tankers

These vessels are designed to carry cargoes including crude oil, refined dirty products, refined clean products, chemicals and gas, and generally fall into the following groups:

VLCC (Very Large Crude Carrier)

About 240/320,000 dwt

VLGC (Very Large Gas Carrier)

About 76,600 cbm

Suezmax

About 120/160,000 dwt

Aframax

About 90/120,000 dwt (or LR2 if coated tanks for refined products)

Panamax

About 60/80,000 dwt (or LR1 if coated tanks for refined products)

MR (Medium Range)

About 37/55,000 dwt

Handysize

About 10/37,000 dwt

In creating the Freight Market Information for dry cargo indices, the Baltic Exchange currently requires its panellists to report their opinions based on the following ship definitions:-

Freight Market Information Ship Definitions

Handysize

28,000 metric dwt, 37,523 cbm grain, fitted with cranes

Panamax

74,000 metric dwt, 89,000 cbm grain, gearless

Supramax

52,454 metric dwt, 67,756 cbm grain, fitted with cranes & grabs

Capesize

172,000 metric dwt

Trades

A large variety of cargoes are carried on bulk carriers, but as a rule, the larger the vessel, the fewer commodities are commonly loaded.

For example, capesize ships carry mostly iron ore and coal and sometimes grain. Panamax sizes, in addition to these cargoes are also sometimes employed for the carriage of metcoke, petcoke, fertilisers, sulphur, salt, bauxite, alumina and steel slabs.

The smaller handysize to supramax sizes, in addition to the above, are also often employed in carrying cargoes such as steel products, scrap and sugar.

The largest trade routes for the major bulk cargoes are commonly:

Iron Ore

Australia to the Far East and to Europe

India to the Far East

South Africa to the Far East and to Europe

Brazil to the Far East, Europe and to Argentina

Chile to the Far East

Norway to Europe

Black Sea to the Far East

Coal

Australia to the Far East and Europe, with some cargoes also to Brazil and Argentina

Australia/India and South Africa/India

Indonesia to the Far East and to Europe

South Africa to the Far East and to Europe

Colombia to Europe

USA East Coast to the Far East and to Europe

West Coast of Canada to Far East

Wheat

N.America to Far East, Middle East and Europe
Australia to the Far East and Middle East
E.coast S.America to the Far East and Europe with some cargoes also to the Middle East
UK/Continent to the Middle East, North Africa
Black Sea to the Middle East

Soya Beans

USA (Gulf/Mississippi) to Far East, Middle East and Europe
Brazil to Far East and Europe
Argentina to Far East and Europe

Tanker Trades & Flows***Crude Oils***

Middle East to Far East, NW Europe, USA, Indian sub Continent, South Africa, Brazil,
Red Sea, Mediterranean & Australasia
Red Sea to Far East, USA, NW Europe & Mediterranean
West Africa to Far East, NW Europe, Mediterranean, Indian sub Continent, USA & South
America
North Africa to Mediterranean, NW Europe, USA & Far East
North Sea to USA & Far East
Baltic Sea to UKContinent, Mediterranean, USA & Far East
Black Sea to UKContinent, Mediterranean, USA & Far East
ECMexico to USA, Europe & South America
Caribbean to USA, Europe, South America, Indian sub Continent & Far East
South America to USA, Europe & Far East
Indonesia/Malaysia to Far East & Australasia

Dirty Products

Middle East to Far East
NWEurope to Far East & USA
Mexico & Caribs to USA, NWEurope & Far East
Baltic Sea to UKContinent, Mediterranean, USA & Far East
Singapore to Far East
Inter-regional trade within Europe/Mediterranean
Inter-regional trade within SE Asia & Far East

Clean Products

Middle East to USA, Mediterranean, Europe & Far East
NW Europe to USA, Mediterranean, West Africa & Far East
Mediterranean to NW Europe, USA & Far East
USGulf to South America & Europe
Caribbean to USA & Europe
Indian sub Continent to USA, Mediterranean, Europe & Far East
NE Asia to USWC & WC South America
Singapore to Worldwide destinations
Inter-regional trade within Europe/Mediterranean
Inter-regional trade within Middle East & Indian sub Continent
Inter-regional trade within SE Asia & Far East

CHARTERING**The Main Components of a Vessel's Costs**

The cost of running a vessel can broadly be divided into two parts. There are routine costs which accrue on a daily basis and which are not affected by the specific voyage on which the vessel is engaged. Then there are costs which are specific to the individual voyage.

The following may be considered the main routine costs incurred in running a ship:

1. Capital cost of the ship, which will normally be expressed as a depreciation cost (the capital cost divided by the number of years the ship is expected to trade, minus its expected demolition value at the end of its working life) plus the funding cost of the capital, which may in part be in the form of a bank loan (mortgage).
2. Crew wages, overtime, pension contributions, insurance, travelling costs.
3. Victualling.
4. Insurance (Hull and Machinery and P&I).
5. Deck and engine room stores and spares, lubricating oil.
6. A suitable daily allowance to cover periodic costs such as dry-docking, special surveys, running repairs.

The following may be considered the main costs which are specific to a voyage:

Bunkers (fuel), port disbursements, stevedoring, load/discharge costs if payable by shipowner, canal dues. Additionally, there may be other expenses, such as war risk premium, over-age insurance, freight tax, local taxes and/or dues, income tax and despatch money etc.

Main Charterparty types

A Charterparty is a contract of agreed terms and conditions between the shipowner, disponent owner (the person who controls the ship by virtue of an existing charterparty with the shipowner or other disponent owner) or operator and the charterer, for the carriage of goods or hire of the vessel in return for payment of an agreed freight or rate of hire.

Charterparties fall into three main categories:

1. Voyage Charters

- a) The charterer employs the vessel for a specific voyage or voyages, with cargo which is customarily loaded and discharged at his expense within a specified time (see Laytime) in return for freight calculated on an agreed rate per tonne of cargo or as a lump sum. The owner pays for fuel and operating expenses, and (generally) port disbursements, of the vessel.
- b) Contract of Affreightment (COA)
This form of contract is an agreement by an owner or operator to lift an agreed number of cargoes of a certain size over a period of time.

2. Timecharters

The charterer has the use of the ship for a specific trip or a period of time. Charterers may direct the vessel within the trading limits agreed, and, in normal circumstances, the Master must obey these orders.

Whilst the timecharterer has the commercial control, the owner retains responsibility for the vessel and the Master and crew remain in his employment. The hire, usually calculated per day, is paid in advance at regular, agreed intervals, normally semi-monthly or monthly.

Whilst on timecharter the timecharterer usually pays for all port charges including his own agency fees, canal dues, pilotage, and generally, if not covered elsewhere, cargo insurance.

Normally, the charterer pays for the fuel on board at the time he accepts delivery and for fuel supplied while the vessel is on hire. When the vessel is redelivered the owner pays for bunkers remaining on board. The prices applicable on delivery and redelivery and the respective quantities are normally agreed by negotiation.

The owner pays for the operating expenses of the vessel.

If the ship breaks down or, as a result of the shipowner's fault, the charterer does not have the use of the vessel, the vessel goes 'off-hire' for that period subject to any terms in the charterparty.

Timecharterers may be owners who want to temporarily augment their own fleet, charterers who have a variety of commitments to meet, charterers who believe term chartering will hedge the market, operators who foresee a profit by taking voyage contracts from charterers and timechartering vessels themselves to cover those contracts.

3. Bareboat Charters (charterparties by demise).

The registered owner passes over to the demise charterer the complete control and management of the ship. The demise charterer becomes, for all effective purposes, the owner during the period of the contract. The Master and crew are his servants and may be appointed by him.

