

**MYBA Charter Committee**  
**GUIDELINES FOR RETAIL CHARTER BROKERS and CHARTER MANAGERS**  
**January 2019**  
**Guidelines for Retail Charter Brokers**

***A Retail Charter Broker:***

**1. At offering stage:**

- a) should carry out full due diligence to ensure that her/his client is legitimate and that s/he is a known source by using all methods currently at one's disposal, e.g. the usual search engines and World Check for example. If the client's status changes during the process and they do become a person that would then violate sanctions lists etc. it is the duty of the Retail Charter Broker to inform the Charter Manager of any changes that would affect the legality of the transaction.
- b) should carefully assess the client's desires, requirements, style and level of service and cuisine, and itinerary for the weather conditions of the chosen area before offering suitable yachts.
- c) should then check a yacht's availability in the YACHTFOLIO bookings before contacting a Charter Manager with an enquiry.
- d) should also check the calendar in YACHTFOLIO if location/itinerary would be viable (checking the distances and any delivery times oneself) before sending enquiries to the Charter Manager.
- e) should be informed about, and advise their clients on, all regulations such as diving, Personal Watercraft use and certification, VAT issues and the terms of the Charter Agreement as well as specific local regulations.
- f) should be aware of the duty free fuel regulations in the countries that the charter is visiting and advise the Charterer accordingly.
- g) should inform the client about the usual extra costs including a crew gratuity and how the APA works.
- h) should inform the client about the limited availability in many locations of berths and the need for ship's agents, obligatory in some waters, and the costs being to their account.
- i) must seek approval of the draft from the Charter Manager before submitting the Charter Agreement to the charterer.
- j) should only present offers to the Charter Manager if they have been placed by a client ready to sign a contract if her/his offer was accepted.  
The Retail Charter Broker should not place offers based on an *assumption* of the amount that her/his client would offer.

**2. When going to contract:**

- a) should inform the Charter Manager if the charter is being 'Co-Brokered' before proceeding to contract and who will be the point of contact. The contract can only be issued by an E-Charter subscriber company who should appear as the principle Broker.
- b) should truthfully advise the Charter Manager of any charter history and references, if available, and, where possible, the guest party composition and number of guests.
- c) should be aware that in some circumstances the Charterer may be requested to provide personal information such as a copy of her/his passport and proof of domicile.
- d) must issue a commission invoice showing the company VAT number (where applicable). If an EU-resident Retail Charter Broker is not able to issue an invoice with a VAT number, it is her/his duty to inform the Charter Manager before going to contract and to send a commission invoice accordingly (as required).
- e) should remind the Charterer in a timely manner when funds are due and chase accordingly, keeping careful written records i.e. emails should be kept.

**3. When preparing the charter:**

- a) has an obligation to find out as much additional information on the client as they possibly can, so that the yacht can provision accordingly and communicate this in detail in writing to the Captain in a timely manner, including, but not restricted to, a comprehensive preference document, with all the guests' details, passport information, medical and mobility issues and, if possible, giving the Captain's details from previous charters.
- b) should keep the Captain up to date on any changes to the charter party.
- c) should remind the Charterer prior to the start of the charter if the charter was contracted with a reduced VAT percentage requiring the vessel to head into international waters. The Charter Manager will remind the Captain of this requirement prior to the embarkation (and the Retail Charter Broker may also choose to do so) and ensure the Captain produces the appropriate paperwork and proof required by the vessel's fiscal agent to process the reduced VAT. The Captain shall remind the Charterer on embarkation of the international water passage requirement.

**4. Event charters:**

- a) As berths are allocated to the client, it is the Retail Charter Broker's responsibility to take care of the application process and all supporting documentation (some of which will need to be furnished in a timely manner by the Charter Manager or Captain) and as requested by the port authorities.

**5. During the charter:**

- a) must ensure that any notices, issued by the Charterer to the Retail Charter Broker with regard to breakdown or issues on board the yacht, are brought to the immediate attention of both the Charter Manager and the Captain.

**6. After the charter:**

- a) should, when possible, give client feedback to the Charter Manager.

