

CII OPERATIONS CLAUSE FOR TIME CHARTER PARTIES 2022

On 1 January 2023, the International Maritime Organization's (IMO's) Carbon Intensity Indicator (CII) regime under the International Convention for the Prevention of Pollution from Ships (MARPOL) in the form of Resolution MEPC 328(76) (together with associated guidelines) (hereinafter "The MARPOL Carbon Intensity Regulations") enters into effect and apply to ships of more than 5,000 gross tons.

The MARPOL Carbon Intensity Regulations will impact time chartering as we know it today. Although the owners and the charterers have different roles in a time charter context, the nature of the CII regime itself cuts through that traditional relationship, such that it will inevitably require both parties to come together to collaborate and cooperate so as to seek to reduce the carbon intensity of ships' operations on an ongoing basis.

Existing (unamended) time charter parties are simply not geared to deal with the CII regime. The CII Operations Clause for Time Charter Parties therefore seeks to provide the necessary building blocks for the parties to operate ships in accordance with the new CII playing field. The clause is drafted to assist both the owners and the charterers to navigate contractually within a time charter party context. It seeks to promote collaboration, transparency and flexibility between the parties, especially in circumstances where the commercial activities and employment of a ship as determined by the charterers and, traditionally, outside of the owners' control, are likely to have a direct and significant impact on a ship's carbon intensity and it also appreciates the role that the owners play in maintaining the energy efficiency of the vessel. Reducing carbon intensity is therefore a shared responsibility which needs to be reflected clearly in a time charter party context.

The clause sets out a way forward for the parties to contribute towards reducing the ship's carbon intensity as required by the MARPOL Carbon Intensity Regulations. Commercial elements have been included in the clause to assist the owners and the charterers to cooperate and collaborate in a balanced way. Sharing and being transparent on ship data, focusing on ship energy efficiency and flexibility in ship operation and employment are fundamental principles underlying the clause which are designed to make it work in practice.

The clause is intended to be a "stand-alone" clause that can be incorporated into existing or new time charter parties. While the clause provides a reasonable and pragmatic blueprint of how to deal with the new CII regime in practice, parties are encouraged to consider how it fits in with their respective industry segment, the particular trade, the duration of the time charter party arrangement and the commercial relationship between the parties.

The clause is not a "compliance" clause. This means that parties will have to familiarise themselves with the MARPOL Carbon Intensity Regulations and the exact requirements applicable to the ship.

To ensure that the clause continues to stay fit for purpose, a clause review will be conducted once there is a clear understanding of how the MARPOL Carbon Intensity Regulations are working in practice.

Clause

Notwithstanding any other provision in this Charter Party, the Owners and the Charterers (the "Parties") agree as follows:

"Agreed CII" means the values in $\text{gCO}_2/(\text{dwt.nmile})^*$ set out in subclause (d).

"CII" means Carbon Intensity Indicator, as provided for in the MARPOL Carbon Intensity Regulations.

"CII Rating" means the Vessel's attained operational carbon intensity rating, expressed as a rating from A-E, in a calendar year, as calculated in accordance with the MARPOL Carbon Intensity Regulations.

"C/P Attained CII" means the CII value in $\text{gCO}_2/(\text{dwt.nmile})^*$ attained by the Vessel, applying any regulatory correction factors and voyage adjustments applicable to the Vessel and excluding fuel consumed and distance travelled during off-hire periods in excess of [] accumulated days (*if left blank, zero (0) days shall apply*), measured in the relevant calendar year from the start of the calendar year to date or, if the Charter Party begins during a calendar year, from date of the Vessel's delivery under the Charter Party to date.

"Delivery Attained CII" means the CII value in $\text{gCO}_2/(\text{dwt.nmile})^*$ attained by the Vessel for the calendar year to date as calculated at the time of delivery into the Charter Party.

"Effective Date" means 1 January 2023.

"MARPOL Carbon Intensity Regulations" means the regulations contained in Chapters 1, 2 and 4 of Revised MARPOL Annex VI which relate to "Regulations on the Carbon Intensity of International Shipping" and Resolution MEPC.328(76) implementing the CII and any associated guidelines and/or subsequent amendments, including the Ship Energy Efficiency Management Plan (SEEMP).

"Projected Attained CII" means the C/P Attained CII extrapolated over the remainder of the relevant calendar year (or the charter period should redelivery be sooner than the end of the calendar year) and used to demonstrate the trajectory of the Vessel's C/P Attained CII.