Law of Contract

Almost all charterparties, and many other contracts agreed in international trade, are concluded under English law (sometimes more precisely expressed as the Laws of England and Wales). There may also be a specific statement that disputes will be referred to the English courts (see also Arbitration commentary elsewhere), without which other courts may hear cases albeit applying English law. All comments on legal matters herein assume the choice of English law and are general statements which cannot be taken as advice for a specific situation. Specific legal advice can only come from practicing lawyers.

Generally the parties to a charterparty have freedom to contract on such terms as they may agree during negotiation. The aim should be clarity of expression and the avoidance of ambiguity and inconsistency of clauses. If disputes arise, which eventually come before the Court or an arbitral tribunal for determination, the judgement or award will normally reflect the presumed intent of the parties. The case (or unwritten) law thus made (unwritten in the sense that it is not an Act made by Parliament) represents the common law which develops according to the changing needs of commerce. One may contract out of common law but not out of statute law. From time to time an accumulation of common law has been codified into Acts of Parliament; the Merchant Shipping Acts, the Marine Insurance Act and the Arbitration Act are examples.

The terms of a contract may be:

- a condition, the breach of which entitles an aggrieved party to elect to be released from further performance and claim damages for any loss suffered, or maintain the contract and sue for damages; or
- a warranty, the breach of which carries only the entitlement to sue for damages

(Note: The term 'warranty' used in connection with marine insurance has the same meaning as 'condition' in other contracts.)

Bills of Lading

A Bill of Lading has the following functions:

1. It is a receipt for the goods, signed by the Master or agent on behalf of the carrier, with admission as to condition and quantity of the goods.
2. It is a document of title to the goods, by which the property in the goods may be transferred.
3. It is prima facie evidence of the terms and conditions of carriage.
4. The charterparty is the contract between the charterer and the owner. However, the lawful holder of a Bill of Lading has vested in him all rights and liabilities under the contract of carriage as if such holder had been a party to the contract of carriage.

Usually, the bill of lading contains a suitable clause to incorporate the terms of the charterparty pursuant to which it is issued. If, however, it is the parties' intent that disputes arising under the Bill of Lading should be resolved in accordance with the terms of the arbitration clause that has been written into the charter, explicit reference thereto needs to be made on the Bill of Lading. Should that Bill of Lading purport to involve the shipowner in a liability greater than agreed in the charterparty, it is considered that the charterer indemnifies the shipowner to the extent of this greater liability towards the cargo. If charterers are also the Bill of Lading holder then it is the charterparty and not the Bill of Lading that is the contract of carriage.

Letters of Indemnity

Discharge or delivery of cargo at a discharge port without the production of the original Bills of Lading has become commonplace over recent years. While this is certainly not an ideal scenario, the charterer presents to the shipowner a Letter of Indemnity, the wording of which is typically provided by the owner's P&I Club, and the letter is then signed by the charterer. The purpose of the Letter of Indemnity is to indemnify the owner against claims arising from the delivery of the cargo without presentation of the Bills of Lading which demonstrate title to the cargo. It is also sometimes necessary for owners to be prepared to consider accepting a Letter of Indemnity for the change of destination to

a port other than that specified in the Bills of Lading. It is recommended that a Letter of Indemnity covering any other situation should be resisted because it could be concealing a fraudulent act. Owners should also take whatever action they deem necessary in order to obtain the Letter of Indemnity in original form. A photocopy is not enforceable in the event of a claim.

A situation may arise in connection with the signing of Bills of Lading where the shipper desires to obtain a condition expressed in the sale of goods contract, but where the condition of the goods shipped is not such as would strictly warrant a clean Bill of Lading being issued.

A Bill of Lading is intended to express 'the apparent order and condition of the goods and the date of shipment' and a representation so made which is knowingly false has all the elements of fraud. Consequently, a Letter of Indemnity from shipper to shipowner in exchange for a clean or incorrectly dated Bill of Lading in such circumstances is not legally enforceable

Role of the Ship's Master

The burden of responsibility resting upon the Master is reduced for routine matters in modern times with improved communication between the ship and the owner.

However, the Master retains the duty of care for the safety of the ship and of the cargo placed in his charge. He cannot delegate this responsibility. In the exercise of his duty he has powers to bind shipowner and cargo-owner by his actions in case of need. The Master is the agent of the shipowner. Thus the shipowner is bound by acts of the Master, which are within the authority of a Master; and third parties with whom the Master deals are entitled to be guided accordingly unless they are aware that the Master's authority has been limited.

If the Master signs bills of lading which are incorrectly dated or knowingly false in any other respect, or for goods which are not on board, or if he unjustifiably deviates from the ordinary course of the voyage, he may incur personal liability.

A Master has to be very careful about the description and condition of cargo and also where a charter-party calls for the release of 'freight prepaid' bills of lading. Before releasing such bills he or his agents must have the owner's confirmation that they have received the freight. If signed bills of lading stamped 'freight prepaid' are released, the Master has an obligation, having signed the bills of lading, to deliver the cargo whether freight is paid or not.

CHARTERING NEGOTIATIONS

While this section in part offers guidance as to good practice, it does not directly form part of the Code of Conduct of the Baltic Exchange.

General Principles

Negotiating must be conducted with care and accuracy. There has to be complete agreement on all of the terms and details between the two principals for an enforceable contract to come into being.

It has for many years been the custom for brokers to record the progress and details of negotiations in a "day book". This can provide a check-list as to the agreed position and outstanding issues and can later, in the event of a dispute, be used to safeguard their own and their principal's position. However, in the modern office environment there is less reliance on paper documents and copies of emails, instant messaging exchanges and the like may represent an equivalent of a day book. It is essential that such correspondence is recorded and retained for a reasonable period of time, at least until the charterparty has ended and all matters have been finalised.

If agreement is reached a recapitulation (recap) should be exchanged between all parties summarising the final agreement.

Verbal communications outside chartering negotiations, when a broker has to act, for example passing on orders to ships, should be re-confirmed in writing back to the instructing company.

A broker authorised to sign a charterparty on behalf of his principal should indicate the source of authority for example by telephone, facsimile or email authority of [the principal's name] 'As Agents Only'. When signing on behalf of a principal the basic rule is that with a signature qualified in this way a broker will not be held personally liable for the performance of the contract. If the name of the principal is not disclosed then even the qualification of "as Agents only" would not absolve the broker from liability for the performance of the contract.

Firm Offers

A 'fixture' is arrived at by the exchange of 'firm offers' between brokers acting on behalf of their principals, an owner and a charterer, and when concluded, (that is all terms and details agreed and subjects, if any, lifted), it is an enforceable contract.

A 'firm offer' should be limited as to time, and be definite as to terms. Opening 'firm offers' are normally based on the main terms and such offers are made subject to agreement of further terms and conditions of charter and in many cases contain a variety of 'subjects' (ie matters needing resolution before the charter can be agreed).

When a fixture is concluded on main terms with 'subjects', it is up to the brokers to ensure that both principals lift 'subjects' as soon as possible. It is important to note that no fixture has been concluded until all 'subjects' have been lifted.

A 'firm offer' or 'firm counter offer' can be declined by the recipient. He is then free to work his vessel or cargo elsewhere. This is a very important point for a broker to bear in mind. If a firm counter is made, however minor the change in terms, the simple act of countering allows the opposite negotiating party the opportunity to decline and withdraw from the negotiation without further discussion or recourse. No firm offer may be made by a broker without authority from a principal.

Subject Details

Negotiations on charterparty details are similar to those on main terms but rarely include time limits for reply. Brokers exchange offers and counter offers on behalf of their principals until such time as both parties are in agreement on all details that will eventually form the charterparty. It is important that brokers ensure that their principals are kept fully advised on the status of outstanding 'subjects' when confirming that details are in order.

