

## SHIPMAN 2024 - an update of the industry's favoured ship management contract

**In April BIMCO released the latest edition of its popular standard ship management agreement SHIPMAN. This article provides an overview of the new form - SHIPMAN 2024 - and a comparison with the previous edition published 15 years ago. SHIPMAN is widely used in the shipping industry. It is a standard contractual framework that may include crew, technical and commercial management (including chartering services) as well as insurance arrangements in respect of a ship.**

The agreement was first published in 1988 and has been updated regularly to reflect changes in ship management practices, regulatory developments, technological advances, etc.

The publication of the 2024 edition<sup>1</sup> is the culmination of close to two years' work by a specialist drafting committee with representatives from shipowners, ship managers, P&I Clubs, insurance and legal experts. A large group of stakeholders engaged in ship management was consulted along the way to ensure broad support to the changes.

A "classic" calls for familiarity

While an update of SHIPMAN was no doubt timely and appropriate, the wide use of the 2009 edition highlighted the importance for the drafting committee of maintaining as far as possible the overall nature and familiarity of the existing version with a view to facilitating transition to the new form.

As will be further elaborated, a number of new provisions have been inserted in SHIPMAN 2024 and it was therefore not possible to maintain the sequence of clauses in Part II (containing the standard terms and conditions) or, indeed, the boxes in Part I (containing the box layout). That said, sections 1 to 5 of the form have been maintained (Basis of Agreement; Services; Obligations; Insurance, Budgets, Income, Expenses and Fees; and Legal, General and Duration of Agreement) as is the case for Annexes A to E (Details of Vessel or Vessels; Details of Crew; Budget; Associated Vessels; and Fee Schedule). To ease navigation through the agreement, a Content page has been introduced at the beginning of Part II.

While the objective of this article is to highlight the changes made in the new SHIPMAN 2024 as compared with the 2009 edition, it is worth making a note relating to the Responsibilities clause (clause 19). The clause, which deals with key matters such as force majeure, liability to owners and indemnification of managers, is central to the successful operation of the agreement. When the 1998 edition was drafted, great efforts were made to provide equitable solutions which strike a fair balance between the owners and the managers.

To maintain the fundamental principles of the responsibilities, very few amendments have been made over the years and the same is the case for the 2024 edition. Here, in addition to reflecting that affiliates are now specifically mentioned in the form and should thus also be covered by the Responsibilities clause, the force majeure provision has been amended to take account of relevant elements of the BIMCO Force Majeure Clause 2022 notably in relation to the inclusion of references to plague and pandemics, natural disasters or extreme natural events, and ionising radiation or contamination by radioactivity, chemical or biological contamination (see subclause 19(a)).

Reflecting commercial realities

It is BIMCO's position that contractual standards should be balanced regardless of market conditions, practical, clearly written and aimed at reducing negotiation time and the risk of disputes. In addition, one of the top priorities when updating SHIPMAN has been to ensure that the new edition reflects current ship management practices - mindful also, of course, of the importance of ensuring the longevity of the form in line with BIMCO's aim to develop standards which are market and business cycle neutral.

Among the most notable changes that were considered appropriate based on changes in ship management practices over the past 15 years, the agreement now includes provisions on so-called predelivery management services and associated fees. In practice, managers of a ship will often start providing services relating to the ship even before the date of commencement of the agreement and it was therefore decided to reflect this in the form (see clause 13).

Separately, while the managers' right to subcontract still requires the owners' consent, the form now clearly states that managers may use affiliates when providing services ancillary to the management services (see clause 17). The reason for this

change is to avoid the situation where managers have to produce subcontracts between themselves and their affiliates simply to comply with the ship management agreement. Importantly, the provision maintains that the managers remain fully liable for the due performance of their obligations under the agreement.

To enable owner input when appointing outside experts, particularly regarding claims, SHIPMAN has been amended to reflect that the authority to settle disputes should not solely lie with the managers but should be a consultative process with the owners (see subclause 20(d)). The managers still wield overriding authority "in their absolute discretion" under clause 3 to take necessary actions in accordance with sound ship management.

A gross-up clause has been introduced (see subclause 13(f)) as well as a new provision to address the verification of bank account details with a secondary verification method other than email (see subclause 13(g)), adding an important extra layer of protection in view of present-day risks posed by phishing and other data attacks.

## Spotlight on ETS

The extension in January 2024 of the EU Emission Trading System (ETS) to cover CO emissions from maritime transport represented a major shift also from a ship management perspective. It was therefore important that the updated SHIPMAN provided an appropriate contractual solution to this regulatory development. Long and complex deliberations took place on how to address this issue - deliberations which were further complicated by the fact that uncertainty remained within the EU authorities about who would be the entity responsible for compliance.