"Required CII" means, for each relevant calendar year of the charter period, the middle point of CII Rating level C equivalent to the required annual operational CII set out in Regulation 28.6 of the MARPOL Carbon Intensity Regulations or as otherwise specified in the Guidelines for the MARPOL Carbon Intensity Regulations.

**use gross tons (gt) instead of dwt, where applicable to the Vessel type.*

(a) The Parties acknowledge and accept that as from the Effective Date the Vessel is required to comply with the MARPOL Carbon Intensity Regulations and that this Clause shall govern the relationship between the Parties and their obligations relating to those regulations.

(b) During the Charter Party, the Parties shall cooperate and work together in good faith to:

(i) share any findings and best practices that they may identify on potential improvements to the Vessel's energy efficiency; and

(ii) collect, share and report on a daily basis any relevant data that may assist the monitoring and assessment of the Vessel's compliance with the MARPOL Carbon Intensity Regulations and for planning prospective voyages.

(c)(i) As from the Effective Date or date of the commencement of the Charter Party, whichever is the later, the Charterers shall:

(1) operate and employ the Vessel (including the planning of voyages and supply and selection of fuel) in a manner which is consistent with the MARPOL Carbon Intensity Regulations and subclause (c)(i)(2), which may require alternative or adjusted voyage or employment orders, instructions or sailing directions to be issued to and performed by the Vessel from time to time during the charter period; and

(2) not permit the C/P Attained CII to exceed the Agreed CII by the end of each relevant calendar year or, if the charter period or period remaining under this Charter Party is less than a full calendar year, by the time of redelivery, but always subject to the provisions of subclause (g).

(ii) Any existing warranties as to despatch, speed and consumption or to maintain the Vessel's description provided for elsewhere in the Charter Party shall continue to apply to the Charter Party. In the event of any breach of such warranties, the Charterers shall be entitled to pursue a separate claim against the Owners, save that any such breach shall not be relied upon by the Charterers as a basis to avoid meeting their obligations under this Clause, including where subclause (g) has been validly invoked.

(d)(i) The Agreed CII by calendar year shall be as follows:

Year	Agreed CII values*	Corresponding to a predicted CII Rating
23		
24		
25		

* BIMCO recommends that Parties agree that the Agreed CII values should be the Required CII or better, consistent with the MARPOL Carbon Intensity Regulations.

(ii) Where the Parties fail to agree in writing the Agreed CII for the relevant calendar year(s) of the charter period or otherwise fail to populate the above table with such values for the relevant calendar year(s), then the Parties expressly agree and acknowledge that the default Agreed CII for the Vessel shall, subject to subclause (d)(iii), be the Required CII.

(iii) If the Charter Party extends beyond 31 December 2026 the Parties shall review and incorporate the Agreed CII in accordance with any new annual carbon intensity targets under the MARPOL Carbon Intensity Regulations as set by the IMO for the remaining calendar years under the Charter Party.

(iv) Upon delivery, the Owners shall provide the Charterers with the Delivery Attained CII together with details of the types and quantities of fuels consumed and distance travelled to date for the current calendar year. The data provided to the Charterers pursuant to this subclause shall, to the best of the Owners' knowledge, be accurate and complete.

(e) (i) The Charterers may at their discretion provide, in writing to the Master, orders or instructions to adjust the Vessel's speed or RPM (main engine Revolutions Per Minute) to meet a specified time of arrival, or closest thereto, at a particular destination or to proceed at a specified main engine fuel consumption, which shall constitute the Charterers' orders with which the Master shall comply, but subject always to:

(1) the Charterers complying with their obligations under this Clause; and

(2) the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment.

(ii) The Charterers shall not be entitled to request an adjustment of speed or consumption or RPM outside the existing safe operational limits of the Vessel or which shall result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time.

(f) From the Effective Date, the Owners shall:

(i) exercise due diligence to ensure that the Vessel is operated in a manner which minimises fuel consumption, including but not limited to:

(1) maintaining the Vessel, its engines and hull, and any of its equipment relevant to the Vessel's energy efficiency, in accordance with the Charter Party and the MARPOL Carbon Intensity Regulations/SEEMP, subject to any express provisions elsewhere in the Charter Party that place maintenance obligations on the Charterers, and reporting any associated deficiencies to the Charterers;

(2) when passage planning, adjusting the Vessel's trim and operating the Vessel's main engine(s) and auxiliary engine(s);

(3) making optimal use of the Vessel's navigation equipment and any additional aids provided by the Charterers, such as weather routing, voyage optimisation and performance monitoring systems; and

(4) unless otherwise instructed by the Charterers, proceeding by the most fuel-efficient route, but the Master may deviate from the route if he has reasonable grounds to believe that such a route shall compromise the safe navigation of the Vessel or the safety of the Vessel, crew or operation of equipment.

