

(中英文对照)

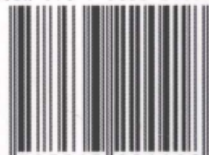
PRACTICE & LAW
OF CHARTERING SHIPPING

租船运输实务与法律

主 编 苏同江
副主编 高 伟
主 审 王学锋

大连海事大学出版社

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Abstract of Contents

To meet the needs of China's higher vocational education and to enhance students standard of English, this text book is written for international shipping management and modern logistics management students in learning chartering shipping as a bilingual teaching materials. The main contents include the basic chartering shipping and legal knowledge, chartering shipping processes and practices, voyage charter parties and time charter parties. The book systematically and comprehensively discusses the basic business and legal knowledge of chartering shipping, in order to facilitate the students in learning and master the contents of the book, each chapter with the Chinese translation.

内容摘要

本书是为适应我国高等职业教育的教学需要,提高学生英文水平,为国际航运管理和现代物流管理专业学习租船运输编制的一本双语教学专业教材。主要内容包括租船运输和法律基本知识、租船运输程序和实务、航次租船合同和定期租船合同。全书较系统、全面地论述租船运输基本业务和法律知识,为便利学员掌握所学内容,每一章都附有中文翻译予以对照学习。

PREFACE

This book is an introduction to the chartering shipping business and is intended for those students who while possessing a general shipping knowledge wish to know more of the vast area of shipping business. Directness and brevity are the author's primary objectives. Being a basic textbook certain parts of the book may therefore seem somewhat superficial since the author has not intended to go too deeply into details. It aims to explain in a manner that is hopefully easy to understand for the students who major in this subject.

For purposes of analysis, Chapter 1 gives general introduction to chartering shipping. Chapter 2 deals with chartering procedure and practice. The two major areas of voyage charters and time charters are dealt with separately in Chapter 3 and Chapter 4. Each chapter follows the assignments for the students to do and check their answers from the text in order to make sure what they have learned. In order to facilitate the students to easy understand the English wording text, the authors give the Chinese version in this book following each chapter and hope it will be good for both the students and readers.

This book sets out to establish a thorough basic knowledge of chartering shipping business. It could not only be a text book for college students who major in shipping business but also a referent materials and a guide to relevant persons who are interest in chartering shipping.

The book is written by Prof. Su Tongjiang as chief editor, Gao Wei as deputy editor, Wang Ruiliang, Yu Xiaodan, Yang Xiaona and Leng Qiang as editors, Shanghai Maritime University Prof. Wang Xuefeng as chief examiner, with reference to various English books/cases and regulations of China's Maritime Code relating to chartering shipping and also basis on the original Editions which published by Qingdao Ocean Shipping Mariners College as the textbook for students majoring in international shipping and logistics. The authors shall appreciate and welcome readers' any suggestions, comments and proposals on this book in order to modify it for further best utilization.

Great thanks are given to all of the readers and supporters.

The Authors

Qingdao Ocean Shipping Mariners College

Management Department

May. 2010

前 言

本书介绍租船运输业务,为拥有一般航运知识打算进一步了解和掌握更加广阔的航运业务领域的学生编辑出版。直接和简洁是作者的主要目标。作为一本基本教材,本书的某些部分似乎有点肤浅,因为作者没有打算作详细深入的研究,目的是希望通过一种较容易理解的方式便于主修本门课的学生学习。

就分析的目的而言,第1章讲述租船运输概论;第2章关于租船运输的程序和实务;航次租船和定期租船两个主要部分分别列为第3章和第4章。每章附有习题供学生练习并根据书中内容进行核对,以把握他们所学到的知识。为了方便学生易于理解英文教材内容,作者在每一章后面附上中文翻译,希望这将有助于学生和读者学习。

本书讲述整个租船运输业务的基本知识,可以作为大学生学习航运业务的教科书,也可以作为对租船业务感兴趣的有关人员的参考资料和指南。

本书由苏同江教授担任主编,高伟担任副主编,王瑞亮、于晓丹、杨晓娜和冷强参编,上海海事大学王学锋教授担任主审。本书是在参照与租船业务有关的各种英文书籍、案件和中国海商法的规定,以及在青岛远洋船员学院校内出版作为国际航运和物流专业学生的教材的基础上编写的。作者欢迎读者的任何建议、评论和意见,以便对本书做修订,进一步加以完善。

对读者和支持者表示万分感谢!