Court decisions in the USA have determined that a binding fixture had resulted when the main terms had been agreed despite the fact that it was still 'subject to details'. The USA Courts' view is not generally shared by the market in terms of practice in London or indeed in New York and a judgement of the Commercial Court in London under English Law has affirmed that at that stage there is no binding contract. It should therefore be noted that if a firm negotiation is taking place under which any eventual contract would be governed by US law, such negotiation cannot fail on charterparty details. Under New York law if the parties are unable to reach an agreement on the charterparty details, a tribunal will rule on the outstanding points.

Briefly therefore, a broker should be aware that in the English Courts the expression "subject details" prevents a binding contract being in place until the subject is removed, and that this is not the position in the US.

Subject Stem

This subject is to give charterers time to put the vessel to their shippers to confirm that they can accept the vessel to load the agreed quantity of cargo on the agreed laydays. 'Subject Stem' is only to be used to determine availability of cargo. As a matter of interest STEM originally stood for Subject To Enough Material being available.

Subject Shipper's or Subject Receiver's Approval

This subject is used when the shippers or receivers of the cargo have to give their approval of the vessel.

Subject Head Charterer's Approval

This subject will normally indicate that the cargo in question is a relet or sublet and charterers have to get approval of the vessel from their head charterers. Most contract voyage charters have a relet or sublet clause in them.

Subject Board Approval

This subject is used when the board of Directors of either principal has to approve the final fixture, but should be viewed with caution as such approval can be refused without a specific reason being given. This subject would normally only be used for long term period fixtures.

Subject Charterer's Reconfirmation

This subject is now commonplace and can be used by charterers to hold a vessel while waiting to judge the market direction and sometimes to see if cheaper tonnage becomes available. This is a very onerous subject for an owner as the charterer simply does not need to give any explanation as to why a business is failed. It is recommended that any subject should be more specific in nature to reflect the actual situation.

Time Limits on Offers and Subjects

When exchanging offers, it should be understood by both parties that the reply time stipulated is either being set by the party making the offer (who would therefore have the authority to conclude a fixture if an acceptance is made to them within time), or the reply time is with another broker or the principal.

Therefore, if the authority is perhaps held overseas, and there could be communication difficulties or time differences, allowances should be made, otherwise the reply or acceptance could be 'out of time', with the risk that one party believes they have fixed because they have replied within time, but in fact the other party who had the authority to make the offer has not been contacted.

It is also important that precise reply times are given on offers and the lifting of subjects, rather than generalities such as 'one business day', 'close of business' or '24 hours after fixing'. State, for example, reply 0900 (local time) London or perhaps 0900 (local time) Tokyo, and make it clear whether the reply is to be made to a broker or the principal.

At no time should a reply time be expressed as 'reply in (10) minutes' or similar limit which is unclear as to the actual expiry time. All time limits should be set for a reasonable time.

Abuse of Subjects

This is an important area which is covered in the Code of Conduct.

Voyage Estimate - Dry Cargo or Tanker

The ability to carry out an accurate voyage calculation is an important skill for a broker. Voyage estimates allow comparison between one piece of voyage business with another, as well as with a voyage performed under timecharter. In this way, the broker can advise his principal of market alternatives.

There are many formats for a voyage calculation, including software packages. *Figure 1* is just one example, basis Free-in Free-out (FIO) terms and full laytime which is used for both dry cargo and tanker business.

Figure1 - Simple Voyage Calculation

Shows the time charter \$ per day earnings from a given voyage \$ per ton freight

Vessel's name	BPI	Ballast speed	14	Draft restriction
Year of build		IFO consumption	34	n/a
Deadweight	76,600	Laden speed	14	Winter allowance
Draft	14.14	IFO consumption	36	n/a
TPC	66	MDO at sea	0	Cargo lift
Grain cubic	90,700	MDO in port	0.1	65000
Bunkers/Constants	2,000	IFO in port	3	
IFO price	609	Speed allowance (B)	0.98	7 % sea margin
MDO price	911	Speed allowance (L)	0.98	7 % sea margin

	Distance	Sea days	Port days	Port costs
Rotterdam				
Santos	5,412	17.32	9.625	65,000
Singapore (bunkers)	8,956	28.66	0.5	3,500
Qingdao	2458	7.87	9.63	60,000
Totals	16,826	53.85	19.75	128,500

Ballast days	17.32
Laden days	36.53
Port days	19.75
Total days	73.60
IFO at Sea	1,159,439
MDO at Sea	0
IFO in Port	36,083
MDO in Port	1,799
Port costs	128,500
Misc	15,000
Total Expenses	1,340,821

Cargo lift	Gross freight pmt	Commission	Total net freight	Equivalent net t/c
65,000	40.00	5%	2,470,000	15343

Result is a net Timecharter of \$15,343 per day over 73.60 days

The following formats are a useful, but not comprehensive, checklist when making or receiving an offer for a dry bulk ship.

Firm Offer - Voyage

For reply by

For account of ..[name and domicile]..... as charterers

Name of ship:

Name of ship: see description as per Baltic Exchange Drycargo Questionnaire Baltic 99 (B99). This questionnaire or any other which is used should be considered supplementary and subsidiary to the owner's description of the vessel.

Cargo quantity:

Cargo description:

Rate of freight: Where and how paid: to:

FIOS/FIOT/FIO SPOUT TRIMMED:

Loading port(s)/Discharging port(s):

Laydays/cancelling:

Position and expected date of readiness to load:

Loading rate/Discharging rate or days permitted:

Demurrage/Despatch:

Dues/taxes (for account of):

Owners/Charterers to appoint/nominate Agents both ends (Delete as applicable):

Extra Insurance (for account of):

Total commission including address:

Form of charterparty: Gencon, C(ore)7, Norgrain or BFC etc.

Subject further terms and conditions and any other subjects required.

Most trades today are on FIO (Free in/out) terms or more fully FIOST (Free in/out stowed or TRIMMED) with the occasional trade still using gross terms, and some charterers still fix cargoes on Custom of Port (COP), Customary Quick Dispatch (CQD) or liner terms.

Firm Offer - Timecharter

Firm for reply by

For account of[name and domicile]..... as charterers

Description of vessel: as per Baltic Exchange Drycargo Questionnaire Baltic 99 (B99).

This questionnaire or any other which is used should be considered supplementary and subsidiary to the owner's description of the vessel.

Delivery port/area:

Redelivery port/area:

Laydays/cancelling Date:

Position and expected date of readiness to deliver:

Duration of timecharter or description of trip:

Trading limits permitted:

Cargo exclusions/permitted cargoes:

Rate of hire: (per day)

When/how payable:

Bunker quantities/prices on delivery/redelivery:

Total commission including address:

Form of charterparty: BALTIME, NYPE etc.

Subject further terms and conditions and any other subjects required.

Terminology and Abbreviations

1. PORT shall mean any area where vessels load or discharge cargo and shall include, but not be limited to, berths, wharves, anchorages, buoys and offshore facilities as well as places outside the legal, fiscal or administrative area where vessels are ordered to wait for their turn no matter the distance from that area.
2. BERTH shall mean the specific place where the Vessel is to load or discharge and shall include, but not be limited to, any wharf, anchorage, offshore facility or other location used for that purpose.
3. REACHABLE ON ARRIVAL shall mean that the charterer undertakes that an available loading or discharging Berth be provided to the Vessel on arrival at the Port which the Vessel can reach safely without delay.
4. ALWAYS ACCESSIBLE shall mean that the charterer undertakes that an available loading or discharging Berth be provided to the Vessel on arrival at the Port which the Vessel can reach safely without delay. The charterer additionally undertakes that the Vessel will be able to depart safely from the Berth and without delay at any time before, during or on completion of loading or discharging.

5. LAYTIME shall mean the period of time agreed between the parties during which the owner will make and keep the Vessel available for loading or discharging without payment additional to the freight.