(ii) monitor and calculate the actual consumption of the Vessel on a daily basis and provide the Charterers with details of the types and quantities of fuels consumed and distance travelled as required by the Charterers and any other relevant data the Charterers may reasonably request for the purpose of this Clause. This data shall be used to calculate the C/P Attained CII value which shall be compared against the Agreed CII for the relevant calendar year or charter period and shared with the Charterers. The Owners undertake that the data provided to the Charterers pursuant to this subclause shall, to the best of their knowledge, be accurate and complete; and

(iii) comply with the SEEMP, provided always that the Charterers adhere to their obligations under this Clause.

(g) If, at any time, based on the data shared in accordance with this Clause, the trajectory of the C/P Attained CII is deviating from the Agreed CII, the Owners shall give the Charterers advance warning of this. If, despite such warning, the C/P Attained CII continues to deviate from the Agreed CII and this indicates that there is a reasonable likelihood that the Charterers may fail to meet their obligations under subclause (c), then:

(i) The Owners shall request in writing and the Charterers shall provide to the Owners within two (2) working days of Owners' written request, a written plan detailing any proposed commercial operation of the Vessel for at least the next voyage.

(ii) If, upon assessment of a Charterers' written plan, the Owners can reasonably show that following this written plan will result in the Charterers failing to meet their obligations under subclause (c) and that, on the basis of the Projected Attained CII, the Agreed CII for the relevant calendar year (or for the charter period should redelivery be sooner than the end of the calendar year) would be exceeded, then the Owners shall communicate this in writing to the Charterers within two (2) working days of receipt of the Charterers' written plan. The Parties shall cooperate and work together in good faith to agree within two (2) working days thereafter an adjusted written plan for the next voyage or voyages which brings the C/P Attained CII in line with the Agreed CII. Any such adjusted written plan agreed between the Parties shall be deemed to constitute the Charterers' orders as if they had been given by the Charterers at the outset.

(iii) Until such time that the Parties agree an adjusted written plan (or where a written plan is not received from the Charterers as per subclause (g)(i)), the Owners shall, where they have validly exercised their rights under this subclause (g), be entitled:

(1) not to follow a Charterers' order and/or a written plan and/or an adjusted written plan (which has not been agreed), without being in breach of any of the Owners' obligations under the Charter Party, and with the Vessel remaining on hire throughout, and instead

(2) to reduce the Vessel's speed or, where a speed reduction is anticipated by the Owners to be insufficient, to require the Charterers to provide all requisite instructions, orders and sailing directions to the Vessel which bring the C/P Attained CII in line with the Agreed CII for the relevant calendar year (or the charter period should redelivery be sooner than the end of the calendar year).

(h) Compliance with any Charterers' orders, a Charterers' written plan or an adjusted written plan validly issued and agreed in accordance with subclause (g) shall not:

(i) be deemed a breach by the Owners of any of the Owners' obligations under this Charter Party, but shall be considered due fulfilment of this Charter Party; and/or

(ii) in any way lessen the Charterers' responsibility to comply with their obligations under this Clause.

(i) *The Charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the Owners provide that compliance by the Owners with this Clause does not constitute a breach of the contract of carriage. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in breach of the Owners' obligation to proceed with due despatch or are to be held to be a deviation or the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

(j) The Owners shall be entitled to claim from the Charterers any losses, damages, liabilities, claims, fines, costs, expenses, actions, proceedings, suits or demands suffered by the Vessel and/or the Owners which have been caused by any breach by the Charterers of their obligations under this Clause.

* Subclause (i) not applicable in the liner trade.

- **CLAUSE**
- **EMISSIONS**
- **DECARBONISATION**

Background

The IMO has so far adopted three different kinds of measures in MARPOL Annex VI. Resolution MEPC.328(76) focuses on either the design and technical energy efficiency of a ship or the ongoing operation of a ship.

