BIMCO’s Documentary Committee recently adopted the revised SUPPLYTIME 2017, thereby bringing the popular standard form charterparty for offshore support vessels (“OSVs”) more in line with current practices in the offshore sector.

In this update, we would briefly explain some of the key differences between SUPPLYTIME 2017 and its predecessor SUPPLYTIME 2005.

Overview

Given the success of its predecessor, the SUPPLYTIME 2005, the emphasis of BIMCO’s latest revision of the standard form was on balancing of the interest of the owners and charterers in relation to the knock-for-knock liability regime. Apart from that, there were also several smaller changes to modernise the decade old standard form.

The full ambit of the changes can be found in the explanatory notes to the latest revision. We summarise below some of the amendments which may be of some interest.

Surveys, Audits and Inspections (Clause 5, Supplytime 2017)

In practice, a problem may arise where charterers do not survey, audit or inspect the vessel before taking delivery, and subsequently argue that the vessel should not be on hire until such survey, audit or inspection is completed post-delivery.

As such, the provision dealing with on-hire/off-hire surveys has been expanded in the 2017 edition to give charterers the right to survey, audit or inspect the vessel prior to delivery. Furthermore, the right to conduct surveys, audits or inspections upon reasonable notice continues throughout the duration of the charter.

This would facilitate the conduct of surveys, audits and inspections prior to delivery and, ideally, the vessel would be ready to be on-hire at the time of delivery.

Fuel (clause 10, Supplytime 2017)

The “Bunker” clause is now renamed “Fuel” to properly reflect the practice in the offshore sector where fuel carried as cargo and fuel carried for the vessel’s consumption (i.e. bunkers) are usually not differentiated.

The payment regime for fuel has also undergone a revamp. In the 2005 edition, the charterers and owners are to purchase/repurchase the fuels remaining on board at the time of delivery/redelivery at the price prevailing at the time and port of delivery/redelivery.

However, there may well be several prices at the port and dispute may arise as to which should be treated as the prevailing price. Moreover, the payment regime fails to accommodate the increasingly popular practice of using Purchase Order.
In the 2017 edition, the parties are given two options for payment of fuel which they can indicate in Box 19 (failing which the default would be the first option):

First, under clause 10(c)(i), the charterers/owners would purchase/repurchase the fuel remaining on board at the same price that was paid at the last bunkering of the vessel;

Second, under clause 10(c)(ii), the fuel is not bought/sold on delivery/redelivery of the vessel. The parties would settle the difference in fuel at redelivery (e.g. if vessel is redelivered with less fuel than when it was delivered, then charterers would pay for the difference), with the price taken to be the price last paid at the last bunkering of the vessel.

**Termination for non-payment of hire (clause 12, Supplytime 2017)**

Like its predecessor, the 2017 edition allows the owners to terminate the charterparty if the charterers do not pay within the five (5) days’ written notice in subclause 12(f)(i).

The change, however, is that in the 2017 edition, if the charterers pay all sums due after the expiry of the five (5) days’ grace period, but before the owners elect to terminate, then the owners shall be deemed to have waived the right to terminate.

**Off-hire (clause 13; clause 34(d), Supplytime 2017)**

In the 2017 edition, breakdown of machinery or equipment (but not charterers’ equipment) is now considered an off-hire event. In the explanatory notes, it is suggested that this is intended to cover, for instance, Dynamic Positioning (DP) and gear.

In the event the vessel is off-hire for a period exceeding what parties have stated in the new box 32 of the form, and no substitute vessel has been provided by the owners, then clause 34(d) gives the charterers a right to terminate the charterparty.

**Knock-for-knock (clause 14, Supplytime 2017)**

The knock-for-knock liability regime has been strengthened in the 2017 edition. Some of the key changes are as follows:

- The definitions of “Charterers’ Group” and “Owners’ Group”, which affects the operation of the knock-for-knock liability regime, have been improved and moved to the Definitions section so that the usage is consistent throughout the charterparty.