6. PER HATCH PER DAY shall mean that the Laytime is to be calculated by dividing the quantity of cargo by the result of multiplying the agreed daily rate per hatch by the number of the Vessel's hatches. Thus:

$$\text{Laytime} = \frac{\text{Quantity of cargo}}{\text{Daily rate} \times \text{Number of hatches}} = \text{Days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

7. PER WORKING HATCH PER DAY or PER WORKABLE HATCH PER DAY shall mean that the Laytime is to be calculated by dividing the quantity of cargo in the hold with the largest quantity by the result of multiplying the agreed daily rate per working or workable hatch by the number of hatches serving that hold. Thus:

$$\text{Laytime} = \frac{\text{Largest quantity in one hold}}{\text{Daily rate per hatch} \times \text{Number of hatches serving that hold}} = \text{Days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

8. DAY shall mean a period of twenty-four (24) consecutive hours. Any part of a Day shall be counted pro rata.

9. CALENDAR DAY shall mean a period of twenty-four (24) consecutive hours running from 0000 hours to 2400 hours. Any part of a Calendar Day shall be counted pro rata.

10. CONVENTIONAL DAY shall mean a period of twenty-four (24) consecutive hours running from any identified time. Any part of a Conventional Day shall be counted pro rata.

11. WORKING DAY shall mean a Day when by local law or practice work is normally carried out.

12. **RUNNING DAYS** or **CONSECUTIVE DAYS** shall mean Days which follow one immediately after the other.

13. **RUNNING HOURS** or **CONSECUTIVE HOURS** shall mean hours which follow one immediately after the other.

14. **HOLIDAY** shall mean a Day other than the normal weekly Day(s) of rest, or part thereof, when by local law or practice work during what would otherwise be ordinary working hours is not normally carried out.

15. **WEATHER WORKING DAY** shall mean a Working Day or part of a Working Day during which it is or, if the Vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such interruption occurs (or would have occurred if work had been in progress), there shall be excluded from the Laytime a period calculated by reference to the ratio which the duration of the interruption bears to the time which would have or could have been worked but for the interruption.

16. **WEATHER WORKING DAY OF 24 CONSECUTIVE HOURS** shall mean a Working Day or part of a Working Day of 24 consecutive hours during which it is or, if the vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such interruption occurs (or would have occurred if work had been in progress) there shall be excluded from the Laytime the period during which the weather interrupted or would have interrupted work.

17. **WEATHER WORKING DAY OF 24 HOURS** shall mean a period of 24 hours made up of one or more Working Days during which it is or, if the Vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such interruption occurs (or would have occurred if work had been in progress), there shall be excluded from Laytime the actual period of such interruption.

18. **(WORKING DAY) WEATHER PERMITTING** shall have the same meaning as **WEATHER WORKING DAY OF 24 CONSECUTIVE HOURS**.

19. **EXCEPTED** or **EXCLUDED** shall mean that the Days specified do not count as Laytime even if loading or discharging is carried out on them.

20. **UNLESS SOONER COMMENCED** shall mean that if turn-time has not expired but loading or discharging is carried out, Laytime shall commence.

21. UNLESS SOONER COMMENCED, IN WHICH CASE ACTUAL TIME USED TO COUNT shall mean that actual time used during turn-time shall count as Laytime.

22. UNLESS USED shall mean that if Laytime has commenced but loading or discharging is carried out during excepted periods, actual time used shall count as Laytime.

23. TO AVERAGE LAYTIME shall mean that separate calculations are to be made for loading and discharging and that any time saved in one operation is to be set off against any excess time used in the other.

24. REVERSIBLE LAYTIME shall mean an option given to the charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a total time being specified to cover both operations.

25. NOTICE OF READINESS shall mean the notice to the charterer, shipper, receiver or other person as required by the CharterParty that the Vessel has arrived at the Port or Berth, as the case may be, and is ready to load or discharge.

26. TIME LOST WAITING FOR BERTH TO COUNT AS LOADING OR DISCHARGING TIME or AS LAYTIME shall mean that if no loading or discharging Berth is available and the Vessel is unable to tender Notice of Readiness at the waiting-place then any time lost to the Vessel is counted as if Laytime were running, or as time on Demurrage if Laytime has expired. Such time ceases to count once the Berth becomes available. When the Vessel reaches a place where she is able to tender Notice of Readiness, Laytime or time on Demurrage resumes after such tender and, in respect of Laytime, on expiry of any notice time provided in the CharterParty.

27. WHETHER IN BERTH OR NOT (WIBON) or BERTH OR NO BERTH shall mean that if the designated loading or discharging Berth is not available on arrival, the Vessel on reaching any usual waiting place at the Port, shall be entitled to tender Notice of Readiness from it and Laytime shall commence in accordance with the Charter Party.

28. WHETHER IN PORT OR NOT (WIPON) shall mean that if the designated loading or discharging Berth and the usual waiting place at the Port are not available on arrival, the Vessel shall be entitled to tender Notice of Readiness from any recognised waiting place off the Port and Laytime shall commence in accordance with the Charter Party.

29. VESSEL BEING IN FREE PRATIQUE shall mean that the Vessel complies with port health requirements.

30. DEMURRAGE shall mean an agreed amount payable to the owner in respect of delay to the Vessel once the Laytime has expired, for which the owner is not responsible. Demurrage shall not be subject to exceptions which apply to Laytime unless specifically stated in the Charter Party.

31. DESPATCH MONEY or DESPATCH shall mean an agreed amount payable by the owner if the Vessel completes loading or discharging before the Laytime has expired.

32. DESPATCH ON ALL WORKING TIME SAVED or ON ALL LAYTIME SAVED shall mean that Despatch Money shall be payable for the time from the completion of loading or discharging until the expiry of the Laytime excluding any periods excepted from the Laytime.

33. DESPATCH ON ALL TIME SAVED shall mean that Despatch Money shall be payable for the time from the completion of loading or discharging to the expiry of the Laytime including periods excepted from the Laytime.

Warranty of Authority

A shipbroker negotiating as intermediary between shipowner and charterer is deemed to warrant that he has the full authority of a principal to contract on the terms of an offer which he transmits. If for some reason it transpires that he did not have the necessary full authority he may be liable in an action brought by the person who receives the offer and accepts it. In this and other matters where disputes arise, a broker should avoid any statement which may be interpreted to accept liability or error before proper legal or insurer advice has been sought.

When dealing with a new connection, members are recommended to check the Warnings and Postings issued on the website, www.balticexchange.com, and also contact the Baltic Exchange management which maintains an extensive internal database on all complaints raised by members over a number of years.

Members should ensure that they do not quote any business on behalf of a person, persons or company that has been posted on the Exchange, but should of course not breach any existing charters or contracts.

The onward transmission to non-members of any postings issued by the Exchange and received by members is strictly prohibited as this could lead to action for defamation against both the member and the Baltic.

Commission (Brokerage)

Unless otherwise expressly agreed, commission is payable only on freight or hire earned and paid; it is customary in a voyage charter for this to be extended by agreement to allow commission to be payable on deadfreight and/or demurrage and detention (waiting time) if any. On timecharter similarly it can be extended to a ballast bonus.

In chartering it is the usual (though not invariable) practice for a commission clause to appear in the charterparty and the commission is payable by the ship owner to the brokers named as having earned it in each individual fixture.

The Contracts (Rights of Third Parties) Act 1999 has changed the way in which shipbrokers can take legal proceedings to enforce their right to commission. The Act applies to contracts entered into after 11 May 1999.

The Act provides a mechanism by which a third party named in a contract but who is not actually a party to the contract, may enforce his rights. Thus it can be used by a shipbroker to enforce payment of a commission specified in a charterparty to which he is not a signatory.