The below gives a brief overview:

1. Design measure: The Energy Efficiency Design Index (EEDI) is aimed at improving the Design efficiency of new ships. Depending on year built, new ships are required to satisfy different phases of increasing design efficiency (currently newly built ships are required to satisfy EEDI phase 2).

2. Technical measure: The Energy Efficiency Index for Existing ships (EEXI) is aimed at improving the design efficiency of existing ships, to a level equivalent to EEDI phase 2, by applying technical measures or improvements.

BIMCO has developed a clause for this transition: [EEXI Transition Clause for Time Charter Parties 2021](#).

3. Operational measure: The Carbon Intensity Indicator (CII) is aimed at improving the energy efficiency of ship's operation, requiring the ship's yearly carbon intensity not to exceed a certain predefined threshold and ships are subsequently rated A to E in accordance with their yearly carbon intensity results.

The CII is an operational efficiency indicator that measures a ship's carbon intensity over time and is expressed in grams of CO₂ emitted per cargo-carrying capacity and nautical miles travelled. It applies to all segments of the shipping industry for all ships above 5000 gross tons.

$$CII = \frac{\text{Annual Fuel Consumption} \times \text{CO}_2 \text{ Emissions Factor}}{\text{Distance Sailed} \times \text{DWT Capacity}} \quad (\text{Formula 1})$$

CII is assessed and calculated annually (not per voyage) based on a ship's reported Annual Efficiency Ratio (AER) – which is the annual fuel consumption multiplied by the CO₂ emissions factor (this factor is determined by the IMO and is based on fuel type), divided by the distance sailed by the ship (in ballast and laden condition) and the DWT capacity.

The CII regime came into force on 1 November 2022 but takes effect from 1 January 2023. It applies to ships of more than 5,000 gross tons. Ships will receive a CII Rating of A, B, C, D or E in the following year based on their emissions from the previous year. This means that ships will not have a CII Rating in 2023. CII emissions are not cumulative year on year. This means that at the end of each calendar year the “emissions counter” for each ship is reset. Whatever CII Rating a ship has in one year will not affect the assessment of the ship's operational efficiency the following year.

Drafting team

The CII Operations Clause for Time Charter Parties 2022 is the result of a collaborative and consensual process between owners, charterers, P&I clubs and legal experts. BIMCO is grateful to the following individuals:

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Guidance Notes

These guidance notes are intended to provide an insight into the thinking behind the BIMCO CII Operations Clause for Time Charter Parties 2022. They also explain how the clause is intended to operate and the allocation of obligations, rights and responsibilities between the parties. If you

have any questions about the clause, please contact us at contracts@bimco.org and we will be happy to assist.

Definitions

The following are (non-exhaustive) comments made in respect of the definitions contained in the clause.

“Agreed CII” is a numeric value for each relevant calendar year expressed in grams of CO₂ per DWT.nautical mile (or gross tons (gt) if applicable to the particular vessel type) that the parties will have to discuss and agree upon. The grams CO₂ values are found by using the annual fuel consumption multiplied by the CO₂ emissions factor (this factor is determined by the IMO Resolution MEPC. 281 (70) and is based on fuel type).

“C/P Attained CII” is a measure of the vessel’s carbon intensity expressed in grams of CO₂/DWT.nautical mile (or gross tons (gt) if applicable to the particular vessel type). The C/P Attained CII is intended to reflect the actual consumption of the vessel in real time and to compare the progress of a ship's carbon intensity against the Agreed CII.

It should be noted, however, that the C/P Attained CII may differ from “Attained annual operational CII” provided for in the MARPOL Carbon Intensity Regulations, which represents the total annual emissions from a ship calculated in accordance with the AER metric and compared to the “Required annual operational CII”. This is because the “Attained annual operational CII” does not factor in nor makes any allowance for off-hire periods. Whereas the C/P Attained CII does contemplate off-hire periods (see comments below).

The C/P Attained CII is calculated on a “to date” basis, being measured either from the beginning of the calendar year or, if the charter commenced after the start of the year, from the start of the charter period. The intention is that this measurement and calculation will continue to the end of calendar year or time of redelivery of the ship (if prior to that).

When calculating the C/P Attained CII the parties are required to take into account any regulatory correction factors and voyage adjustments applicable.

