

Defence Guides

Late redelivery in a nutshell

When is the ship redelivered late?

A charterer has an obligation to deliver the vessel in compliance with the redelivery provisions of the charter. The timing of a redelivery will primarily depend on the duration of the charter.

Usually a time charter will fall into two categories:

1. A fixed period which could be a flat period, for example “1 year” or a period of time until a certain date, for example “until 15th July”.
2. A variable period (for example, “11 to 14 months” or “6 months, 15 days more or less”).



1. Fixed period

Even when the word “about” is not included in the redelivery period, “there is a presumption that a definite date for the termination of the charter should be regarded as approximate only” (London Explorer 1971). The precise date agreed for redelivery means “about that date”. Charterers are allowed a reasonable margin before and after this precise date.

How big is the margin?

The extent of the margin of time for redelivery will depend on many facts. For example, a ship redelivered 8.4 days beyond the stated period of a 6 months, 20 days period could be deemed as reasonable (see also discussion on “about” below).

2. Variable period

There are broadly two types: “11 to 14 months” or “6 months, 15 days more or less”.

- (i) “6 months, 15 days more or less”: here the parties have agreed a fixed duration with a built-in tolerance clause. There is therefore no implied allowance.
- (ii) “11 to 14 months”: here the answer is not straight forward. Whether an implied allowance is allowed will depend on the period of the spread. If the spread is 15 days (“6 to 6½ months”) the law may allow an implied tolerance. If the spread is long (“11 to 14 months”) arbitrators and judges are less likely to allow an implied tolerance.

There will be no implied tolerance if the range is defined by a minimum and/or maximum period (“minimum 6 months, maximum 7 months”).

“About”

The NYPE charter for example usually qualifies the duration of the charter with the word “about”. There is no hard and fast rule to determine the margin imported by the word “about”. It largely depends on the duration of the charter and any specific factual circumstances that reflect the intention of the parties.

In one case, for example, a ship was chartered for “about 4 to 6 months” and 5 days was an allowable margin. However 12 days was not deemed reasonable in a charter for “about 6 months”.

If the word about is deleted, the judge/arbitrators may take this into account to deny a tolerance margin.

Trip time charter on a “without guarantee” duration

If for example the charter provides a trip between 2 ports for a duration of “70/80 days WOG” there is no minimum or maximum period as long as the estimate is made in good faith. If, for instance, in the above example the voyage lasts 150 days due to some unforeseen circumstance, then the charter will not be liable for late redelivery and will just have to continue to pay hire at the agreed rate.

Late redelivery

Charterers have an obligation to redeliver the ship within the charter period (including the tolerance margin).

What can the owner do if the charterer gives an order for a final voyage which cannot reasonably be completed during the charter period?

This is also called an “illegitimate last order”. In such circumstances owners are entitled to refuse to perform such an order and insist on asking for fresh orders.

What if charterers refuse to give new orders?

If charterers refuse to give new orders, then owners might be able to treat the charter as repudiated and claim for damages. Owners and charterers should make sure that their decision to repudiate the charter or insist on the order is correct as the consequences of their decision may end up being very costly.

Can a “legitimate” order become “illegitimate”?

The obligation to make sure that the voyage orders are legitimate is continuing. If there is a change in circumstances then new instructions must be given.

Time at which legitimacy is determined

The date to keep in mind is the date the performance of the orders falls due. Charterers will give orders in advance of the performance. If at any time before the performance, circumstances change, a legitimate order will become illegitimate and owners will be entitled to ask for new orders.

If circumstances change after the performance then owners will have to carry out the orders and claim damages.

What if owners have knowingly chosen to accept an “illegitimate” order?

Owners will be deemed to have waived their rights to refuse to perform the order. Owners will however not have waived their rights to damages.

Owners’ acceptance must be unequivocal although owners must be careful not to tacitly accept the order as in some circumstances silence may constitute an agreement.

Damages

If the ship is redelivered late, charterers have to pay hire until redelivery together with damages.

The normal measure of damages is the difference between hire earned under the charter and what would have been earned on the market for the overrun period:

$(\text{Market rate} - \text{C/P rate}) \times \text{period overrun} = \text{Damages}$

How to calculate the period of overrun?

The period of overrun is the number of days from the latest date at which the ship could have been redelivered and the actual date of redelivery.

The period does not start to run from the date when the ship would have been redelivered had the last order not been “illegitimate”.

Market rate

The market rate will be calculated on the basis of a charter for a similar period/region/trade as the original charter. If the original charter was one for “10 to 12 months in the Atlantic trade”, then the market rate will be one for a charter “10 to 12 months in the Atlantic trade”.

Can the owner claim for the damages suffered as a result of not being able to perform the next fixture?

Unless the laycan date of the following C/P is brought to the knowledge of the charterers at the time of entering into the contract, owners will not be able to claim for the loss of profit on the follow-on fixture.

June 2015

This article was written by Julien Rabeux in the Club’s Hong Kong office with additional input from Ince & Co (Hong Kong).

This note is for general guidance only and should not be relied upon as legal advice. Should you require specific advice on a particular situation please contact the Club.