作 者
2010年5月

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CHAPTER ONE INTRODUCTION TO CHARTERING SHIPPING

【Teaching Aims】 Through study this chapter, students will be required to master a basic general knowledge of chartering shipping such as the meanings and characteristics of chartering shipping, voyage chartering, time chartering, TCT, COA and bareboat chartering, main parties involved in chartering, charter party forms, charter market etc.

【Teaching Contents】 Types of chartering, chartering participators, vessels and cargoes, standard charter party forms, chartering market.

In this chapter, the students will be given a general idea of what chartering shipping is about and look at the various ways in which the ships can be contracted to carry the available cargoes. It will also introduce the outline of standard charter party forms as well as the parties involved in chartering shipping.

SECTION 1 CHARTERING SHIPPING AND PARTICIPATORS

1 Concept and Characteristics of Chartering Shipping

1.1 Concept of Chartering Shipping

Chartering shipping is an activity within the shipping industry. Shipping industry is a service industry that generally provides cargo transportation of international trade. Often, the shipping industry is categorized into two major sectors: one is the chartering shipping which provides services mainly in the transportation of raw materials such as crude oil, coal, iron ore, and grains; and the other is liner shipping which provides services in the transportation of final and semi-final products such as computers, manufacturing products and other consumption goods etc. Chartering business is the business of providing employment for the vessels and arranging suitable sea transport for a variety of commodities. It refers to shipping service performing on waterways without preset schedule or fixed routes and sailings normally depend of an availability of cargoes entrusted for carriage. So it is also called tramp shipping.

1.2 Characteristics of Chartering Shipping

The characteristics of chartering shipping are the following:

1.2.1 Sailings are based on cargo requirements that vary with the vessel's employment, and are usually different for every voyage. The shipowner does not have a fixed schedule of sailings for his vessel and will employ it where and when he can get a cargo. Chartering service is generally not provided on a regularly scheduled basis, but rather as needed, on specialized ship transporting a

specific commodity.

1.2.2 Shipowner is a contractual (private) carrier and does not usually hold himself out as a common carrier and his ship is free to operate anywhere on any terms. Freight or hire rates vary from day to day depending upon supply and demand of the market.

1.2.3 Cargoes carried in tramps generally are those unpackaged either dry, such as grain and ore, or liquid, such as petroleum products, which can be transported in bulk and have low intrinsic value and normally carry full shiploads of a single commodity.

1.2.4 The shipowner must negotiate separate contract for each employment of his vessel, and the terms of the charter party vary from ship to ship, depending upon the bargaining abilities of shipowner and charterer, and the general trend of the market.

1.2.5 Freight and hire rates for tramps vary according to the supply of and demand for ships. Rates and services are determined by negotiation between shipowners and charterers, and reflect the specific requirements of the contracting parties.

1.2.6 The rights, duties and responsibilities of shipowners and charterers are governed by the charter parties concluded between them.

2 Chartering Participators

The parties involved in the chartering business are, on the one hand, someone who owns or operates a ship (called shipowner, time chartered owner or disponent owner), and, on the other hand, someone who requires a sea transport to be carried out (called charterer). Both parties normally negotiate through the intermediary of representatives called chartering brokers or shipbrokers.

2.1 Charterer

The person entering into the charter party with the shipowner is known as the charterer who in search of vacant cargo space for transporting his or others commodities.

There are many kinds of entities whom can be charterers, from individuals operating small corporations, through to major international trading-houses. The charterer may or may not be the owner of the goods to be carried. In some cases he may be the seller or the buyer of a commodity. In other cases the charterer may be an intermediary between buyer and seller, that is to say he is a third party looking to arrange the transport requirements of a seller and/or buyer of a commodity. In almost all carriage cases there are a number of intermediaries involved in chartering who can be charterers such as freight forwarders, customs brokers, chartering brokers and multimodal operators.