In December 2023, shortly after the adoption of Commission Implementing Regulation (EU) 2023/2599 of 22 November 2023 laying down rules as regards the administration of shipping companies by administering authorities in respect of a shipping company, BIMCO adopted a clause which allocates the costs and responsibilities for obtaining, transferring and surrendering emission allowances for ships operating under an emission scheme, such as the EU ETS, in a ship management context (see clause 10). The clause was developed as a free-standing clause for use with SHIPMAN 2009 and for inclusion in SHIPMAN 2024.

The ETS Allowances Clause has been developed for use with any applicable emission scheme including but not limited to the EU ETS, considering that the party responsible for compliance may vary according to the jurisdiction the vessel is trading in. For clarity, it is divided into two subclauses depending on whether the owners or the managers are the entity responsible for ETS compliance. When the owners are the responsible entity, an optional subclause has been included whereby the parties can expressly agree that the management services will include performance of services necessary for owners' compliance with emission schemes applicable to the vessel, including providing the owners with emission data and calculations of the allowances to be surrendered, arranging the monitoring and reporting of data to the administering authorities, and arranging the actual surrender of the allowances.

In circumstances where the parties agree that the managers should be appointed as the responsible entity under subclause (b) of the ETS Allowances Clause, BIMCO has developed a standard template for mandating compliance with ETS obligations under Commission Implementing Regulation (EU) 2023/2599. The template, Standard ETS Mandate 2024,2 is available as an independent, supporting document for use with SHIPMAN 2024 or the ETS - SHIPMAN Emission Trading Scheme Allowances Clause 2023,3 as appropriate.

Separately from the allocation of costs and responsibilities relating to ETS allowances, SHIPMAN 2024 now also caters for the managers' collection of emission allowances due from charterers to owners as part of their commercial management services (see subclauses 6(c) and 12(d)).

## It's all about the data

Closely linked to the increased focus on ships' environmental performance, including the importance of ensuring compliance with ETS and upcoming FuelEU Maritime requirements, new provisions have been included in SHIPMAN 2024 addressing the owners' access to the vessel's data through the managers' information system, ownership of this data and how it should be handled in case of termination (see clauses 21 and 22).

From an owners' perspective, it is essential to have access to relevant data concerning the vessel and its operation; to clearly state the owners' ownership of such data; and to be able to obtain the data in digital, transferable formats for easy system compatibility. No reference has been made to current standards due to the evolving nature of technology. From a managers'

perspective, the most important aspect is to safeguard the managers' ownership of and intellectual property rights to the digital information platform. The clauses have been drafted with these perspectives in mind.

Related to the importance of digital information systems and data for the vessel's environmental performance, cyber risks pose various threats to shipping from operational, safety and security perspectives. It was therefore natural that the new edition of SHIPMAN should include a provision on this issue. The BIMCO Cyber Security Clause 2019 was included with a few adjustments to align it with SHIPMAN 2024 (see clause 27). The most notable adjustment is that the liability cap in subclause (d) of the Cyber Security Clause 2019 has not been included in SHIPMAN 2024 as this issue is considered sufficiently covered in the Responsibilities clause (see clause 19).

A new clause has also been included to protect the parties from the disclosure of confidential information or data to third parties (see clause 40). The owners and managers are bound by confidentiality in respect of all information and data that they receive about the performance of the agreement. Both parties must try to ensure that any affiliates, subcontractors, employees or agents also abide by this confidentiality undertaking. The clause provides certain exceptions where the confidentiality undertaking does not apply, for example regarding information that has already been published in the public domain or which is required for legal purposes.

## Sanctions and compliance

While sanctions are not a novelty, various geopolitical developments in recent years have resulted in a rapidly evolving sanctions and compliance environment which shipping continuously has to adapt to. This is also the case in a ship management context and SHIPMAN 2024 therefore includes an updated sanctions clause, based on the Designated Entities Clause for SHIPMAN 2009 (see clause 28), intended to safeguard the parties from legal consequences stemming from the other party's involvement in sanctioned activities or association with sanctioned entities.

The clause has been refined to better suit the specific needs of ship management. It is designed to ensure that all parties involved, specifically owners and managers, comply with international sanctions laws and do not engage in or support any activities, services, trade, or voyages subject to sanctions imposed by sanctioning authorities such as the United Nations, European Union, United Kingdom, United States of America, or other competent bodies. Warranties are provided, stipulating the right to terminate the agreement if these warranties are breached, as well as indemnities for any losses incurred due to such breaches.

Mindful of the increased focus on corporate structures and sanctions compliance, SHIPMAN 2024 now addresses any proposed change of control of either party and regulates the situation in case the other party is not content with the change of control (see clause 18). Importantly, the clause includes a right for a party that objects to such change of control to terminate the agreement by giving the other party not less than one month's notice, the result of which will be the termination of the agreement (see subclause 31(f)).