When calculating the C/P Attained CII, the parties should also take into account off-hire periods, if agreed. The parties may have agreed that for example only off-hire (accumulated) periods in excess of 10 days should be deducted from the calculation. This will mean that fuel consumed and distance travelled during off-hire periods in excess of 10 days will be excluded from the C/P Attained CII calculations. In all circumstances, care should be taken where any off-hire periods are excluded from the C/P Attained CII calculation as the C/P Attained CII may not reflect the “Attained annual operational CII” as required by the MARPOL Carbon Intensity Regulations (as discussed above), so, at the very least, the owners will have to monitor two sets of data when it comes to assessing the ship's carbon intensity i.e. one for the purposes of the charter party and the other for regulatory compliance. If the parties have not agreed a number of “buffer” off-hire days, then, by default, all fuel consumed and distance travelled during off-hire periods will be excluded, when calculating the C/P Attained CII. Care must be taken when reviewing this provision.

“Delivery Attained CII” is the "Attained annual operational CII" calculated as per the MARPOL Carbon Intensity Regulations (see Formula 1 above), but on a “to date” rather than annual basis ie using fuel consumption and distance travelled from the start of the year to the time of delivery.

"Projected Attained CII" means the C/P Attained CII (see above description) projected over the remainder of the relevant calendar year (or the charter period should redelivery be sooner than the end of the calendar year) and used to demonstrate the ship's C/P Attained CII trajectory as compared to the Agreed CII (see above). At any point in time, the C/P Attained CII already contains all the prior relevant information which makes up the carbon intensity value of a ship (i.e. it is a cumulative value of fuel consumption and distance travelled on voyages performed to date). As such, in the absence of any future voyage information, the “Projected Attained CII” is likely to be the same value as the C/P Attained CII, but it is the closest thing to an objective standard available to the parties to demonstrate the impact of the C/P Attained CII –as projected into the future. However, when future voyage(s) information becomes available (such as, for example, by virtue of a written plan provided by the charterers), this should be considered as it should provide a clearer picture of the likely future impact of the “Projected Attained CII” on the current C/P Attained CII going forward and this is a possibility envisaged at subclause (g)(ii).

“Required CII” means, for each relevant calendar year of the charter period, the middle point of CII rating level C equivalent to the required annual operational CII set out in Regulation 28.6 of the MARPOL Carbon Intensity Regulations (i.e. the "Required annual operational CII") or as otherwise specified in the Guidelines for the MARPOL Carbon Intensity Regulations.

“CII Rating” means the Vessel’s attained operational carbon intensity rating, expressed as a rating from A-E, in a calendar year, as calculated in accordance with the MARPOL Carbon Intensity Regulations.

The parties are, nonetheless, invited to consider all definitions carefully. This includes populating information, where appropriate.

Subclause (a) – MARPOL Carbon Intensity Regulations

Unlike most MARPOL legislation which simply requires the owners to meet and then maintain an agreed technical standard, the CII regime is very different in nature. It is an operational tool used to measure the carbon intensity of the commercial activities of ships on an annual basis, whereby ships will need to comply with ever stricter, year to year, carbon intensity standards. Both the owners and the charterers are strongly encouraged to familiarise themselves with the requirements of the new CII regime as provided for in the MARPOL Carbon Intensity Regulations as this is likely to have a significant impact on the ship operation and trade in the coming years.

“MARPOL Carbon Intensity Regulations” includes the Ship Energy Efficiency Management Plan (SEEMP). It is mandatory for most ships to have and follow a SEEMP to comply with the MARPOL Carbon Intensity Regulations. Furthermore, since the SEEMP may include operational measures which the owners should follow, the charterers should seek sight of the ship’s SEEMP.

Subclause (b) – Working together and sharing best practices and data

As explained, ongoing carbon intensity reduction is inevitably a shared responsibility for the owners and the charterers in a time charter party context and requires the parties to collaborate and cooperate. Subclause (b) conveys that fundamental principle. The parties need to operate transparently, share data and work together to optimise the commercial use of the vessel.

Subclause (c) – Charterers' obligations

Subclause (c) sets out the principal obligations of the charterers.

Subclause (c)(i)(2) provides that the charterers shall be obliged to operate the ship so that the C/P Attained CII does not exceed the Agreed CII by the end of the relevant calendar year or upon redelivery. Therefore, the Agreed CII is the key factor for the charterers to consider as this is the principal yardstick against which their obligations will be measured. As stated above, the Agreed CII is a fixed figure to be agreed between the Parties for the relevant year(s) of the charter. The C/P Attained CII is calculated for the year against the Agreed CII, or if the charter party is only for part of a calendar year then the C/P Attained CII is measured against the yardstick of the Agreed CII only for the period the ship is on charter in the relevant calendar year. Therefore, the starting point for this clause is that the impact of the ship's operation on the Required CII during any part of the year when the charterer does not have the ship on charter is a risk that sits with the owners.