Some shipowners also can be charterers, this is particular true in the case of major oil companies, several of whom own large fleets to carry their own cargoes but when necessary will charter in ships to meet their extra demand. Many vessels fixed on time charter are utilized on liner service. Some are used to supplement the liner operators owned ships but some liner operators use only time chartered vessels and own no ships themselves.

2.2 Shipowner

The person entering into the charter party with the charterer is known as the shipowner. There is a wide variety of shipowners. Some shipowners are of a single ship, others of large fleets. Some concentrate on ships of a particular type or size. Many ships are owned, in the legal sense, by finan-

cial institutions. This is usually because the ships are being purchased under a hire purchase arrangement. Some shipowners are state-controlled or run their ships under the flag of the country in which they reside, while others operate ships under a 'convenient' flag.

Operators who employ a ship and then re-employ that vessel for further business chartering her out in a new role are described as disponent owners or time charter owners. A disponent owner is a party deemed to be the shipowner having control of the vessel by time charter. We have seen that from time to time the party acting as the "shipowner" may, in fact be the "disponent owner" such as the party who has the ship on time charter. Occasionally there may be more than one link in the chain between the actual shipowner and the disponent owner involved in the immediate fixture.

It is customary to stipulate in voyage, time and bareboat charter parties that the charterer has right of subletting the whole or part of the vessel, subject to the charterer remaining responsible to the shipowner for the due fulfillment of the original charter party.

This right is of considerable importance to the charterer since it gives him a certain freedom to utilize the vessel in the way that is most economical to him. Subletting frequently occurs in practice; the charterer may have chartered the vessel for the sole purpose of making a profit by rechartering or otherwise subletting it; or he may find that the cargo which he intended to ship is not available or, alternatively, that he is not in a position to utilize the vessel for the original intended purpose, in which case he will seek other employment for it in order to be covered for the freight or hire which he is due to pay the shipowner; he may also find, because of a rise in freight market rates, that it is more profitable for him to recharter the vessel than to utilize it in the way originally intended.

A vessel may at the same time be involved in several different contracts. The following example illustrates such a chain. A is the registered or real owner of the vessel. Since he is only interested in investing money in shipping, he may have made a bareboat charter with B. B in his turn has time chartered the ship to C. In the relationship between B and C, B is act as a disponent owner, while C is the time charterer. C in his turn has chartered the vessel to D under a voyage charter. In the relationship between C and D, C is the disponent owner, and D is the voyage charterer.

2.3 Chartering Broker

2.3.1 Concept of Chartering Broker

Chartering brokers are typically specialists in the chartering business. The individuals or corporations who are appointed to act on behalf of the shipowners or charterers to secure cargoes for their ships and secure ships for their cargoes are called chartering brokers or shipbrokers. The existence of chartering brokers greatly facilitates the speed and efficiency of the chartering process. The task of the chartering broker is to provide expertise and information at the time these are required by his clients. The expertise takes the form of a knowledge and understanding of ships and trades that enables him to meld the two to the mutual satisfaction of shipowner and charterer.

2.3.2 The Role of Chartering Broker

The chartering broker should keep both the shipowner and the charterer continuously informed about the market situation and the market development, about available cargo proposals and shipment possibilities. The chartering broker should in all respects work loyally for his principal and

should carry out the task of negotiations and other work connected with the charter scrupulously and skillfully. The chartering broker should act strictly within given authorities in connection with the negotiations and they have no authority to quote a ship or a cargo, unless duly authorized by their principals. The chartering broker may not withhold any information from his principal or give him wrong information.

2.3.3 Number of Brokers Involved in Negotiation

Number of brokers involves in chartering negotiation depending on the intentions of the parties and the market situations. A typical deep-sea dry cargo fixture will involve normally two chartering brokers, one representing the shipowner, the other representing the charterer, sometimes there will be more brokers in the chain. Whereas it is comparatively unusual for just one chartering broker to be employed on a deep-sea dry cargo fixture, for short-sea and some specialized trades occasionally only one chartering broker will be engaged between two principals.