Commissions Deducted at Source

Unless otherwise agreed in writing and included in the fixture recap, charterparty or addendum, the owner is responsible for paying all commissions. If however, during the negotiation or subsequent to the fixture, all parties agree, in writing, that a broker's commission will be deducted by and paid by the charterer and providing the commission is actually deducted, it will be the charterer and not the owner who is responsible for payment of the commission so deducted. If there is no written agreement, the charterer is required to pay the owner gross values, less any address commission only.

Brokers' commissions on direct continuations

Members should note that the occasional practice of owners or charterers avoiding the payment of commission due to brokers on direct continuations of time-charterparties or contracts of affreightment in which a broker or brokers were originally involved or covered for commission, is considered to be unacceptable by the Baltic Exchange. To avoid any dispute and possible legal consequences, it is recommended that brokers endeavour to have included in the original time-charterparty or contract of affreightment a clause specifying that they will receive not only a commission on any hire or freight paid, but also upon any continuation of the charter or contract.

TANKER CHARTERING

Negotiations

Whilst negotiations involving the fixtures of tankers are very similar to those in the dry cargo market, negotiations do tend to be rather less protracted. The main elements of the fixture are still the same - rate, size, laydays, demurrage and loading/discharge areas. All the major charterers have their standard forms to fix on, such as Shellvoy/BPvoy/Exxonmobilvoy, with the most common non-oil company charters being the ASBATANKVOY.

Worldscale

Most oil industry fixtures are concluded under the auspices of the New World-wide Tanker Nominal Freight Scale, known as Worldscale. This publication is jointly sponsored and issued by the Worldscale Association (London) Limited and Worldscale Association (NYC) Inc. and it is virtually impossible to trade tankers without having access to this information. The Worldscale organisations issue an annually revised Scale of Rates and Differentials on 1 January each year covering almost every possible tanker voyage. The figures published are based on a standard sized vessel described in the Schedule and market levels of freight are expressed in terms of a percentage of the nominal printed freight rate.

Thus, Worldscale 100 means the rate for the voyage in question as calculated and issued by the Associations whilst Worldscale 175 means 175 per cent of that rate and Worldscale 75 means 75 per cent of that rate.

Worldscale rates are modelled on a notional tanker of 75,000 metric tons with an average service speed of 14.5 knots on 55 metric tons of bunker consumption for steaming and a fixed port time of four days, and aim to produce a universally comparable return for each round trip, with bunker prices based on the monthly average from the previous period of 1 October to 30 September. Port costs, canal transits and other direct costs are taken into account and continually monitored for each new publication, and amendments to flat rates can be made during the year if considered by the Associations to have considerable effect.

Worldscale also encompasses demurrage and various other costs. Ships of different size ranges have differing demurrage rates. These are increased or decreased in line with the negotiated Worldscale freight rate, but today owners and charterers are tending to trade on a daily lumpsum dollar demurrage rate. Demurrage commences on the expiry of 72 hours SHINC total laytime which is allowed for loading and discharging purposes but despatch money is not paid in the tanker industry.

Laydays and cancelling are generally very narrow, being probably no more than two or three days, but many principals are now insisting on a ship arriving at load port with only a 24 hour spread due to the limited availability of stems. Where a full cargo is not available, charterers usually ask owners to guarantee a minimum quantity, having the option to lift up to a full cargo. This extra cargo is classified as 'overage' and freight for that extra portion of oil tends to be paid at 50 per cent of the charterparty rate. Freight on voyage charters is payable upon completion of discharge although charterers with an unproven track record would probably have to concede a freight remittance before breaking bulk or even arrange a bank guarantee, which is little different from dry cargo.

Timecharter

Timecharter for tankers is similar to dry cargo with either specific trips or for a period of time. Period charter can be used by oil companies/traders to hedge their long term contracts in what can sometimes be a very volatile market. As with voyage most of the major oil companies have their standard charterparties such as Shelltime and Exxontime, and the hire is usually agreed at a daily rate expressed in US Dollars, the same as in dry cargo. Worldscale is not commonly used in timecharters, but is sometimes utilised when the timecharter rate is directly linked to the market indices (TD3/TC2 etc).

DISPUTES

General Principles

A broker should be familiar with the various types of dispute resolution so as to be in a position to advise a principal accordingly. An arbitration hearing or mediation may take place some months or even years after the event and this emphasises the importance of having on file documents and electronic records relating to a fixture. A broker who has written contemporaneous evidence of events is at an immediate advantage.

When a dispute arises there is a variety of means available to resolve it. Some of those means are mutually exclusive, at least until each has run its course.

Baltic

In the first instance where the matter is clear and well-defined, the Baltic Exchange Directors may be contacted via the executive and they may feel able to provide assistance. They will contact the parties for information and establish the facts of the case. If the dispute is between members, the Directors may ultimately suspend or expel a member who does not comply with a ruling from the Directors or whose behaviour is considered a breach of the Code of Conduct. Where one of the parties is a non-member of the Baltic then the ultimate sanction is a posting on the Baltic website which is a warning to members of the risks of doing business with the counterparty concerned.

Baltic Mediation

A more formal process of mediation may be embarked upon and the Baltic and the London Maritime Arbitrators Association has set out a system and process for offering mediation. In the first instance Baltic members should contact the Baltic executive, who will arrange for the appointment of a mediator. The advantage of mediation is that it offers a low cost opportunity to explore possible resolution of a dispute while minimising the damage to the overall commercial relationship between the parties.

Maritime Arbitration

It is common for charterparties to specify that in the event of a dispute then the matter will be referred to arbitration. Such a clause does not prevent attempts to resolve the dispute by negotiation or mediation. Indeed even after the arbitration clause has been invoked negotiation towards a settlement is customary.

The form of the arbitration clause in the charterparty is subject to the agreement of the parties and printed clauses are frequently amended to comply with their wishes, particularly as to the composition of the tribunal and the forum. However a charterparty clause is not essential to invoke arbitration; written evidence that the parties have agreed to submit disputes to arbitration is all that is required. It is open to either party to invoke the arbitration procedure.

In addition to the comments on choice of law made earlier, in the case of arbitration it is useful to make use of a standard arbitration clause which can clarify many issues, including the location of the arbitration and the process for appointing the tribunal. It is also in the contracting parties' interests that the procedure for the conduct of the arbitration be set out in the relevant arbitration clause.

BIMCO and the LMAA have produced a printed comprehensive arbitration clause, which is recommended by the Baltic for inclusion in charterparties.

In appointing an arbitrator a party is choosing a judge who, either in his capacity of sole arbitrator or together with his co-arbitrator(s), will decide the matter fairly and impartially without unnecessary delay or expense to the best of his or their ability either on the basis of written evidence and submissions made by each of the parties or pursuant to an oral attended hearing. Depending upon the form of the arbitration clause, if the arbitrators appointed by each side cannot agree then either an umpire can be appointed or a third arbitrator.

If a formal hearing is required, submissions may be made by the parties themselves or through representatives, for example, solicitors and perhaps counsel. The tribunal's award is final unless challenged on the grounds of serious irregularity affecting the tribunal, the proceedings or the award. The tribunal's award is also final as to the facts of the case, as well as to law unless appealed to the Courts under the very restrictive conditions of the Arbitration Act 1996. Such leave to appeal shall only be given if the court is inter-alia satisfied that on the basis of findings of fact in the tribunal's award, the decision of the tribunal is obviously wrong in law OR that the question that has arisen is one of general public importance AND the decision of the tribunal is at least open to serious doubt.

If a charterparty does not contain an arbitration clause then it is open to the parties subsequently (ad-hoc) to agree a suitable wording should a dispute arise (e.g. the BIMCO/LMAA Arbitration Clause). The parties may also agree to vary the wording of an existing clause, for example, to appoint a sole arbitrator in place of three arbitrators or to appoint a third arbitrator instead of an umpire.

