



Defence Guide 16 Mar, 2022

Defence Guide - Notices of redelivery in a nutshell



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The purpose of a notice of redelivery is to enable the owner to have enough time to fix the ship for her next employment. Usually the charter party will provide for example that “Charterers are to give Owners not less than 20/15/10/7 days approximate notice of vessels expected date of re-delivery, and probable port and 5/3/2/1 day(s) definite notice of redelivery”.

Is the tender of a redelivery notice a prerequisite for redelivering a ship?

It is important to note that charterers can redeliver a vessel back to owners without issuing notices of redelivery. Although charterers will be in breach of contract, owners will not be able to reject the delivery of the ship and insist in continuing the charter.

Does an approximate notice need to be accurate?

An approximate redelivery notice implies that there is no absolute obligation to redeliver on the approximate date given. An approximate redelivery notice is not contractually binding or a condition precedent to redelivery, unless the charter party and/or the notice state otherwise.

Although an approximate notice of redelivery does not need to be precise, it must be given honestly and upon reasonable grounds. Owners will not be able to claim damages if the timing of such a notice is incorrect but was deemed reasonable and given honestly at the time when the notice was issued. Many events can arise between the first notice (20 days in the above example) and the actual redelivery (port congestion etc.).

Definite notices of redelivery

A definite notice will have to be correct and accurate. If charterers redeliver the vessel within the charter party permitted period but give a definite redelivery notice with a shorter time frame than that required in the charter party and/ or do not serve any notice, owners will have a right to damages, although owners will still be obliged to take delivery of the ship. The breach will only occur on the date of redelivery and not before, even if it is obvious that charterers will be in breach.

Can a redelivery notice be withdrawn unilaterally by charterers?

English law states that parties are not bound by representations made “WP” or “WOG”. As a result, if charterers tender a redelivery notice with reservations such as “AGW, WP, WOG”, owners subsequently fix the ship for her next employment but in contravention with this notice charterers then decide to employ her for another voyage (within the allowed charter period), owners will not be able to refuse such order nor claim damages for loss of profits for cancelling the next fixture (*The Zenovia* [2009]). To avoid this risk, owners should insist on an unqualified notice from charterers.

Damages

The amount of damages payable by charterers will be measured by putting owners in the position in which they would have been in had notice(s) been properly tendered (see *The Great Creation* [2014]).

Where charterers redeliver the vessel without having served the redelivery notice/s required by the charter and/or redeliver the vessel earlier than the notice period in the charter, owners will be entitled to the hire which would have been earned during the balance of the notice period after charterers' actual (premature) redelivery. For example, if 20 days' notice is required and charterers only give a notice 7 days before redelivering the vessel then the starting point for damages would be the amount of hire owners would have earned during the 13 days after actual redelivery. Credit will then be given to charterers for the hire earned by owners in any subsequent charter party in reasonable mitigation of their loss.

Where charterers serve contractual redelivery notice/s but then redeliver the vessel late, owners will be entitled to claim damages at the charter party hire rate for the "overspill" period.

In any event, owners cannot usually claim additional damages for loss of business opportunity / lost profits in relation to an actual or potential follow-on fixture that has been lost due to charterers' late redelivery of the vessel. These types of losses are not considered to be recoverable because these were not within the contemplation of the parties at the time the charter party was entered into. However, if when fixing the charter, owners were also fixing a follow-on fixture and owners state this to charterers at the time of fixing, owners may be able to claim damages for the loss of such follow-on fixture, for example, if the follow-on fixture is above market rates at the time of fixing.



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This article was written by Julien Rabeaux in the Club's Singapore office, with additional input from Mills & Co.

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