In practice, to achieve this subclause (c)(i)(2) obligation, it can no longer mean business as usual for the commercial parties because employment orders (i.e. voyage / speed orders and sailing directions) are likely to directly and significantly impact a ship's carbon intensity. So, it is expected that employment orders – in particular, speed orders – will need to be adjusted by the charterers – it is hoped on their own initiative as part of their given employment orders - in order to meet this obligation. This flexibility to adjust a ship's speed is also provided for in subclause (e).

This is primarily what subclause (c)(i)(1) tries to capture: that adjusted or alternative voyage or employment orders, instructions or sailing directions may (but not always will) be required during the charter period, depending on the particular facts and circumstances and how the parties apply the subclause (g) regime (see comments below). These adjusted orders have to be consistent with the subclause (c)(i) obligations.

With the view to safeguard their obligations under subclause (c), it is recommended that the charterers closely follow a ship's C/P Attained CII and other data provided by the owners on a daily basis during the relevant calendar year or charter party period (see comments on subclause (f)).

The obligation not to permit the C/P Attained CII to exceed the Agreed CII is not measured voyage by voyage, but by the end of the calendar year or at the time of redelivery. However, to safeguard the charterers' compliance with their obligation under subclause (c)(i), the parties are required to engage in constructive dialogue when planning voyages throughout the charter party and, if required, undertake "corrective" actions such as speed reduction or other means to bring the C/P Attained CII in line with the Agreed CII in accordance with subclause (g) (see comments on subclause (g)).

Subclause (c)(ii) further stipulates that any existing warranties as to despatch, speed and consumption or to maintain the ship's description under the charter party continue to apply and can still be relied upon by the charterers. However, if the owners are in breach of any such warranty, the charterers cannot use such breach to avoid meeting their obligations as set out in this clause, in particular where subclause (g) is in operation. Instead, the charterers are entitled to pursue a separate claim against the owners, for example if the vessel does not perform in accordance with the speed and consumption warranties given by the owners set out in the charter party.

Subclause (d) – Agreed CII

Owners and charterers should discuss and agree the CII values to apply for each calendar year of the charter party or for the charter party period, if shorter than a calendar year. The values are expressed in grams of CO₂ emitted per cargo-carrying capacity and nautical miles travelled. The value corresponds to an equivalent CII rating, which can also be reflected in the table, but it is not the CII rating that the parties should agree upon. It is the grams of CO₂ per DWT.nautical mile as this will give the most accurate principal yardstick to which the parties' rights and obligations relate and operate under the clause.

The Agreed CII values should be inserted in the table set out in subclause (d). This clause includes a recommendation to agree to CII values which are the Required CII or better, consistent with the MARPOL Carbon Intensity Regulations.

The MARPOL Carbon Intensity Regulations require improvements in a ship's carbon intensity year by year equivalent to a 2% annual reduction from the original base line of 2019. As such, the range of values contained in each CII Rating of A-E will become more stringent through to 2026, after which new targets will be set by the IMO. Both the owners and charterers should therefore take this into account when discussing and agreeing the values to be attributed to the Agreed CII. Equally, in a short-term time charter party, one Agreed CII value is likely to be required depending on the duration. If the short time charter party runs from one calendar year into the next, then two Agreed CII values are likely to be required.

Furthermore, when setting the Agreed CII, it is recommended that the parties incorporate a suitable margin to account for unexpected events, such as unpredicted port stays and delays, off hire and adverse weather. To that end, it is not recommended to agree to an Agreed CII value at the lower limit of a CII Rating range (e.g. at a C CII Rating bordering a D CII Rating).

The table only has space to enter values up to and including 2026. The IMO has not yet set emission targets beyond 2026, so parties using this clause on long-term charter parties extending beyond 2026 must discuss and agree new Agreed CII values once these new targets are established.

As a safeguard, subclause (d) contains a fallback default value equivalent to the Required CII.

Upon delivery the owners shall provide the charterers with the Delivery Attained CII. See comments above under "Definition".