"The LMAA Terms", last revised in 2012, provide, in a clear and convenient form, guidelines aimed at making for greater efficiency and despatch in the conduct of London arbitration. The LMAA also publishes a "Small Claims Procedure and Commentary", last revised in 2012, which was introduced to provide a simplified, quick and inexpensive procedure for the resolution of small claims. Additionally, "The LMAA Intermediate Claims Procedure" was introduced in 2009 for the expedited and less costly resolution of medium size claims.

The LMAA Terms (2012) – The LMAA Small Claims Procedure (2012), The LMAA Mediation Terms (2002), and The LMAA Intermediate Claims Procedure (2012) Terms, can all be found on the LMAA website, www.lmaa.org.uk

Small Claims

The LMAA Small Claims Procedures are designed to provide a simplified, quick and inexpensive procedure for the resolution of small claims. It is usual for the charterparty to specify the value of claims which can be resolved via these procedures.

SALE & PURCHASE

General Principles

The Baltic is the world's leading sale and purchase market. It is active both in fields of new buildings and second hand tonnage and features strongly in demolition sales.

The second-hand market is particularly significant in terms of value and turnover. A large percentage of this business is transacted via Baltic brokers.

It is a general practice in the buying and selling of ships that owners will instruct brokers to place vessels on the market whilst the vessels are engaged in their normal trades. It is therefore an important part of the transactions that inspections and eventually deliveries under a sale contract are co-ordinated with the employment of the vessel.

A standard form of contract - the Norwegian Sale Form - is used in over 80% of transacted business. The latest edition, which was revised in 2012, has also been approved by BIMCO and incorporates further amendments to previous forms particularly with respect to terms applicable to delivery.

Although contrary to the printed Norwegian Sale Form, it is now more usual that vessels are inspected before being negotiated for sale as the value is very much dependent on a vessel's physical condition. An important part of the purchase is also an inspection of classification records which will show the history of the vessel since it was delivered.

The Sale Form deals mainly with price, terms of payment, where and when the vessel is to be delivered, and the seller's obligation towards the status of class certificates, etc. Sale and purchase also covers the contracting of new ship construction, and a broker's role in this market lies in obtaining the best available shipyard price, payment terms and specification for all types of vessels.

The scrapping of vessels at the end of their commercial life is dealt with by brokers who offer the ships for recycling.

Sale and purchase brokers provide a service to the industry in estimating ships' values, and this is often formally done by way of certificates of valuation which are widely used by owners for insurance and banking requirements.

Vessel Quality Management

There are a large number of regulations covering many aspects of the business of shipping. The main international regulator for ocean-based activity is the International Maritime Organisation (IMO), which is the London-based UN agency concerned with maritime matters. It is responsible for among many others the SOLAS (Safety of Life at Sea) regulations as well as the MARPOL (Marine Pollution) rules governing environmental matters.

Vessel inspections for compliance with all applicable regulations are managed under a series of Memorandums of Understanding (MOUs) which operate on a regional basis and allow for what is known as Port State Control inspections and detentions. In N Europe for example the Paris MOU is the relevant agreement.

In addition to the over-riding authority of the IMO in setting rules for ocean transportation, each ship must be registered with a particular national regulator (the flag state). It then flies the flag of that state and is regulated by the authority within that state when it comes to a wide variety of vessel management issues, the most important of which is vessel safety. In the past ships were registered with the flag of the state where they were owned. Subsequently it became the practice sometimes to "flag out" and be registered with other states. In recent years and in view of the Port State Control system, flagging to what is known to be a quality flag has generated significant commercial advantages, so it is incorrect to consider choice of a "foreign" flag as implying a desire to save money at the expense of quality or safety. Nonetheless there are quality league tables for different flags, recording for example the number of detentions worldwide of ships according to flag.

Classification Societies

Although the flag state has overarching responsibility for the quality of vessels, much of the work is delegated to classification societies which survey ships and ensure their compliance with all relevant construction and maintenance requirements.

There are many ship classification societies throughout the world centred in the traditional maritime countries but the best known are the twelve belonging to IACS, the International Association of Classification Societies.

American Bureau of Shipping (ABS)
Bureau Veritas (BV)
China Classification Society (CCS)
Croatian Register of Shipping (CRS)
DNV GL
Indian Register of Shipping (IRS)
Korean Register of Shipping (KR)
Lloyd's Register of Shipping (LR)
Nippon Kaiji Kyokai (NK)
Polish Register of Shipping (PRS)
Registro Italiano Navale (RINA)
Russian Maritime Register of Shipping (RS)

INSURANCE

A typical voyage will require many insurances. The ship's hull and machinery will need to be insured, as will the cargo being transported and the crew on board.

The vessel's hull and machinery is usually insured in Lloyd's of London, or one or more of the large commercial insurance companies. This is also the case with cargo insurance. Owners must belong to a P&I Club, which will cover the ship for its liability for cargo and will usually provide insurance for crew, death and bodily injury.

Charterers will have potential liabilities to third parties including the owner, and these are often also covered via membership of a P&I Club.

The Protection & Indemnity (P&I) Clubs

The present P&I Clubs are the remote descendants of the many small hull insurance Clubs that were formed by British shipowners in the 18th century. These hull Clubs were essentially unincorporated associations or co-operatives of shipowners who came together to share with each other their hull risks on a mutual basis, each being at the same time an insured and an insurer of others - still the basic concept of the present P&I Clubs, despite the fact that they are now incorporated so that in law it is the Club and not the individual members who provide the insurance. Eventually, in 1855, the first protection association was formed - the Shipowners' Mutual Protection Society, the predecessor of the Britannia P&I Club. It was intended to operate like a mutual hull club,

but instead of covering the hull, to cover liabilities for loss of life and personal injury and also the collision risks excluded from the current marine policies, particularly the excess above the limits in those policies. Other similar associations followed.

The full range of risks covered by the P&I Clubs include crew, stevedore and third party death and injury and other crew liabilities, collision liabilities, damage to docks, pollution, removal of wreck (all of which are 'protection' risks), loss of or damage to cargo, ship's proportion of General Average, customs penalties and many types of fine (indemnity risks).

Freight, Demurrage and Defence Clubs are also run by some of the major P&I Clubs. These insure the legal and other costs of dealing with disputes that are otherwise uninsured. Typical claims are for freight, demurrage, collections of debt and the like. New building contracts or sale and purchase disputes are amongst the most expensive claims handled by Defence Clubs, who also give legal and commercial advice to their members.

General Average

There is a General Average act when, and only when, an extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

A sacrifice is the loss of or damage to physical property, for instance jettison of cargo. An expenditure is a disbursement of money, for instance salvage costs or expenses entering and while at a port of refuge.

Contracts of carriage, charterparties and bills of lading, almost invariably specify that general averages shall be adjusted according to the York-Antwerp Rules: the most recent version is the 2004 Rules.

Ship, cargo and freight contribute to the general average and expenditures in proportion to their values at the end of the voyage.

The shipowner has a lien on the cargo at destination and therefore requires cargo interests to sign an average bond and their insurers an average guarantee before release of the cargo to consignees.

BALTIC EXCHANGE INFORMATION AND THE FREIGHT DERIVATIVES MARKET

The fixture lists, indices, assessments and market reports issued by the Baltic are proprietary information, and any circulation of these without permission or authority, could lead to legal action being taken.

Each working day the Baltic Exchange collates freight market information and publishes a range of indices and route information. The procedures, together with a good deal of useful background information, are contained in The Guide to the Specification, Production and Management of Benchmarks which is updated regularly and available to members on www.balticexchange.com. All users of the data should familiarise themselves with the latest edition of the guide so that they are fully conversant with Baltic freight market information. The guide covers the indices, route definitions, the reporting companies and their procedures. A separate guide exists with guidelines for the Baltic Forward Assessment (BFA) panellists. This too is available on the website.

