

**MINUTES OF THE
CHARTERING & DOCUMENTARY PLENARY MEETING HELD AT
THE GOLDEN TULIP HOTEL, VITÓRIA, ES
AT 9.00 a.m. ON WEDNESDAY, 14th OCTOBER 2015**

Present:

Mr. F. Carlini FICS	Chairman
Mr. G. Gordon Findlay	President FONASBA

In Attendance:

Mr. J.C. Williams FICS	General Manager
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Mr. J. Dulce	Argentina	Mr. A. Al-Shnag	Libya
Mr. R. Garcia Piñeiro	Argentina	Mr. F. Schupitta	Libya
Mr. S. Diaz Mathé	Argentina	Mr. J. Contreras	Peru
Mr. G. Hernandez	Argentina	Mr. A. Mantrach	Morocco
Mrs. H. Bruggeman	Belgium	Mr. M. Tak	Netherlands
Mr. W. Rocha Jnr.	Brazil	Mr. F. Zeimetz	Panama
Mr. M. Froio	Brazil	Mr. R. D'Orey	Portugal
Mrs. M. Lachmann	Brazil	Mr. A. Belmar da Costa	Portugal
Mr. P. Alves	Brazil	Mr. A. Crespo	Spain
Mr. A. Costa	Brazil	Mr. N. Warner	South Africa
Mr. M. Bonelli	Brazil	Mrs. B. Blomqvist	Sweden
Mr. M. Neri	Brazil	Mrs. M. Collins	USA
Capt. N. Hristov	Bulgaria	Mrs. J. Cardona	USA
Capt. J. Karmelić	Croatia	Mr. F. Sarre	BIMCO
Mr. C. P. Papavassiliou	Cyprus	Mr. S. Larsen	BIMCO
Mr. T.D. Paulsen	Denmark	Ms. M. White	INTERTANKO
Dr. A. Geisler	Germany	Mr. A. Jamieson	ITIC
Mr. J.A. Foord FICS	Great Britain	Mr. G. Wramfelt MICS	Shipbrokers' Register
Mr. A. Dobson FICS	Great Britain	Observers:	
Mr. B. Szalma	Hungary	Mr. L. Cordeiro	Brazil
Mr. V. Totorizzo	Italy	Mr. L. Felipe Alves Junior	Brazil
Mr. A. Bancherò	Italy	Mr. C. Killian de Alvarenga	Brazil
Ms. L. Tropa	Italy	Mr. H. Barcelos Junior	Brazil
Mrs. G. Reghellin-Carlini FICS	Italy	Mr. D. Farinelli Leite	Brazil
Mr. T. Iigaki	Japan	Mr. L. Barbosa Santos	Brazil
Mr. T. Saita	Japan	Mr. G. Freitas Campos	Brazil
Mr. H. Morita	Japan		

Item

Action

1. President's Welcome, Chairman's Opening Address

The **President** and **Chairman** welcomed all those present to the meeting, the **Chairman** extending a particular welcome to Mr. Francis **Sarre**, newly-elected Chairman of the BIMCO Documentary Committee, who was attending his first FONASBA meeting, and to Mr. Mario **Froio**, President of the Federation from 2008 to 2010. The **President** also welcomed Mr. Francis **Zeimetz** from Panama, who was also attending his first meeting.

The **Chairman** then invited all delegates to stand and observe a minute's silence in memory of former C&D Committee Vice Chairman and Executive Committee member Knut Frode Eriksen, who had passed away earlier this year.

The **General Manager** then advised delegates that photographs of each meeting and social event were being uploaded to the FONASBA Facebook page, which he then demonstrated.

2. Minutes of the Last Meeting held Gothenburg, 8th October 2014

With no comments having been received, the minutes **were approved**.

3. **Matters Arising**

There were no matters arising that were not otherwise covered in the agenda.

4. **Enhancing the Profile of the Shipbroking Sector**

The **Chairman** introduced this discussion item by reminding the meeting that although there were areas of common interest, there was also significant variation in the expectations of shipbrokers and ship agents in terms of what FONASBA could deliver. The demands of the ship agency community were well-known but those of the shipbroker less so. The Federation therefore needed to carefully consider and define the needs of the broking community in order to fully accommodate and attend to them within the current structure. It was therefore necessary, he said, for both arms of the organisation to understand each other's needs, the issues they face and to cooperate in ensuring that FONASBA is able to offer support and add value to both.