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**Guidelines for Charter Managers**

***A Charter Manager:***

- should maintain strict confidentiality regarding the identity of the charterer and her/his guests and not use or exploit any information gained in any way other than is necessary for the operation of the charter.
- may, as controller of data, be liable for compliance with the European Union General Data Protection Regulations (GDPR) and must only appoint processors who can provide 2 sufficient guarantees that the requirements of GDPR will be met and the rights of data subjects protected. \*

***1. Before going to contract:***

- a) should update YACHTFOLIO regularly (i.e. high and low rate, winter/summer location, home ports, refit details, water sports equipment, amenities, crew profile, bookings, owner's use, shipyard works, unavailable periods, Layout/General arrangement etc...)
- b) must be aware of regulations regarding duty free fuel and communicate the situation to the Retail Charter Broker before contracting the charter.
- c) should make sure there is full disclosure in YACHTFOLIO of all amenities and water sports and any addenda to the Charter Agreement, any special contractual conditions or unusual expenditure, non-MYBA gratuity policy, reduced commissions, restrictions to bookings, e.g. – young children...
- d) under clause 24 of the MYBA Charter Agreement the Owner is obliged to honour the contract and the payment of commission should be allocated as necessary. It is the Charter Manager's duty to deal with each situation with due diligence and sensitivity.
- e) should remind the Owner to act as per the contract clauses and not to take her/his own initiative that might interfere with Retail Charter Broker's task.
- f) must include the Owner's company VAT number (where applicable) in the contract details.
- g) must review draft contracts from the Retail Charter Broker of record promptly and formally approve the draft contract in order to finalise the contract.
- h) should use the E-Contract validator on the MYBA E-Contract site which lets you know whether a MYBA Charter Agreement is a genuine MYBA Charter Agreement by confirming the unique contract number. The validator will also give the date and the name of the subscribing company which generated the Agreement, so Charter Managers should also check that the name of the principle Retail Charter Broker corresponds to the subscribing company and the watermark and check the date to be sure it is an original and not a photocopy being re-used over again.

***2. After contract has been signed:***

- a) should notify the Retail Charter Broker as soon as s/he becomes aware of any changes including, but not limited to, crew changes, refit delays, mechanical issues, changes in amenities or water sports equipment, RYA certification possibility, changes to delivery times, unforeseen expenses/issues, etc...
- b) if the yacht should have an accepted offer of sale, the charter manager will be pro-active and obliged to inform immediately in writing the Retail Charter Broker and to assist her/him as much as possible in finding the best solution and to act as per the contract. Reimbursement of funds shall be treated as a matter of utmost urgency.

.../...

\* See [https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules\\_en](https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en) for further information

- c) should notify the Retail Charter Broker and Owner of contracted charters that might lead to a recalculation of delivery fees, preferably before the Balance payment is due.
- d) must provide the following documents to the Retail Charter Broker on request:
  - the insurance of the vessel and liability coverage
  - the certificate of registry
  - powers of attorney when necessary
  - Crew Profiles
  - any other relevant certificates
- e) should obtain a proper commission invoice from the Retail Charter Broker with the Retail Charter Broker's VAT number if applicable.
- f) should make sure that the Captain and Crew are familiar with the MYBA Guidelines for Charter Yacht Captains and Crew (previously known as the Captains' Guidelines), the Charter Agreement and their responsibilities as reflected in those agreements.
- g) should ensure that Captains and relevant Crew are aware that email trails including the Retail Charter Broker and Client should not include the Charter Manager and that all such communication should be kept confidential.
- h) should make sure that the MYBA Guidelines for Charter Yacht Captains and Crew are dated and signed off by the Captain as read and accepted during the listing of the yacht to the fleet. If there is a change of Captain, the new Captain should sign off and date the current version.
- i) Should speak to the Captain at the start of the charter to ensure that the charter has started correctly (i.e. guests on board and boat in working order).
- j) The Retail Charter Broker will have reminded the Charterer prior to the start of the charter if the charter was contracted with a reduced VAT percentage requiring the vessel to head into international waters. The Charter Manager should remind the Captain of this requirement prior to the embarkation (and the Retail Charter Broker may also choose to do so) and ensure the Captain produces the appropriate paperwork and proof required by the vessel's fiscal agent to process the reduced VAT. The Captain shall remind the Charterer on embarkation of the international water passage requirement.

**3. After the charter:**

- a) should obtain a confirmation of VAT payment where possible.



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**GUIDELINES FOR BOTH RETAIL CHARTER BROKER / CHARTER MANAGER**

Proof of **Professional Indemnity** insurance renewal should be provided to AYSAS Admin at each renewal date.

**1. Options**

- a) Please see attached document entitled "Definition of an Option" for MYBA Guidelines on using Options and First Refusal.

**2. MYBA Charter Agreement**

- a) The only valid MYBA Charter Agreement is now the 2017 version. Any previous version of the MYBA Charter Agreement is no longer endorsed by MYBA.
- b) The **draft** electronic contract should only be used for Central Agent/Retail Charter Broker approval; it is not acceptable to be used as a legally binding final contract. Only the final watermarked version of the MYBA E-Charter evidencing which company has issued the agreement should be used or accepted as a legally binding Agreement.
- c) Special Conditions – Special Conditions should not contain any items already dealt with in the existing clauses, please see the attached document entitled "Communication on existing clauses".
- d) Both the Charter Manager & the Retail Charter Broker should have a trail of written communication showing notice has been given if non-payment is a possibility.
- e) In the case that the Charter Agreement is in the name of two persons, wording in the Special Conditions should read: "*It is agreed that the Charter Agreement can be signed by either Charterer, but both Charterers will be jointly and severally liable under the terms of the MYBA Charter Agreement*".