Subclause (e) – Just in time arrivals and slow steaming

The intention behind this subclause (e) is to provide the charterers with the flexibility they require to meet their obligations during the charter party period or by calendar year if the time charter party is long-term. The charterers will have to carefully follow and monitor a ship's C/P Attained CII based on the data provided by the owners. The charterers can give orders to the Master to adjust the ship's speed or to meet a certain specific time of arrival. Subclause (e) provides the charterers with flexibility to manage their obligations under this clause, in particular to have the C/P Attained CII not exceeding the Agreed CII by the end of the relevant calendar year or upon redelivery.

The commercial activities of a ship – in particular, the operating speed – are likely to directly and significantly contribute to the carbon intensity of a ship. Sensible and efficient reduction in speed lowers fuel consumption which, in turn, reduces emissions. Routing efficiency is also an important factor. If a shorter route can be found it means that a ship will use less fuel because not only is the distance shorter, but the ship can also reduce speed to arrive at the same time. Furthermore, due to the nature of the AER metric (applied by MARPOL to calculate CII) longer trips can, in certain circumstances, be more favourable to CII than shorter trips. It is to be noted also that “the most fuel-efficient route” may not always be the most favourable CII route in the relevant circumstances.

At present there are no exceptions from CII calculations and/or correction factors which apply to time spent in port and at anchor or time spent in yards or laid-up etc. However, it is expected that the amount of fuel consumed while a ship is stationary (“hotel load”) is likely, in most cases, to be minimal in the scheme of the CII regime. Other than for significant extended periods lasting for many days or weeks, an idle ship's emissions are unlikely to adversely impact the C/P Attained CII over a year, unless the vessel's C/P Attained CII is already very near the outer limit of the equivalent CII Rating. For short-term time charter parties, where the ship is idle, the impact will however naturally be greater for shorter periods, and this needs to be borne in mind when negotiating the applicable Agreed CII value.

Subclause (f) – Owners' obligations

Subclause (f) sets out the owners' obligations pursuant to the clause. These are important obligations insofar as minimising fuel consumption and maintaining a ship's energy efficiency are concerned.

The owners are obliged to exercise due diligence to ensure that the ship is operated in a manner which minimises fuel consumption.

This includes the owners' responsibility for maintaining the ship, its engines, hull and equipment relevant to the ship's energy efficiency in accordance with the charter party terms and the MARPOL Carbon Intensity Regulations and the SEEMP (subclause (f)(i)(1)). The only qualification to this obligation is where the charter party already allocates responsibility for certain types of maintenance (for example, for hull cleaning). Any deficiencies related to the maintenance, or the energy efficiency of the ship, are to be shared with the charterers.

Focus on minimised fuel consumption is also linked to a variety of aspects from passage planning to making optimal use of the ship's navigation equipment, as specified in subclauses (f)(i)(2) and (3). Furthermore, the Master is also expected to proceed by the most fuel-efficient route unless safety and/or safe navigation dictates otherwise, see subclause (f)(i)(4).

The owners are responsible for the continuous monitoring and calculation of the actual fuel consumption and distance travelled by the ship and sharing the relevant data on a daily basis with the charterers. This is of utmost importance to the ongoing dialogue between the parties and to ensure the parties are on the same page when it comes to calculating the C/P Attained CII. For this reason, subclause (f)(ii) stipulates an undertaking by the owners that the data provided to the charterers is accurate and complete to the best of their knowledge.

The owners retain the responsibility for complying with the SEEMP, but subclause (f)(iii) recognises the fact that such compliance is closely linked to the way in which the charterers employ the ship and thus the charterers' obligations under the clause. Ultimately, this reflects the nature of the CII regime which requires cooperation between the parties to reduce a ship's carbon intensity under the MARPOL Carbon Intensity Regulations.

Subclause (g) – Ongoing dialogue and cooperation towards the C/P Attained CII meeting the Agreed CII

The underlying objective of subclause (g) is to promote ongoing and constructive dialogue between the parties and to get them to work together and collaborate to ensure that the ship is operated in such a way which reduces carbon intensity in accordance with the MARPOL Carbon Intensity Regulations. While the owners are required to continuously monitor and report the C/P Attained CII to the charterers together with relevant data, the charterers are obliged to provide employment orders which keep the C/P Attained CII in line with the Agreed CII by the end of the relevant calendar year and by redelivery. There may be occasions during the course of a relevant calendar year when there is a realistic prospect of the C/P Attained CII exceeding the Agreed CII by the end of the relevant calendar year or upon redelivery. Subclause (g) seeks to cater for this by encouraging constructive dialogue between the parties whenever appropriate, and, ultimately, providing for a workable solution in circumstances where agreement as to employment orders and instructions consistent with the Agreed CII cannot be mutually agreed in a timely manner.