In outline, the published information comprises:

The Baltic Exchange Dry Index

The Baltic Exchange Dry Index (BDI) is derived from and summarises the Baltic Exchange Handysize Index (BHSI), the Baltic Exchange Supramax Index (BSI), the Baltic Exchange Panamax Index (BPI) and the Baltic Exchange Capesize Index (BCI). These indices are all calculated from the average rates on major timecharter and/or voyage routes, as assessed by a panel of competitive brokers who are members of the Baltic Exchange. The BDI provides a good general indicator of movement in the dry bulk market, and continues the established time series of the Baltic Freight Index (BFI), which was introduced in 1985.

The Baltic Exchange International Tanker Routes

The Baltic Exchange International Tanker Routes (BITR) are average rates, usually expressed in *Worldscale*, on major oil routes, both dirty and clean, as assessed by a panel of competitive brokers who are members of the Baltic Exchange.

The Baltic Exchange Dirty Tanker Index

The Baltic Exchange Dirty Tanker Index (BDTI) is derived from and summarises the rates on the crude oil and dirty products routes.

The Baltic Exchange Clean Tanker Index

The Baltic Clean Tanker Index (BCTI) is derived from and summarises rates on the clean products routes.

The Baltic Exchange Liquefied Petroleum Gas Route

The Baltic Exchange Liquefied Petroleum Gas Route (BLPG) is a single route assessment, assessed by a panel of brokers.

The Baltic Exchange Sale and Purchase Assessments

The Baltic Exchange Sale and Purchase Assessments (BSPA) are weekly averages of the value of six vessel types as assessed by a panel of brokers.

The Baltic Exchange Demolition Assessments

The Baltic Exchange Demolition Assessments (BDA) are weekly averages of the demolition value of wet and dry vessels for delivery China and the Sub-continent of Asia.

The Baltic Exchange Forward Assessment

The Baltic Exchange Forward Assessment (BFA) is a daily average of the current bids and offers at the end of the trading day for forward prices on dry and wet routes, provided by a panel of FFA brokers.

Broker Commissions

A Baltic member should be paid a commission for every trade settled on the basis of the Baltic's assessments and indices.

Forward Freight Agreements

Forward Freight Agreements (FFAs) provide a means of managing exposure to freight market risk through the trading of specified timecharter and voyage rates for forward positions. An FFA is a swap agreement between two principals where agreement is struck for the value of the contract on an agreed future date. Settlement is effected by payment or receipt of cash covering the difference between the agreed rate and the settlement rate at the expiry of the contract.

Settlement is effected against the relevant route assessment or an average of a series of route assessments such as the capesize 4 timecharter average (4TC). The custom is also for settlement to be against the average calculated of a number of days (usually a month).

Forward Freight Agreements broked by members of the FFA Broker's Association are 'over the counter' (OTC) products made on a principal-to-principal basis. By and large all trades are conducted in standard form and this has enabled trades to be passed to clearing houses in order to minimise credit risk. Without, clearing trades are conducted on a bilateral basis, with each party extending credit to the other for the term of the agreement. When a trade is cleared it is passed to the clearing house which then becomes the counterparty to each of the original parties to the transaction.

Clearing services are currently provided by LCH-Clearnet (London), NOS (Norway), SGX-Asiaclear (Singapore), CME (New York) and ICE (London).

A cleared trade is executed according to the terms and rules of the relevant clearing house, so the FFABA contract formerly used in bilateral transactions now has little relevance.

In 2011 the Baltic Exchange launched an electronic trading marketplace for dry bulk FFAs. The system, known as Baltex, is operated by a wholly-owned subsidiary of the Baltic, Baltic Exchange Derivatives Trading Ltd and is approved and regulated as a Multilateral Trading Facility by the FSA in London. The system allows all market participants, both principals and brokers, to enter prices into the system and display those to the rest of the market. Counterparties can hit or lift prices from the screen, executing trades automatically.

Deals executed on Baltex are passed directly to the relevant clearing house, with General Clearing Members able to monitor and manage credit, if necessary before a trade is irrevocably entered for clearing.

All members of Baltex are required to be members of the Baltic Exchange and must agree to be bound by the Trading Rules. These rules are published on the Baltic Exchange website.

Forward Freight Agreement Brokers' Association (FFABA)

The Forward Freight Agreement Brokers' Association (FFABA) was formed in 1997 by members of the Baltic Exchange, and acts within the framework of the Baltic Exchange and is serviced by the management of the Baltic. Since 2006, separate Associations have existed for the wet and dry markets, each with its own Chairperson. Members engaged in the trading of freight derivatives are obliged to conform to the current Rules of the FFABA as promulgated and published from time to time by the FFABA Committee.

A copy of The Baltic Exchange Guide to Market Practice for members of the FFABA is on the website and printed copies can be obtained from the Baltic. It is expected that any member engaged in the trading of freight derivatives will also conform to the Baltic Code.

The FFABA seeks to promote trading of Forward Freight Agreements (FFAs) with high standards of conduct amongst market participants. However, it is recognised that members of the FFABA who act as brokers cannot be responsible for the performance of a contract.

Membership of the Association is open to brokers acting as intermediaries.

Members of the FFABA must:

1. Be members of the Baltic Exchange;
2. Be regulated by The Financial Conduct Authority (FCA) if resident in the UK, or if not resident in the UK, by an equivalent body if required by the authorities in the jurisdiction;
3. Have demonstrated they are active in promoting the use of Forward Freight Agreements;
4. Contribute to the Baltic Forward Curve Assessment (BFA) if required to do so by the Baltic Exchange.

Staff of Members of the FFABA should also have a reasonable knowledge of:

1. Routes as defined by the Baltic Exchange in relation to the indices listed above;
2. All FFABA standard contracts.

Members of the Association are expected to conform with this guidance and with notices made from time to time by the FFABA.

Contract Negotiations and Market Practice

As with charter market negotiations, the broking of FFAs must be conducted and recorded with care and attention to detail.

Clear distinction must be made between market guidance given by brokers; indications from principals; and firm offers. Firm offers should always be made with a time limit. The practice of withdrawing offers during the period of validity is strongly discouraged and any such instances should be reported to the FFABA.

Verbal communications are contractually binding and should follow the high standards of integrity enshrined elsewhere in the Baltic Code. The Baltic Exchange motto, Our Word Our Bond, applies to the derivatives market as well as the physical market.

In addition to the maintenance of accurate written records, brokers are also encouraged to record telephone conversations. To the extent it is practical and reasonable, clients should be informed that conversations may be recorded.

Unless otherwise agreed, the Seller's Broker will be responsible for recapping the terms of agreement in writing as soon as possible after the contract is concluded.

Brokers shall not divulge the identity of their principals unless there is specific authority from the principal concerned. No contract shall be concluded without the express acceptance of both counterparties.

The broker should ensure that the rate of commission payable by the principal(s) is agreed prior to concluding the contract.

Proprietary trading. If an FFABA broker acting as an intermediary has any direct interest as principal in a transaction, it must be divulged to both counterparties during contract negotiation.

Recognising that FFAs are settled based on rates provided by the Baltic Exchange, it is expected that all transactions will be negotiated with a Baltic member broker specialising in FFAs and that an appropriate commission will be paid.

Traded Options

Options on FFAs are regularly traded. They are traded as an option on the FFA (rather than directly on the relevant index) and exercise automatically at expiry when in the money. Since the FFA is based on an average rate, they may be known as an Asian style option with European exercise.

Freight Market Information Users' Groups

The Baltic Exchange, through the Freight Indices and Futures Committee (FIFC), coordinates users' groups for members who trade on dry and wet FFAs as principals or who otherwise have an interest in the accuracy and evolution of the Baltic freight market information, known as the Freight Market Information Users' Group(s) (FMIUG).

The Users' Groups aim to meet several times year, with additional communications and consultations being conducted as required between meetings.