The meeting then discussed the means by which that support could be provided by member associations. It was suggested that giving agents and brokers an insight to the basics of each other's roles in their education programmes would certainly be beneficial, for example by requiring agents to take a short course in broking and vice-versa, as would holding joint events at which brokers and agents could meet and exchange views. Providing opportunities for face to face meetings was also seen as being a means to break down the increasing compartmentalisation of the broking sector. Previously new brokers spent time working in a number of markets before being allocated to a particular sector but unfortunately the pressing need to make a positive contribution as soon as possible was significantly reducing the opportunity for brokers to gain a wide understanding of the various markets.

In order to take this action forward, it was agreed that national associations should, so far as possible, seek to bring their agency and broking members together on a regular basis and to offer opportunities for each sector to learn about the other. Expanding the syllabi of their education courses could be productive means of increasing awareness. Where associations only represent one sector, holding joint events with representatives of the other could also prove useful. The **Chairman** therefore called on all associations to take these recommendations on board.

The **President** said that FONASBA was working hard to add value to its broker members and would continue to develop new initiatives as the opportunity arose.

5. **“Who Are You Fixing With?”**

The reduction in personal contact and in face to face broking that had come about through the increasing use of email to exchange orders and information, as well as the significant increase in the number of brokers and the volume of orders being quoted, had greatly reduced the opportunities for brokers to know with whom they are fixing. This had led to an increasing number of disputes, claims on brokers' indemnity insurances and similar actions. It was for this reason, the **Chairman** said, that he had invited Mr. **Jamieson** to present a number of examples of situations where knowing clearly with whom the broker is fixing has proven vital. Mr. **Jamieson** then discussed the following topics:

Getting the principal's name right: Whilst this may appear self-evident, not checking carefully can have significant and damaging repercussions should a claim arise. A party that is subject to legal proceedings is looking for any opportunity to avoid paying damages and being able to prove that the party named in the contract is not correct can often result in the claim being thrown out.

What duty does a broker have to his principal to ensure that he is fixing with the right counterparty? The FONASBA and Baltic Exchange Codes of Conduct both require the broker to make “all reasonable enquiries” before bringing business to the market and the Baltic Code goes further in stating that if this is not possible to do so, that difficulty should be clearly stated to the principal. What constitutes “reasonable” will depend on a variety of factors but the broker should be able to prove that some level of enquiry was carried out and that this was passed on to the principal. At the same time, the broker must not make any statement regarding the bona fides of a counterparty that cannot be verified. Doing so could lead to the broker being accused of

misleading the principal. Where information received from a third party is passed on, the broker must make the source of that information clear to the principal.

How financially stable is the counterparty? Again, being certain as to the identity of the counterparty is important, especially where statements relating to their financial standing are concerned. Is the principal fixing with the parent company or a subsidiary? If so which is known (or thought) to be financially stable? No statement about the financial standing of the counterparty should be given by the broker unless completely certain of the facts.

What constitutes a guarantee? When a statement or opinion becomes a guarantee (implicit or implied) depends on the individual circumstances and the broker should be alert to any situation in which a statement could be construed by the counterparty as being a guarantee.

Has the information been passed on correctly and in good time? It is up to the broker to ensure that any information is passed to the right person in the principal's company. Checks should be made to confirm receipt; a phone call to follow up a written advice should suffice.

Obligations of brokers in an extended chain: Where a number of brokers are involved in a fixture, each should be aware of their obligations and liabilities and any limitations of liability that might apply. Not being certain of those conditions could leave the principal exposed.

Summing up the presentation, the **Chairman** reminded the meeting that brokers are under pressure to make all relevant and appropriate checks in order to protect themselves and their principals but in many cases there was no guidance as to what those checks should be. He therefore confirmed that FONASBA would endeavour to issue guidance and reminders to members as to how those checks should be carried out.

Mr. **Sarre** added that close cooperation and liaison between the broker and the port agent was also vital to ensure that accurate information about the port calls was also correctly passed on to the principal.