Subclause 14(a)(i) describes the losses that falls on the owner as any loss or damage to property belonging to the Owners’ Group, or personal injury and death of anyone in the Owners’ Group are to be borne by the owners, even if they are caused by, for instance, the negligence or default of the Charterers’ Group, subject to three exceptions:

- Subclause 9(e) - charterers to provide
- Subclause 14(c) - Liabilities and Indemnities - Limitations
- Subclause 18(c) - Saving of Life and Salvage
Subclause 14(a)(ii) describes the losses that falls on the charterers. It is not identical to that of the owners due to the differences in their respective obligations. Suffice to say, there is an equivalent strengthening of the knock-for-knock regime, subject to two exceptions:

- Subclause 9(e) - charterers to provide
- Subclause 16 - wreck removal

Notably, the description of the included causes of loss has been expanded to include any loss “arising out of or in any way connected with the performance or non-performance of this Charter Party whatsoever and in any circumstances, even if such loss, damage, or personal injury or death is caused wholly or partially by the act, neglect, breach of duty (whether statutory or otherwise)” (emphasis added in bold)

Lay-up (clause 33, Supplytime 2017)

In the 2017 edition, the charterers’ right to lay-up the vessel has been expanded into a comprehensive clause that sets out in detail the process leading to the laying up of the vessel during the charter period.

Early Termination Clause (clause 34, Supplytime 2017)

The procedure for early termination (for cause) has been reviewed and clarified. In the 2017 edition, either party or the non-defaulting party (as the case may be) may give a written notice of its intention to terminate if the “Termination Event” is not cured within 14 days of the receipt of the notice. On the expiry of the 14 days’ notice, the notifying party may give a second notice, latest within 3 days of the expiry, to terminate the charterparty.

This new amendment to the procedure for early termination (for cause) adds certainty for the party receiving the notice as to whether the notifying party is going to terminate the charterparty or not.

Key summary:

- The SUPPLYTIME 2017 has retained the key features that made the standard form one of the most popular in the offshore sector, while making several changes to modernise it and to ensure that it keeps up with the changing market practice.
- One of the key changes to the SUPPLYTIME 2017 is the strengthening of the knock-for-knock liability regime by providing a balanced set of liabilities and indemnities, and reducing the number of exceptions.
- Other minor changes are also made to review and clarify the wording of the clauses to reduce ambiguity in known areas of potential dispute and misinterpretation (see for instance the early termination clause).
- The 2017 edition also has certain new additions, such as the expansion of the Surveys, Audits and Inspections clause and the Lay-up clause to reflect the current trends and demands in the offshore sector.
About the Shipping & International Trade team

The Shipping & International Trade team at Kennedys Legal Solutions provides seamless dispute resolution support for a full spectrum of shipping and international trade matters through the firm’s international network of offices and liaison firms.

Over the years, Joseph Tan and his team have gathered a good following of clients comprising of shipowners, charterers, cargo interests, offshore oil & gas support operators, and commodity trading houses. He has also been consistently recommended by Legal 500 Asia Pacific as a leading practitioner in shipping and trade related work since 2011.

Key Contacts:

Joseph Tan  
Partner  
Advocate & Solicitor, Singapore  
T: +65 6671 7408  
E: Joseph.Tan@kennedyslaw.com

Joanna Poh  
Senior Associate  
Advocate & Solicitor, Singapore  
T: +65 6671 7450  
E: Joanna.Poh@kennedyslaw.com

Zhihui Chen  
Trainee Solicitor  
T: +65 6671 7446  
E: Zhihui.Chen@kennedyslaw.com

Kennedys Legal Solutions  |  Legal Solutions LLC

80 Raffles Place  
#44-01 UOB Plaza 1  
Singapore 048624

T +65 6671 7400  
F +65 6671 7401  
http://www.kennedyslaw.com/singapore/

Kennedys Legal Solutions is the trading name of Kennedys Legal Solutions Pte Ltd, a limited liability joint law venture between Kennedys Singapore LLP and Legal Solutions LLC. The word “Partner” refers to a member of Kennedys Legal Solutions, or an employee or consultant who is a lawyer with equivalent standing and qualifications.

The contents of this publication are owned by Kennedys Legal Solutions and subject to copyright protection under the laws of Singapore. No part of this publication may be reproduced, licensed, sold, published, transmitted, modified, adapted, or whatsoever without prior written approval of Kennedys Legal Solutions.

The information contained in this publication is for general information purposes and is not intended to constitute legal advice.