The Chairpersons of the Users' Groups convey the views of their Groups to the FIFC for action where appropriate.

ASSOCIATED SHIPPING ORGANISATIONS

The Baltic Air Charter Association (BACA)

The Baltic Air Charter Association (BACA) is a British professional body representing air charter brokers, charter airlines, airports, business aircraft operators, freight forwarders, consultants and others, and is based at the Baltic Exchange in London.

All members of BACA are governed by their own Code of Practice which can be found at www.baca.org.uk/pages/rules.asp

BIMCO

The Baltic and International Maritime Council (BIMCO) is the world's largest organisation of shipowners, brokers, agents, P&I Clubs and other companies with an interest in shipping, with approximately 2,550 members in 123 countries. The owner-members of BIMCO control a fleet of about 525 million dwt. It is BIMCO's aim to unite shipowners and to defend the interests of international shipping at large. Members may draw on BIMCO for information and guidance on matters relating to port calls, document-related problems, technical issues and other practical shipping matters. Members may also access BIMCO's On-Line Service for information. BIMCO is the acknowledged centre for the development of shipping documents, such as charterparties, bills of lading and other forms. BIMCO's subsidiary companies produce and sell publications on practical shipping matters and professional shipping software.

FONASBA - London

The Federation of National Associations of Ship Brokers and Agents, (FONASBA), was formed in April 1969 at the Baltic Exchange – albeit at the time under the auspices of Institute of Chartered Shipbrokers, one of the founding members of the Federation. Although on its formation FONASBA's membership was almost exclusively European, its coverage spread within the first two years to encompass the USA, South Africa and other non-European associations and this global expansion has continued to the present, with FONASBA's membership coverage now extending to some 50 countries stretching from North and South America to China, India, Japan and Australia. Membership is divided into three categories: Full Members, comprising national brokers and/or agents associations in more than 40 countries, Associate Membership, covering individual companies in countries where no national association presently exists, and Club members. The latter are organisations or companies whose activities are of significant importance to the FONASBA Membership. Club Members are admitted by invitation only and currently comprise the Baltic Exchange, BIMCO, Intertanko, ITIC and the Shipbrokers' Register.

In order to discharge its obligation to “promote and protect the interests of the international ship broking and ship agency professions” FONASBA works very closely with all those international, regional and, via its members, national bodies and organisations responsible for the development of legislation and other rules relating to maritime trade. Accordingly the Federation enjoys consultative status with IMO, UNCTAD, UNCITRAL, the World Customs Organisation and the European Commission as well as international and regional shipping organisations. It is also proactive in supporting its member associations in their own discussions and negotiations with national authorities. In order to ensure it covers all the issues affecting its members, FONASBA has established three standing committees, covering Chartering & Documentary, European (ECASBA) and Liner & Port Agency matters.

2005 saw FONASBA become independent from the Institute and in 2010, after an absence of 18 years, relocated its office back to the Baltic Exchange.

In 2007, FONASBA established its Quality Standard, the only quality regime specifically designed for, and relevant to the needs of, the shipbroking and ship agency professions. At the time of writing, more than 250 companies in 15 member countries are accredited to the standard.

The Institute of Chartered Shipbrokers (ICS) - London

The Institute has from its inception enjoyed a close relationship with the Exchange. Indeed, when the Institute was first formed in 1911, much of the initiative leading to its creation came from the members of the Baltic. By 1920 the education programme was well established and a Royal Charter, similar to those granted to universities, enabling Fellows of the Institute to refer to themselves as Chartered Shipbrokers, was granted.

Members must pass the Qualifying Examinations. There are exemptions for candidates with professional or academic qualification. The syllabus allows specialisation in, for example, dry cargo chartering, tanker chartering, sale and purchase, ship management, liner trades and port agency. Membership (MICS) also requires work experience in the shipping industry, which can include service at sea. The Fellowship (FICS) may be granted to those who have reached a position of influence in the industry.

Membership is open to citizens of any country in the world. Company membership is also available. The Institute's unique professional qualification is recognised and respected throughout the world.

INTERCARGO (The International Association Of Dry Cargo Shipowners)- London

Founded in 1980, Intercargo represents the interests of shipowners/managers and associates operating in the dry bulk trades. It is an active participant in the Round Table of international shipping associations with BIMCO, ICS and Intertanko. Intercargo has NGO status at IMO and contributes to all relevant IACS committees.

Intercargo has over 160 bulk carrier and other members located throughout the world, representing approximately 1,000 bulk carriers. Meetings are held twice a year to set policy on Round Table strategy, technical and operational issues.

Intercargo's current work programme comprises 12 topics linked to safety, quality and the environment. Three of the most topical are piracy; hazardous cargoes and excessive loading rates. Intercargo also produces an annual statistical and Benchmarking report which is sent to approximately 1,300 dry bulk companies worldwide.

INTERTANKO (The International Association of Independent Tanker Owners) - Oslo

Intertanko represents 250 members operating over 3,350 tankers. The members are spread across some 37 maritime countries. In addition, the Association has 320 associate members with an interest in shipping of oil and chemicals. Intertanko projects a strong and positive profile internationally for the independent tanker industry. It provides extensive information services and regular opportunities for industry-wide gatherings to discuss issues of concern to tanker operators. Intertanko also takes an active part in the IMO. The Association is striving for safe transport, cleaner seas and free competition. It has 24 staff based in Oslo and London plus offices in Singapore and Washington, DC.

International Underwriting Association (IUA) - London

This Association is the representative body for international insurance and reinsurance companies trading across all classes of business through London, and has 40 ordinary members, 14 Associate members and 10 affiliate members. Formed at the end of 1998 from the merger of the Institute of London Underwriters (ILU), whose history in the marine, aviation and transport insurance markets dates back to 1884, and the London International Insurance and Reinsurance Market Association (LIRMA). Its offices are at the London Underwriting Centre, 3 Minster Court, Mincing Lane, London, EC3R 7DD.

International Maritime Organization (IMO)

IMO – the International Maritime Organization – is the United Nations specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. It is the only UN agency based in London. The mission of the International Maritime Organization (IMO) is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This will be accomplished by adopting the highest practicable standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO's instruments with a view to their universal and uniform application.

Lloyd's of London

Lloyd's is the most famous insurance market in the world. It is made up of syndicates or groups of underwriters backed by the personal wealth of individuals or 'names' and limited companies who have become specialists in various types of risks, marine and non-marine. There is competition between groups but the importance of the market as a cohesive whole is recognised. Edward Lloyd opened his coffee house in the 1680s; today the Corporation occupies sites on each side of Lime Street in the City of London. The market is known as the Room and insurance may only be placed through brokers who make up roughly half of the people likely to be engaged in the daily business at any one time.

The London Maritime Arbitrators Association - LMAA

The London Maritime Arbitrators Association is an association of maritime arbitrators, consisting of 38 full members who practice in London and who embrace a variety of disciplines and a corresponding breadth of expertise. The Association was founded in the Queen's Room of the old Baltic Exchange in 1960 but London maritime arbitration's roots and traditions stretch back over 300 years. In 1972 supporting membership was introduced. Such members now number many hundreds with many residing overseas. They are drawn from the commercial, nautical, technical, insurance and legal branches of the shipping community and, in particular, from the Bar, solicitors and the P & I Clubs.

National Shipping Organisations

Most countries have a representative body for their owners - for example, the Union of Greek shipowners. In the United Kingdom the Chamber of Shipping is the representative body of the British shipowners on issues affecting the interests of its members. The Greek shipping community in London is focused on the Greek Shipping Co-operation Committee set up in 1935 and now located at the Baltic Exchange. There are also regional bodies such as the European Community Shipowners Association (ECSA) and the Asian Shipowners' Association, and the Council of European and Japanese National Shipowners' Associations (CENSA).



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