The **President** confirmed that the C&D Committee would look at all these issues and take appropriate action.

6. **FONASBA Document Revision**

The **Chairman** advised the meeting that action to develop the Standard Liner & General Agency Agreement into an all-purpose agency contract was ongoing. The agency clauses and agreements provided by members were being examined and the common components were being extracted to form the basis of a generic core agency agreement. Additional clauses would then be added to customise the content for specific trades, such as short sea shipping or project cargo.

The FONASBA Standard Proforma Disbursements Account form had been overlooked for many years but following its recent rediscovery, it had been agreed to update and modernise the form, providing it in electronic as well as "paper" format.

The Subject Details Clause was also being updated following acknowledgement that the conventions relating to the use of the term varied significantly between English and US laws.

The **Chairman** confirmed that all the revised documents would also be referred to the BIMCO Documentary Committee for endorsement.

7. **ITIC Claims Review**

The **Chairman** invited Mr. **Jamieson** to address the meeting and report on the current issues giving rise to claims from ship brokers and ship agents.

Opening his presentation, Mr. **Jamieson** reported that in the year to 31st May 2015, ITIC had taken action on 430 occasions to recover commissions and outstanding disbursements. In many such cases there was no dispute about the validity of the debt, or the amount concerned, but it

had taken the threat, or initiation, of legal action to induce the recalcitrant party to settle the outstanding.

Companies going into insolvency, and the wider effects of such an action is another issue that brings work to ITIC. Apart from taking action to assist parties directly affected by the insolvency to recover funds due, Mr. **Jamieson** said that his organisation also assisted companies to avoid being caught up in legal arguments caused by the insolvency.

As an example, he cited a case of a member that was in possession of a cargo of steel but as a result of the insolvency of the steel mill received claims from two separate parties demanding that the steel was delivered to them. ITIC was able to resolve this issue and ensure that the member was not dragged into legal action.

The entry into insolvency of OW Bunkers of Denmark in November 2014 had also seen a large number of ship-owners receive competing demands for payment for bunker supplies. The OW Bunkers insolvency is so big, Mr. **Jamieson** reported, that seminars have been arranged to discuss the legal issues concerned.

Also in relation to insolvency, and raised at previous meetings by Mr. **Jamieson**, was the need for ship agents to act quickly should they be aware, or receive notice, of insolvency proceedings involving their principal. He said that agents that do act promptly may get paid whilst those who delay will not. Supporting a principal through minor difficulties is integral to a good working relationship but the need to protect one's own interests is paramount. He therefore recommended that any agent who finds themselves in a deteriorating situation makes contact with their P&I Club without delay.

As ever, ITIC continues to assist agents in cases where simple mistakes have led to claims. As previously reported, many of these result from typographical errors such as using the wrong name for a port (often the wrong port is in another content), missing minus signs from reefer temperature limits, sending notifications to the wrong party or an old email address and similar. Once again Mr. **Jamieson** stressed the need to carefully check these details to prevent easily avoidable claims.

A new issue giving rise to claims relates to interpretation of, and compliance with, environmental regulations, for example on the use of low sulphur fuels or delivery of garbage. As ever, the agent should take care to ensure the master and owners are fully informed of all the relevant information. Fines for non-compliance with environmental regulations can be very high and an owner that receives such a fine may well try to prove the agent was negligent in order to claim compensation to mitigate the damage.

The final topic covered by Mr. **Jamieson** was the increasingly sophisticated frauds being perpetrated against ship owners and ship agents, especially in relation to diversion of funds. He first raised this at the Gothenburg meeting but confirmed at this meeting that the frauds continue. He reminded delegates that extreme care must be taken to ensure that all payment instructions (but particularly those to remit to new or amended accounts) are bona-fide and that any messages regarding changes to previous or known instructions are separately verified – either by sending a completely separate email using a trusted email address or by contacting the instructing party by telephone. On no account should the recipient just reply to incoming message as one of the most common actions by the fraudsters is to establish an email address that is almost identical to the correct one.

