

Unchartered waters in the season ahead



Katie Macpherson looks at the issues surrounding ‘force majeure’ and a new addendum in the MYBA Charter contract to help overcome any unforeseen issues due to Covid-19

The COVID-19 pandemic has affected everyone around the globe and is having a significant effect on the way we do business. It has resulted in quarantines, travel restrictions, the introduction of emergency legislation in many countries and the cancellation or postponement of major events such as the Monaco Grand Prix and the Cannes Film Festival. A difficult equation to solve as far as the wider travel industry is concerned and a particular challenge for the yacht charter market.

Measures to combat the virus mean that owners might not be able to deliver the yacht on time (or at all in some cases), charterers might be not allowed to reach the port of delivery or the yacht might be restricted from sailing. Arranging the boarding and/or disembarkation of crew is also proving to be issue.

That is why it was imperative for the seasoned professionals sitting on the MYBA Charter Committee to come together quickly to create an addendum that would assist both owners and charterers in navigating these uncharted waters. The MYBA Charter Committee consists of both charter brokers and charter managers so that meant the issues that were fast arising could be discussed from the perspective of both owners and charter clients.

The standard MYBA Charter Agreement incorporates a force majeure clause which may afford protection to owners if successfully invoked, for example if failure to deliver the yacht is directly attributable to “governmental act or regulation”. However, it does not typically offer protection to charterers in case they want to cancel the charter due to force majeure.

While every charter is unique unto itself given the owner, charterer, and destination, the Committee tried to create a tool for

charter brokers and charter managers that would provide increased protection to all parties. It allows the parties involved to discuss alternative arrangements if either party is prevented from performing its obligations due to Covid-19. These include changes of scheduled dates (up to 12 months later) or cruising area, or failing agreement on these two points, a no-penalty cancellation of the charter. All parties need to agree to the new addendum which can either be appended to existing charters or adopted in future contracts.

The principal aim was to provide a framework within which clients could continue making plans for charter vacations, and go ahead with bookings without worrying about negative developments.

The Committee understood that the addendum could not be a full resolution for the charters that were already booked for 2020 however it provided valuable legal language that could be used by the industry to mitigate losses.

At the time of writing, there is no way to predict what will occur in the next few months as far as Covid-19 is concerned but there is an air of optimism due to the rising vaccination rate and the health and travel protocols that are in place. Superyachts have become more attractive than ever as they combine an extremely controlled environment with exceptional settings, service and flexibility. The industry has responded swiftly and effectively, with crew members being tested frequently and specialised cleaning taking place on board, making chartering a yacht a wonderful alternative to other holiday options even for those who were not yet aficionados.

That being said, we all hope that we will soon be able to return to normal and that we will have a stronger contract with the various changes that we as a committee are working hard to finalise. It may not be the same contract that we all know and have worked with over the years but an improved version.

Hopefully some of the changes that we intend to implement in order to address a future pandemic will never be needed and we will once again be able to travel as we like it, on a superyacht.