The agreement has been amended to specify that piracy is now a required insurance as opposed to an optional cover as was the case in the 2009 edition (see clause 11). Also, in circumstances where the managers are providing crew management services in accordance with subclause 5(a), it has been found useful to reflect that the parties may have to review the trading restrictions agreed for the vessel during the currency of the agreement and not just at its beginning (see clause 15).

A standard waiver clause has been included, outlining the conditions for effective waivers of breaches or provisions in the agreement (see clause 38). Separately, a clause has been introduced to ensure that the individuals signing the agreement on behalf of the owners and managers are duly authorised representatives, binding their respective parties to the agreement (see clause 39).

## A comprehensive standard

To provide users with a comprehensive agreement, SHIPMAN 2024 includes a number of standard BIMCO clauses which have been developed since the previous edition of the form was published in 2009 and which parties have typically added to the contract as riders. Among these clauses, users will find the MLC Clause for SHIPMAN 2009 (see clause 25), the Personal Data Protection Clause for SHIPMAN 2009 (see clause 26), the Anti-Corruption Clause for Charter Parties 2015 (see clause 29), the standard BIMCO Law and Arbitration Clause 2020 (see clause 32), the Mediation/Alternative Dispute Resolution Clause 2021 (see clause 33) and the Electronic Signature Clause 2021 (see clause 41).

As a novel feature compared to the 2009 edition, Part I also incorporates the BIMCO Authenticity Clause above the signature boxes. The purpose of the clause is to decrease the incidence of - often unknowing - use of counterfeit and/or altered BIMCO contract forms. If the party providing the contract template for negotiation is reluctant to include this clause, then it should serve as a warning that the offered contract is not a genuine BIMCO standard agreement. The clause is included in all new and revised versions of BIMCO contracts.

## On the horizon

BIMCO will shortly finalise and publish a new third-party management agreement for autonomous vessels based on SHIPMAN 2024. The new agreement - AUTOSHIPMAN - is the industry's first purpose-designed standard contract aimed initially at the growing inland waterway sector operating remotely controlled vessels. The contract adds options for managers to provide remote operation and, ultimately, fully autonomous services for owners within the framework of the new SHIPMAN 2024.

Also, following the adoption of SHIPMAN 2024, work will soon begin to update the specialist crew management agreements CREWMAN A (Cost plus fee)<sup>4</sup> and CREWMAN B (Lump sum)<sup>5</sup> which were both also last revised in 2009. Once completed, the remaining standards in the suite of management agreements, LAYUPMAN and SUPERMAN, will be updated accordingly. Importantly, a dedicated drafting committee has embarked on the development of a freestanding clause for use with the SHIPMAN agreements addressing the FuelEU Maritime Regulation which is set to take effect in January 2025.

## Conclusion

SHIPMAN 2024 brings the shipping industry's most used agency agreement up to date by reflecting commercial developments in ship management practices over the past 15 years whilst adding several provisions that have become relevant because of regulatory changes. Acknowledging SHIPMAN's wide recognition in the industry, the basic framework has been maintained, including eg the liability and insurance regime which the industry is familiar with and supports. In a market characterised by a continuously changing regulatory environment, this work continues to ensure that the contractual framework is fit for purpose with the revision of other third-party management agreements and development of free-standing clauses addressing topical issues such as decarbonisation.

SHIPMAN 2024 and its accompanying notes explaining the key clauses are available for use at BIMCO SmartCon ([bimco.org/contracts-and-clauses/create-a-contract](https://bimco.org/contracts-and-clauses/create-a-contract)).

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1 [bimco.org/contracts-and-clauses/bimco-contracts/shipman-2024](https://bimco.org/contracts-and-clauses/bimco-contracts/shipman-2024)

2 [bimco.org/contracts-and-clauses/bimco-contracts/ets-standard-mandate-for-eu-emission-trading-scheme](https://bimco.org/contracts-and-clauses/bimco-contracts/ets-standard-mandate-for-eu-emission-trading-scheme)

3 [bimco.org/contracts-and-clauses/bimco-clauses/current/ets-shipman-allowances-clause](https://bimco.org/contracts-and-clauses/bimco-clauses/current/ets-shipman-allowances-clause)

4 [bimco.org/contracts-and-clauses/bimco-contracts/crewman-a-cost-plus-fee-2009](https://bimco.org/contracts-and-clauses/bimco-contracts/crewman-a-cost-plus-fee-2009)

5 [bimco.org/contracts-and-clauses/bimco-contracts/crewman-b-lump-sum-2009](https://bimco.org/contracts-and-clauses/bimco-contracts/crewman-b-lump-sum-2009)