2.3.4 Chartering Broker's Remuneration

The chartering broker's income is in the form of the reward of commission or brokerage paid for a successful introduction and negotiation between shipowner and charterer leading to a fixture. Even after hard work and expense, a negotiation that does not lead to a fixture will normally result in no payment of any kind to the broker in the middle.

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, if any. On time charter 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 contract (the charterparty) and the commission is customarily payable by the shipowner to the charterer's broker as well as to the shipowner's broker.

2.3.5 International Brokers Commission Contract

In order to protect the broker interests the Federation of National Associations of Ship Brokers and Agents (FONASBA) published an international brokers commission contract which was recommended by BIMCO.

THIS AGREEMENT is made the _____ day of _____ 200 between:

Shipowner/Time chartered Owner/Disponent Owner (hereinafter referred to as the "Owner")
and _____

Shipbroker/Chartering Broker of : (hereinafter referred to as the "Broker")

WHEREAS:

The Broker has fixed the Owner's vessel on the terms and conditions contained in the Charter Party dated: _____ annexed hereto.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The Owner shall pay commission to or otherwise remunerate the Broker;

(Delete as appropriate)

(a) In accordance with the relevant provisions of the Charter Party.

(b) As follows _____

2. Any dispute arising out of this Contract shall be referred to Arbitration at _____ and shall be subject to the law and procedures applicable there.

For and on behalf of
(Owner)

For and on behalf of
(Broker)

SECTION 2 TYPES OF CHARTERING SHIPPING

The worldwide scope of marine trading, the variety of commodities to be shipped and the differences in operation of vessels call for several different kinds of chartering, which can currently be divided into the following main elements: Voyage chartering; Time chartering; Time charter on trip basis (TCT); Contract of affreightment (COA); Bareboat chartering etc.

1 Voyage Chartering

1.1 General Introduction to Voyage Chartering

The voyage chartering means that the shipowner promises to carry on board a specific ship a particular cargo for a single or several voyages from one or more loading ports to one or more discharging ports. The payment paid by the charterer to the shipowner is called freight and the contract made by shipowner and charterer is called a voyage charter party. A voyage charter party is concluded between the shipowner or disponent owner and the charterer. The person who charters in the ship is known as voyage charterer. The person who charters out his ship is known as shipowner or disponent owner. Usually this form of contract is selected when the charterer has no experience in the operation of ship or he has just one consignment of cargo needed to be transported from one port to the other.

Under a voyage charter the shipowner retains the operational control of the vessel and is responsible for all the operating expenses such as port charges, bunkers, vessel's insurance, taxes, etc. The charterer's costs are usually costs and charges relating to the cargo. Loading and discharging costs are divided between the shipowner and the charterer in accordance with the agreement from case to case.

A voyage charter party shall mainly contain the names of the parties, the name and nationality of the ship, its deadweight and bale or grain capacity, description of the goods to be loaded, port of loading and discharge, laydays, time for loading and discharge, payment of freight, demurrage, despatch money and other relevant matters.

There are more standard forms of voyage charter parties than any other form of contract of carriage. The Uniform General Charter, code name GENCON, is the most popular and widely used general purpose voyage charter party on a global basis for numerous types of cargoes. When used these forms are likely to have several additional clauses attached to cover eventualities not covered by the printed clauses.

1.2 Manners of Voyage Chartering

1.2.1 Single Voyage Chartering

Single voyage chartering means that both parties reach an agreement that the shipowner promises to carry on board a specific ship a particular cargo only for one single voyage. The shipowner will be responsible for the specific goods from the port of loading to the port of discharge. The shipowner's contractual obligations will be completed by the delivery of goods at the port of discharge.

1.2.2 Return Voyage Chartering

Return voyage chartering means that both parties reach an agreement that the shipowner promises to carry on board a specific ship a particular cargo for a round voyage between loading port and discharge port. Actually this manner involves two single voyages. The first discharge port may be or may not be the loading port of the second voyage. The shipowner's contractual obligations will be completed by the delivery of goods at the port of discharge of the second voyage.