Closing the report, Mr. **Jamieson** advised that ITIC is now looking at how it can assist its members to avoid losses due to cyber-attacks. He said that the Club was looking at effective solutions to provide protection and loss mitigation and would be contacting its members in due course. He also said that use of the FONASBA endorsed “post-fixture” clause was growing and this was a welcome development.

The **Chairman** thanked Mr. **Jamieson** for yet another detailed report and then opened the discussion to the floor.

Not covered in Mr. **Jamieson**'s report was the ability of an agent to terminate an agency should the need arise and the level of an agent's liability for port charges should the ship owner or operator refuse or be unable to pay. He said that in both cases the situation varied according to the country in which the agent operated so there was no consistency in this regard. It was therefore suggested that FONASBA should carry out a survey to determine how these issues are applied across the membership. The **Chairman** said this would be done.

8. **BIMCO Documentary Committee Report**

At the invitation of the **Chairman**, Mr. **Larsen** and Mr. **Sarre** took the floor and together reported on the recent actions undertaken by the BIMCO Documentary Committee. A copy of their presentation is available for download from the Members' Area but in summary the topics covered were:

NYPE Revision: BIMCO had recently launched a revised and radically different version of this most commonly used timecharter form. The new version had been developed by ASBA, BIMCO and the Singapore Maritime Foundation. A programme of presentations of the new form were being organised by BIMCO in major shipping centres. *(Post-meeting note: A copy of the new form plus explanatory notes have been circulated to all members).*

LNGVOY Charterparty for liquefied natural gas products: This new form is designed specifically of the needs of the LNG shipments and ends the previous reliance on heavily modified forms of other forms. It is expected that the form will be adopted at the November Documentary Committee meeting in Hamburg. *(Post-meeting note: the form was adopted in Hamburg subject to some minor amendments).*

SUPERMAN Standard Newbuilding Supervision Contract: It was also expected that this new form would be adopted at the Hamburg meeting. *(Post-meeting note: It was adopted unchanged).*

SUPPLYTIME: This current supply vessel timecharter form is being revised in order to reflect current practice in the sector.

Standard Novation Agreements for Timecharter Parties and Shipbuilding Contracts: BIMCO is currently reviewing three novation agreements covering, in the case of a timecharter, a change of owner, charterer and, in relation to a shipbuilding contract, a change of the ownership of the vessel. Work is continuing on these agreements.

Standard Ship Financing Term Sheets: Due to the complexity of this project, and the number of parties involved, progress on developing standard term sheets had been slower than expected. It is hoped that positive progress could be made in the coming year, however.

Anti-Corruption Clause: Work was continuing on this clause but it was anticipated it would be completed in time for adoption in November. Some of the terms had proven contentious and BIMCO had held in meeting in London immediately prior to this FONASBA meeting, from which some possible alternative solutions had emerged. Both Mr. **Larsen** and Mr. **Sarre** were aware that this clause might prove controversial for agents but before taking questions they briefly mentioned other documents under review including revising the SLOTHIRE Standard Slot Charterparty form and the World Food Programme Charterparty and BIMCO's offer to assist in the review of the Standard liner & General Agency Agreement. A Standard Newbuilding Contract for Superyachts was also being considered.

Returning to the Anti-Corruption Clause, the meeting discussed its impact in countries where the custom of the port and or cultural traditions required that low level bribes or gifts be given to officials to ensure that the call was facilitated. Delegates agreed that the strict application of the clause would be problematical and clear guidance was therefore required as to what constituted bribery and what could be considered to be normal practice. Mr. **Larsen** said that BIMCO was fully aware of this issue, and indeed it had been discussed in great detail during the drafting process, but he added that quantifying the problem was difficult as owners were reticent to report cases where low-level bribery had been required to facilitate port calls. He said that introducing the clause would bring with it some operational issues but BIMCO hoped that at the same time it would highlight the problems faced by the international shipping industry and give ship owners some protection against the recently introduced bribery and corruption legislation.

Closing this item, the **President** thanked Mr. **Larsen** and Mr. **Sarre** for their detailed presentation and for ensuring that the relationship between BIMCO and FONASBA remained excellent.

