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MS  **Amlin**

The Increasing Risks of a Charterer in the 21st Century



Over the past few months, the shipping community has been in turmoil over the implementation of the Sulphur Cap 2020. The International Maritime Organization (IMO) has indicated that more regulation, particularly in relation to emission control, is to be expected in the foreseeable future. It is often overlooked or underestimated that the risks of a charterer tend to be significantly increased with these new rules and legislations.

Furthermore, charterers have been faced with increasing requirements for the provision of security for claims under the NYPE Inter Club Agreement and growing demands from ship owners for indemnities under their contracts of carriage. Through this circular MS Amlin wishes to inform its clients about the risks and liabilities of a charterer, as well as the (custom made) insurance solutions that we are able to offer.

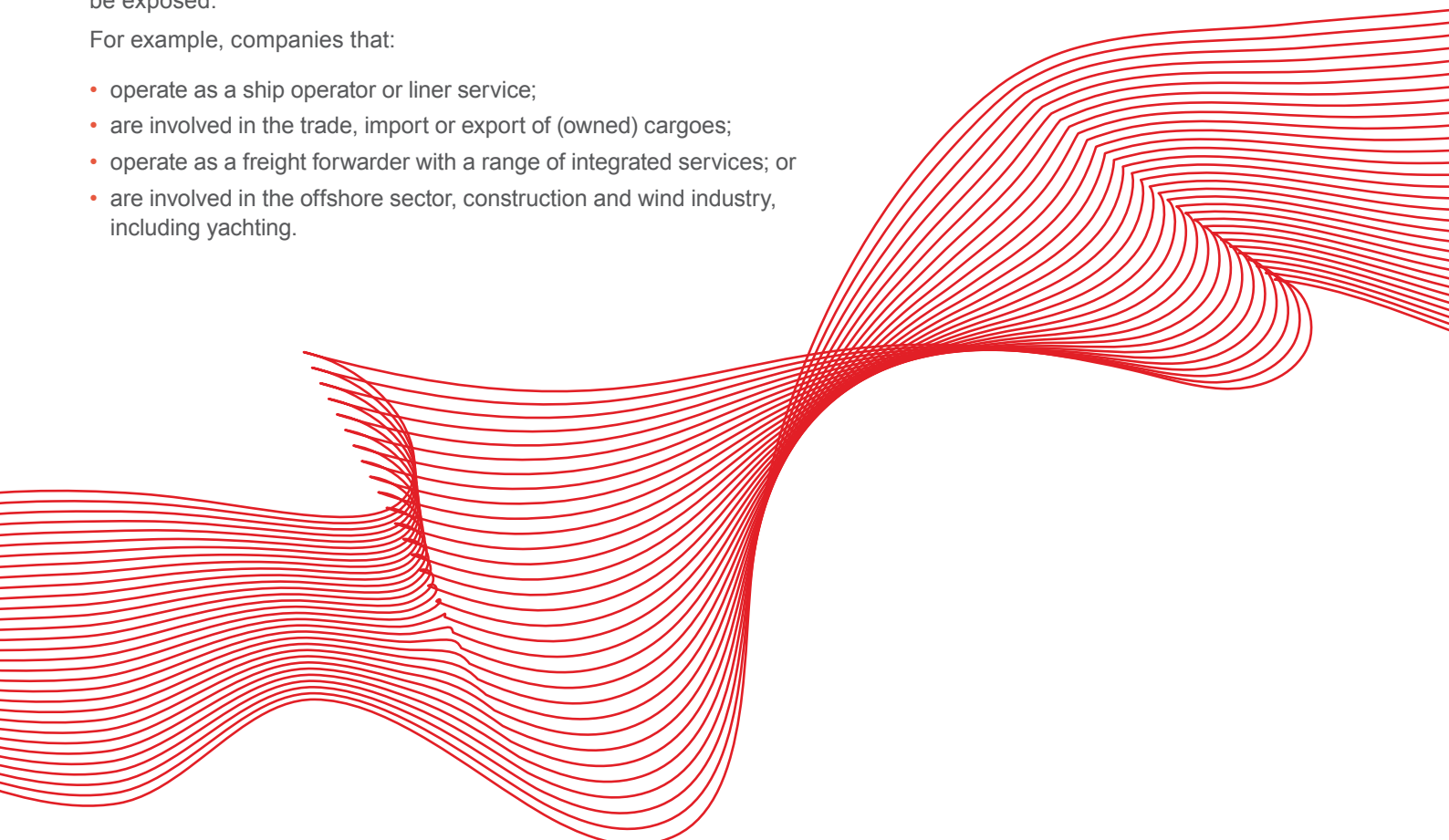
What is a charterer?