Under subclause (g), not following an employment order or written plan is a final recourse and can only be reached if several intervening safeguarding mechanisms have been applied validly but failed to generate agreement. All of these intermediate steps are set out to provide a mechanism to get the charterers' employment of the vessel back on track and in line with the Agreed CII. The clause therefore provides the charterers with as much flexibility as possible in the circumstances and every opportunity to determine how they, themselves, comply with their obligations under the clause.

It further sets out a "roadmap" for the parties to follow if the C/P Attained CII deviates from the Agreed CII. If the data shared between the parties shows that the trajectory of the C/P Attained CII consistently deviates from the Agreed CII, the owners shall give the charterers a warning about this. Such warning gives the charterers the option to think differently about how they are trading the ship or discuss such plans with the owners to change this trajectory.

If the trajectory of the C/P Attained CII continues to deviate despite such warning, the next step for the owners to take is to ask the charterers for a written plan, where the charterers set out the proposed commercial trade of the vessel at least for the next voyage. Such written plan must be provided by the charterers within two (2) working days after the owners' request in accordance

with subclause (g)(i). When this written plan is received by the owners, the owners shall review this and if satisfactory, no further steps need to be taken pursuant to subclause (g).

If, however, the owners can reasonably show that following the written plan provided by the charterers will still result in the charterers failing to meet their obligations under this clause, and that, based on the Projected Attained CII, the C/P Attained CII would exceed the Agreed CII, the owners shall communicate this in writing to the charterers within two (2) working days of having received the written plan in accordance with subclause (g)(ii). In practice, it may be possible for the owners to factor in details concerning future prospective employments and apply them to the Projected Attained CII to demonstrate why the written plan will not be sufficient to change the ship's CII trajectory, but this will depend on the content of the written plan (if any) received.

Within two (2) working days of receipt of the owners' communication, the parties are obliged under subclause (g)(ii) to work together in good faith to agree an adjusted written plan for the next voyage or voyages, which will bring the C/P Attained CII in line with the Agreed CII.

Until such time as, an adjusted written plan is agreed (or where the charterers fail to provide the owners with a written plan), the owners shall be entitled not to follow the charterers' orders or written plan or adjusted written plan without being in breach of the charter party and the ship remaining on hire. Instead, the owners shall be entitled to either reduce the ship's speed, or where such speed reduction is anticipated by the owners to be insufficient, to require the charterers to give instructions, orders and sailing directions to the ship which will bring the C/P Attained CII in line with the Agreed CII.

Subclause (h) – Compliance with Charterers' orders under subclause (g)

Subclause (h) clarifies that steps taken to comply with the charterers' orders, a written plan or an (agreed) adjusted written plan under subclause (g) shall not place the owners in breach of any of their obligations under the charter party. The intention behind this subclause (h) is to avoid disputes or create doubt between the parties about whether acting in accordance with subclause (g) could be regarded as a breach by the owners.

Subclause (i) – Contracts of carriage

Pursuant to subclause (e) the charterers may at their discretion give orders or instructions to the Master to adjust the ship's speed or RPM. Likewise, steps may need to be taken to reduce the speed of the ship or provide alternative orders to bring the C/P Attained CII in line with the Agreed CII under subclause (g). The charterers are obliged to ensure that bills of lading, waybills or other documents evidencing the contract of carriage issued for and/or on the owners' behalf contain terms which protect both parties against a claim raised by a third party for not proceeding with due despatch or for deviating in compliance with this clause, failing which the Charterers shall be liable to indemnify the owners for the consequences.

Subclause (i) mirrors a similar provision in the [BIMCO Slow Steaming Clause](#).

It should be noted that because liner terms normally give the carrier a right to slow steam, this subclause does not apply when the clause is used in scheduled liner trades.

Subclause (j) - Claims

Subclause (j) entitles the owners to claim for general damages for breach of contract and sets out the type of damages and losses the owners may be able to recover from the charterers. The quantum of such losses and damages still needs to be substantiated and be shown to have been caused by a charterers' breach of their obligations under this clause. It is hoped that, through effective cooperation and planning between the parties under the clause and, where appropriate, subclause (g), this subclause (j) will only need to be invoked on limited occasions.