# Have we just scored an own goal?

## Regular columnist Simon Tatham provides a lawyer's eye view of the changes made to BIMCO's Supplytime 2017 after attending a role-playing seminar on the subject

► *Simon Tatham*

**It would be a simple matter to run through the changes made to BIMCO's Supplytime 2017, updated from the well-used 2005 edition. I suspect well before the end of the piece, all but the most patient and earnest contract negotiators or trainee defence club lawyers would be turning the page.**

Moreover, one can do little better than refer to BIMCO's own booklet. This is available online. In particular, the two-page introduction is succinct and outlines the main changes and why these were made, while the explanatory notes run to more than 30 pages. What is there left to add?

To learn more, I attended in September the Lloyd's Informa seminar on the subject, in London, and was led by the immensely capable and experienced Ian Perrott, chairman of BIMCO's drafting committee no less, in giving a workshop to the delegates on the completion of Part 1 of the contract – that is the filling out of the familiar BIMCO box format on the first two pages of the document. Given that the rest of the contract is intended to be a standard wording, with many clauses being boiler plate provisions for ice, ISPS and the like which are seldom applicable, this is where things can begin to go wrong. When they go very badly wrong, this can contribute helpfully to the legal profession's pension plans.

The task set at the seminar involved taking a dreadfully badly worded draft Part 1, prepared by a hypothetical incompetent broker (I suppose there is a theoretical possibility that such a person exists), and asking the delegates firstly to split up into owners' and charterers' groups and, secondly, to amend the wording so as produce a workable contract.

The fun part was taking the executives from the operations and commercial departments of an owner and asking them to role play from charterers' perspective, and vice versa. I subsequently provided the same workshop in-house at the offices of one of the industry's regular users of the contract.

In this way charterers became a brass plate company in Nassau seeking to pay a minimal mobilisation fee, demanding a wide range of delivery and redelivery ports and generalised services paid for 30 days in arrears with paltry interest applying for late payment. Conversely, owners sought lengthy notice periods in advance of charterers' declaring options for extension of hire, generous periods for notice of termination along with swingeing termination fees.

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Charterers have not greatly suffered in the offshore recession, and it was interesting for them to stand in owners' shoes for an afternoon absorbing the message that operational expenditure and miscellaneous charter party costs, thrust upon them, may exceed hire.

Most of the participants appreciated that the dispute resolution provision, in terms of choice of law, should refer to English rather that UK or British law and since the participants were European, there was little incentive to move the jurisdiction clause to Singapore, although in the Far East that is becoming very popular.

We all learnt a lot, but I felt that I learnt the most by some margin. It was fascinating to see how sharp the negotiations were, along with appreciation of how seemingly small commercial differences might make a significant contribution to the bottom line, at least in today's market. The clients' broker, who also participated in the exercise, of course loved it, sitting there smugly while the exercise demonstrated the level of experience and attention to detail that goes into preparing a good draft.

We also heard in the seminar from a number of analysts who provided a fascinating, if depressing, insight into the state of the market, the principal message seeming to be restructure now using their services, or face the consequences.

Supplytime 2017, now occupying a 20 per cent, and growing, proportion of the take-up of the contract, does not offer good prospects for my profession. The knock-for-knock liability wording is drafted, somewhat draconically in my view, to remove almost completely the prospect of claims and counterclaims arising irrespective of fault.

For sure, it is a good thing that certainty should exist: a liability regime does not, unlike Gruyère cheese, benefit from being full of holes, but this leaves me wondering whether good behaviour in performing a contract is engendered by a regime that allows a defaulting party to walk away from most of the consequences of its mistakes. The intention may be to minimise scope for litigation and avoid, in turn, the attentions of my profession, but equally fear of contractual and financial responsibility is surely an important driver in terms of quality control and performance.

Had I studied jurisprudence more enthusiastically I may have a better answer, but I was left pondering whether avoidance of potential legal disputes for its own sake was not an own-goal in terms of safety culture and performance. I suppose the cynical among our readers, brokers included, might say that I was bound to say that.

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# Bid to tackle containership fires

**Insurers are finalising a package of safety proposals aimed at combating containership fires, with a view to presenting them to the IMO to be mandated.**

The measures are being drawn up by the International Union of Marine Insurance (IUMI) in response to one of shipping's biggest safety problems: boxship fires, which are currently occurring every two months. The initiative also comes as a leading salvage expert has called for container operators to install firebreaks on existing and new containerships to help protect seafarers' and salvors' lives. The IUMI initiative is being led by Uwe-Peter Schieder, head of marine and loss prevention at the German Insurance Association (GDV). GDV's position is that the current rules under the SOLAS convention are unsuitable for boxships, especially the new generation of ultra large containerships.

Under SOLAS, boxship fires are allowed to burn out, but the GDV points out that with ultra large containerships the danger of a fire spreading increases considerably.