1.2.3 Consecutive Single Voyage Chartering

Consecutive single voyage chartering means that both parties reach an agreement that the shipowner supplies the vessel to perform a series of consecutive voyages between A and B instead of only one voyage. A consecutive voyage charter is similar to a single voyage charter, but the ship is contracted to undertake a series of cargo carrying voyages on a defined route. The shipowner's contractual obligations will be completed by the delivery of goods at the port of discharge of the last voyage. This is used when the charterer has a well defined schedule of cargoes to be transported.

1.2.4 Consecutive Return Voyage Chartering

Consecutive return voyage chartering means that both parties reach an agreement that the shipowner supplies the vessel to perform several consecutive round voyages between A and B. The shipowner's contractual obligations will be completed by the finish two or more consecutive round voyage. This kind of chartering is seldom used in practice.

1.3 Characteristics of Voyage Chartering

1.3.1 Specific vessel, specific cargo, specific port and specific route are stipulated in the voyage charter.

1.3.2 Rights, duties and responsibilities of shipowners and charterers are determined by the voyage charter party concluded by them.

1.3.3 The charterer should be responsible for the arrangement of the cargo, payment of freight calculated according to the quantity of the cargo loaded or carried and other expenses concerned.

1.3.4 The shipowner possesses and controls the vessel and takes charge of the operation of the vessel and the manning and management of crew.

1.3.5 The shipowner should bear the operational expenses of the vessel.

1.3.6 The payment by the charterer to the shipowner for chartered vessel is usually called freight instead of hire.

1.3.7 The shipowner charters out the whole vessel or part of her space to the charterer.

1.3.8 There are the provisions for the laytime, demurrage and dispatch money etc., in the

voyage charter.

2 Time Chartering

2.1 General Introduction to Time Chartering

The time chartering means that the shipowner provides a designated manned ship to the charterer, and the charterer employs the ship during the contractual period for the agreed service against payment of hire. The length of the charter may be the time taken to complete a single voyage (trip charter) or a period of months or years (period charter). A time charter gives the charterer the use of the ship, while leaving ownership and management of the vessel in the hands of the shipowner. Under a time charter the crew is employed by the shipowner, who is also responsible for the nautical operation and maintenance of the vessel and supervision of the cargo.

The time charterer may be a shipowner who for a time needs to enlarge his fleet or a cargo owner with a continuous need for transport, and who does not want to invest money in a ship but wants to have the control of the commercial operation of the vessel. The charterer may be a speculator taking a position in anticipation of a change in the market. The charterer is liable for costs directly connected with the use of the vessel, for example, bunker costs and port charges and pays for the loading and discharging costs.

Although considerably fewer in number than the wide choice available for voyage chartering, there is an adequate number of time forms for use in the time chartering business. The two major forms are NYPE and BALTIME. When used these forms are likely to have several additional clauses attached to cover eventualities not covered by the printed clauses. By far the largest numbers of time chartering are fixed on the basis of the NYPE Form.

2.2 Characteristics of Time Chartering

2.2.1 The shipowner should be responsible for the manning of crew and bears the wages and provisions thereof.

2.2.2 The master shall be under the orders and directions of the charterer as regards employment and agency. If the charterer shall have reasonable cause to be dissatisfied with the conduct of the master or officers, the shipowner shall on receiving the complaint make a change in the appointments, if necessary.

2.2.3 The charterer should be responsible for the operation of the vessel and bears the variable operational costs such as bunkers, port charges, handling charges and canal tolls etc.

2.2.4 The shipowner should bear the fixed operational costs such as costs relating to the vessel capital, ship's maintenance and stores, ship's insurance premium and so on.

2.2.5 The ship is chartered as a whole part and the hire is calculated and collected according to the duration of chartering and the agreed hire rate.

2.2.6 There are the provisions for the delivery/redelivery of vessel, off-hire etc., in the time charter.

2.3 Distinctive Features of Voyage and Time Chartering

Under a voyage charter party, the shipowner undertakes to provide a vessel for the carriage of certain goods on one or several voyages between named ports. While under a time charter party, the