**3. Commission on cancelled charters**

- a) In the case of an initial 25% deposit, it is common industry practice that the Retail Charter Broker deducts 50% of their commission due from this deposit and the remaining commission from the second payment.
- b) If a charter is cancelled, standard practice may mean that you have not yet taken your full commission. In the case an initial payment of 25% is made, both Brokers should discuss and agree before signing the Charter Agreement the amount of commission that will be due if the client cancels the charter before the second instalment has been paid.

**4. Respect of professional courtesy**

- a) Retail Charter Brokers and Charter Managers should respect each other's role and be mindful of professional courtesy at all times.

*Disclaimer*

*These guidelines are made available for the purpose of facilitating the ethical cooperation between brokers and as such provide general information and a non-specific understanding of the law. They are not intended to provide legal advice. By using them you understand and agree that you are not receiving legal advice and these guidelines should not be used as a substitute for competent and up to date legal advice. Neither MYBA, nor its staff nor any member of its Committees shall be liable in any way for any loss suffered by anyone relying on these guidelines.*

## MYBA Charter Committee

### DEFINITION OF AN OPTION

The MYBA Charter Committee is pleased to publish their definitions of an Option and a First Refusal. Please note however that either option is granted only at the sole discretion of the Central Agent.

#### Option

- An “Option” is when the contract has been issued to the Charterer for signature. The “Option” period is the time from when Contracts are approved by the Central Agent until the date the first payment is stated as being ‘due’ on the Contract. Once the Agreement has been signed by the Charterer in addition to the deposit funds being received by the due date specified, the yacht is considered to be confirmed by the Charterer. If neither the signature nor the payment are finalised by the due date specified on the Agreement, the Agreement is considered ‘null and void’ and the yacht can again be offered to other parties.

#### Guidelines for Options

- The Central Agent should take care to ensure the date the first payment is stated as due is sensible for the time of year, takes into account competition for the dates, and allows the Charterer reasonable time to meet the requirements.
- Once the approved contract has been fully signed and deposit funds received by the due date specified, the yacht is considered to be booked.
- A Retail Charter Broker **must not** request options on more than one yacht for the same client and time period.
- There is only an Option if an Option has been issued. Contracts can be issued on a first come, first served basis and this should always be clarified in writing.

#### First refusal

- A “*First Refusal*” may be granted when a Retail Charter Broker has a client that is seriously interested in a yacht but needs a bit of time to get them to the Contract stage. If a “*First Refusal*” is granted the Central Agent will “hold” the yacht for the Broker and tell other Brokers interested in the yacht that there is a “*First Refusal*”. “*First Refusals*” are dependent on the individual situation and granted at the sole discretion of the Central Agent for a given period (which can be flexible, dependant on other enquiries). At the end of this period, if the Broker has not requested to proceed to contract, then the yacht is offered to the next person waiting in line.

#### The MYBA Charter Committee

October 2018

## MYBA Charter Committee

### MYBA Charter Agreement Communication on existing clauses

#### **'Special Conditions' clauses – Already in the body of the MYBA Charter Agreement 2017:**

Please see below in *italics* some special clauses that are being regularly included by Brokers in the Special Conditions section of the MYBA Charter Agreement. However, these clauses are already contained in the body of the Agreement and the relevant clause is indicated in **BOLD**

*Whilst every effort will be made to secure berthing in the chosen ports during the cruise, neither the Owner, Captain nor Stakeholder can be held responsible for the final allocation of any berth*

**SEE CLAUSE 4**

*Additional guests joining the charter party onboard are at the Captain's discretion*

**SEE CLAUSE 5A**

*Infants and children under the age of thirteen are to be under the supervision of an adult in the charter party at all times*

**SEE CLAUSE 5b**

**(Nota Bene: the MYBA Charter Agreement Clause 5 does not refer to an age limit due to possible liability for the Crew)**

*It is the responsibility of the Charterer to ensure that he and his guests hold current, valid visas for all countries to be visited during this charter*

**SEE CLAUSE 5c**

*The Charterer will be liable for any local tax due*

*Bank fees will be deducted from the APA*

*Any outstanding accounts will be settled with the captain on board prior to disembarkation*

**SEE CLAUSE 8**

*Smoking is not permitted inside the yacht. Smoking on outside decks only*

*Rendezvous diving only*

*Pets are not permitted onboard*

**SEE CLAUSE 13**

#### **The MYBA Charter Committee**

March 2018