9. INTERTANKO Documentary Committee Report

The **Chairman** then invited Ms. **White** to report on the work of the INTERTANKO Documentary Committee. A copy of her presentation is available for download from the website and her written report is attached but in summary she covered the following issues:

Recent clauses developed include the Ebola Clauses for vessels trading to west Africa on time and voyage charter, the MARPOL Annex VI Clauses for vessels operating in the Sulphur Emissions Control Areas and the Nigeria Trade Clause (see below).

The INTERTANKO Freight Demurrage and Information Pool, a facility through which the organisation assists its owner members to recover freight, demurrage and other payments due from charterers and other parties.

With regard to the Nigeria Trade Clause, this had been developed in just two weeks to assist owners to prepare for, or protect against, the actions being taken by the Nigerian authorities to blacklist vessels that were alleged to have taken part in corrupt practices whilst in Nigerian waters. INTERTANKO had investigated the allegations and ascertained that a number of vessels on the blacklist had never been to Nigeria before and others had not called there for many years. A number of other errors on the list had also been identified. As well as developing the clause, INTERTANKO had protested to the Nigerian National Petroleum Company (NNPC) and the government about the actions as well as raising awareness of the issue in the international maritime press. A draft letter of comfort was also developed in response to changes in the requirements of NNPC. At the time of the meeting the issue had not been fully resolved but the demands on ship owners had been significantly mitigated.

Ms. **White** closed her presentation by introducing the INTERTANKO Payment Performance System which was designed to assist owners in identifying and resolving issues with late payment of freight and demurrage. The online system allows owner members to report on late payments and for aggregate information on charterers to be displayed.

The **Chairman** thanked Ms. **White** for another excellent presentation and in particular for INTERTANKO's swift response to the Nigerian issue.

10/ Shipbroking Panel Discussion

11. The **Chairman** welcomed former FONASBA President Mario **Froio** and Mr. Cleber Lucas of ABAC.

Mr. **Froio** thanked the **Chairman**, the **President** and FONASBA for inviting him back to an Annual Meeting and granting him the opportunity to participate in this panel. He then gave delegates a short introduction on the use of cabotage on the Brazilian coast and between Brazil and Argentina or Uruguay. He said that whilst many owners and charterers operate in the dry bulk trades, all Brazilian coastal tanker movements are under contract to Petrobras. Irrespective of the trade, however, all vessels operating on the coast are required to employ at least one third Brazilian crews.

He then introduced Cleber Lucas, a director of cabotage operator Syndarma, chairman of a cargo terminal in Vitória and on this occasion representing ABAC, the Brazilian Association of Cabotage Operators. A copy of his presentation is available for download from the Members' Area of the FONASBA website. The main topics covered included the logistical reasons for the development of the Brazilian coastal trade the regulatory conditions, the business and investment climate and the intermodal challenges.

Following the presentation, Mr. Lucas took questions from the floor on subjects including the impact of proposed legislation to regulate working hours for truck drivers and the prospects for the pending agreement within the Mercosur group to allow for open cross trading between all the partner countries. In reply Mr. Lucas said that if legislation to regulate drivers' hours was

introduced, it would need to be rigorously enforced and regular checks made, otherwise drivers would continue to work for as long as possible. On the Mercosur question, he said that some member states were continuing to resist implementation of the necessary bilateral agreements – Uruguay being one that he specifically mentioned.

Closing the discussion, the **President** reminded the meeting of FONASBA's aim to become the representative body for short sea, coastal and river shipping at international level and so would support member associations in removing burdens and freeing up trade in these areas. Mr. Lucas said that such a move would be warmly welcomed in Brazil and his association was ready to cooperate in this action.

The **Chairman** then thanked Mr. **Froio** and Mr. Lucas for participating in the panel and thanked the delegates for their input.

12. C&D Committee Future Work Programme

The **Chairman** reminded all those present that the C&D Committee was open for, and keen to receive, proposals for issues that it could take forward and invited delegates and their associations to bring same to his attention.

13. Any Other Business

None.

14. Date and Place of Next Meeting

The **Chairman** thanked all those present for their contributions to an excellent and productive meeting. He then advised that the next Plenary Meeting of the Chartering & Documentary Committee would take place in October 2016 in London, with the date expected to be Wednesday, 19th October.

There being no further business to discuss, the Chairman brought the meeting to a close.

JCW/01.2016