The dictionary definition of a charterer is “*a person or company chartering a ship or aircraft*”. In other words, they are the ‘users’ of a vessel. Even though a charterer is not the owner of the vessel, this does not exempt them from certain responsibilities towards the owners and third parties. Compare it with renting a car; even though a hirer is not the owner of the car, the rental agreement is likely to state that the hirer is liable for damage to the rental car in case of negligence.

There are different types of charterers who, depending on the terms and conditions of their individual contracts, have a different range of risks and responsibilities to which they could be exposed.

For example, companies that:

- operate as a ship operator or liner service;
- are involved in the trade, import or export of (owned) cargoes;
- operate as a freight forwarder with a range of integrated services; or
- are involved in the offshore sector, construction and wind industry, including yachting.



The risks

Standard industry charterparties, such as for example Gencon or NYPE, have been drafted with the purpose of balancing the risks and liabilities between owners and charterers of a vessel. However, in most jurisdictions there is freedom of contract, meaning that the parties can contract on any terms they prefer.

On the basis of unamended industry contracts, the key risks that charterers face include amongst others:

- loss of or damage to the chartered vessel caused by stevedores, an unsafe port or the supply of unsuitable fuels;
- loss of or damage to (third party) cargo;
- pollution, salvage, general average or fines;
- other marine liability risks including loss of life, injury or illness suffered by the crew or other third parties such as agents or surveyors.

Generally, charterers will not only be responsible for their own negligence or omissions, but also for acts of their servants, agents and sub-contractors.

As shipping practice prevails, responsibilities are balanced between owners and charterers so it is unlikely that a charterer is able to exonerate himself from any and all liabilities. Often, if possible, charterers will fix on back-to-back terms which is a good way of limiting exposure. However, please note that contracting on full back-to-back terms is often utopian. Besides, if a contractual party up or down the contractual chain defaults, charterers may find themselves exposed to claims that cannot be recovered.

On a separate note, it is worth considering whether it is wise to put your faith and potentially the future of your company in the hands of your contractual party.

How to protect the charterer from these risks?

Every vessel and every voyage is different and not all charterers are exposed to the same risks. Contrary to P&I insurance, Charterers' Liability insurance is not mandatory so it is a charterer's prerogative to go uninsured. If the risk is low and charterers can afford to pay claims from their own pocket, it may well be cost effective to remain uninsured. In our experience, however, as the risks for charterers can be substantial depending on the value of the vessel and cargo, claims could run into millions of dollars.

Even though claims may not be very frequent in your line of business, performances of the past are no guarantee for the future and when claims do happen there are very few 'gentlemen's agreements' that will survive the turmoil of a casualty.

We can protect charterers against these risk and assist them in case they are faced with a claim. Our highly experienced and dedicated claims teams in Rotterdam, Paris and Singapore are ready to handle any claim that charterers are faced with under their contracts of carriage with the purpose of unburdening our clients, making sure that they can focus on continuation of their day-to-day business.

Furthermore, MS Amlin's financial security is listed amongst the top securities in the world of marine insurers ('A' security) and our Letters of Undertaking are accepted across the globe, which is essential when assets are under threat of arrest for the provision of security against claims.

"After all, one does not need to be liable in order to be held liable".



Conclusion

Day-to-day chartering can be a risky adventure and therefore we recommend charterers to carefully scrutinize their contracts to determine their financial exposure for potential liabilities resulting from cargo handling, stevedores, safe port warranties or off spec bunkers. New emission control regulations, such as the Sulphur Cap 2020, place a high level of responsibility on the charterers to supply compliant bunkers, whereby the consequences of failing to do so can be significant. Over the next coming years we expect that such exposures will only increase.

Furthermore, we live in an increasingly litigious environment so even in cases where the charterers are not liable, they may still need to defend themselves against claims; after all, one does not need to be liable in order to be held liable.

Our products are designed to cover charterers for these exposures, and more importantly we are there to assist in case of need.

Since 1993 MS Amlin offers P&I solutions for charterers covering, amongst others, the above listed exposures. Additionally, MS Amlin has created a series of smaller insurance packages to cover charterers against a range of additional liabilities, such as Marine Defence Insurance (FD&D), Cargo Owners' Legal Liability Insurance (COLL), Bunker Insurance, Freight Insurance, Shipowners' Liability Insurance (SOL) and War Risk Insurance.

For further details of our cover, please see:
[MS Amlin brochure Charterers' Liability](#)

For any queries on this topic, please do not hesitate to contact one of our Underwriters or the Client Services Desk:
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