



# BIMCO EDUCATION

## eLearning Diploma Programme

### BeDP Module 3 – Time Charter Parties

#### Curriculum

##### Tutor



Mr Stephen Mackin, shipping lawyer, partner at London-based law firm Eversheds LLP and head of the firm's shipping group. He specialises in shipping and energy related issues particularly those arising from the carriage of oil and gas by sea.

Mr Mackin was qualified in 1994 and has been with Eversheds for 20 years, speaking regularly at conferences worldwide. He has a first class B.Sc. (Hons) Degree in Maritime Studies and, before qualifying as a solicitor, he spent five years with Shell Tankers (UK) Limited. Mr Mackin has practical experience of the operation of VLCC's, Product Tankers, LNG Tankers and Bulk Carriers. He was Shell "cadet of the year", a watch-keeping officer with Operation Raleigh and has sailed the Atlantic on a Tall Ship.

He is regarded by Chambers Directory as a "leader in his field" and described as being the person you want on right hand when you have a dispute.

##### Course Coordinator

BIMCO Education Department

##### Educational Level

Master (postgraduate)

##### Language

English

##### Schedule

- Starting date: 6 February 2012
- Ending date: 7 May 2012
- Webinars scheduled for:
  - 8 March, 2012 in connection with Cast Study 1
  - 3 April, 2012 in connection with Cast Study 2
  - 18 April, 2012 for general questions and discussions
- Exam date:
  - 7 May 2012

## **Learning Objectives**

Time chartering is a complex business. The shipowners give the time charterers substantial control over the commercial operation of the vessel in exchange for the regular payment of hire. However, whilst this arrangement suggests that the shipowners have transferred much of the potential operational risk to the charterers and that the charterers can do more or less what they like with the ship, such an initial impression is both misleading and dangerous. The shipowners rely heavily on the financial standing of the charterers both in relation to the payment of hire and in relation to the indemnity which the charterers have promised should the shipowners suffer any costs, damage, losses or liability as a result of carrying out the charterers' orders. Similarly, the charterers rely heavily on the shipowners' ability to provide them with the agreed service throughout the charter period as they will be entering into sub-contracts with third parties in reliance on such ability. The charterers' intentions may also be frustrated by the various restrictions that the terms of the contract and the law may place on their intended use of the ship.

The aim of this module is to highlight the various problem areas and to consider ways in which parties attempt to allocate risk inter se and thereby, provide the student with a balanced understanding of the relevant legal principles and practise.

## **Module Content**

This module will cover the following topics:

### **1. Time Charter Duration**

The duration of the time charter establishes the period of time for which the charterers are entitled to use the property of the shipowners (i.e. the ship) and the period of time for which the shipowners are entitled to receive the agreed hire. However, the charter duration is also important for both the shipowners and the charterers for other very different reasons. It is important for the charterers since they require the use of the ship in order to satisfy contracts which they have entered into with third parties on the basis that they will have the use of the ship for that purpose. It is important for the shipowners since they will need to plan their next fixture before the end of the current charter and need an accurate estimate of when the vessel will be redelivered to them in order to meet their commitments under their next charter. The expectations of both parties in these respects may be frustrated by events over which they have no control e.g. heavy weather during earlier voyages or tug strikes at an earlier discharge port.

The aim of this chapter is to comment on the allocation of risk between the shipowners and charterers for delay and to consider the problems which can arise at the end of the charter period when there does not seem to be sufficient time left to complete the last voyage planned by the charterers. The chapter also considers the various standard clauses which are designed to protect the parties against such eventualities.

### **2. The Payment of Hire**

The commercial benefit of a time charter to shipowners is the regular receipt of cash income in the form of hire. Such income is important not only as a source of profit but also as a means to enable the shipowners to finance the services which it is their obligation to provide under the charter. If the regular inflow of cash income is disrupted, the shipowners may lose not only their profit margin but they may also become obliged to finance the performance of other contracts such as bills of lading themselves. To protect shipowners against such eventualities, it has become common for time charters to provide shipowners with various remedies of a powerful nature.

The aim of this chapter is to analyse the duties of the charterers in relation to the payment of hire and the various remedies that are available to shipowners should the charterers fail to do so.

### **3. Off-Hire**

Charterers agree to pay hire in consideration for the services which the shipowners have agreed to provide under the time charter. Therefore, if the ship ceases to provide such services, the charterers will want some form of redress or reimbursement since they will have been obliged under the terms of the charter to pay in advance for services which the ship has subsequently failed to provide.

The aim of this chapter is to analyse the manner in which off-hire clauses seek to provide charterers with such a remedy and the importance of ensuring that the particular event for which the charterers wish to place the vessel off-hire does indeed fall within the scope of the particular off-hire clause. If the charterers deduct hire without justification, they run the danger that the shipowners will be entitled to implement the various remedies outlined in the Payment of Hire chapter.

### **4. Performance Claims**

Since time is money, the ability of the ship to comply during the time charter period with her description as outlined by the shipowners in the charter is important to charterers since, if the ship's speed is slower than described, she will take longer than expected to perform her services and the time charterers will consequently have to pay more hire. Similarly, if the ship uses more bunkers than stipulated in the charter description, the charterers will be obliged to pay for the excess amounts used as it is normally the duty of the charterers to provide and pay for bunkers under time charters. In such cases, the charterers will wish to receive some form of compensation.

The aim of this chapter is to analyse the most common forms of charter clauses relating to performance, the various forms of performance claims that are usually made and the various remedies that are available to charterers in such circumstances.

### **5. Employment Orders**

One of the major advantages of a time charter to a time charterer is the flexibility that the contract allows them to dictate the commercial operation of the vessel and her crew. This enables the charterers to maximise their commercial exploitation of the vessel. The shipowners' agreement to allow the charterers such flexibility is generally compensated by the charterers' promise to indemnify the shipowners should they suffer any costs, losses, damage or liability as a result of complying with the charterers' orders. However, such an indemnity is not always available, and even when it is available, the shipowners may be reluctant to rely on such a remedy in all circumstances, particularly when the potential exposure is large and the financial standing of the charterers is uncertain.

The aim of this chapter is to examine the extent of the rights which are given to the charterers to control the operation of the vessel and the extent to which the shipowners may refuse to comply with such orders.

### **6. Bills of Lading under Time Charters**

One of the key requirements of a time charterer is the ability to obtain bills of lading from the ship for trading purposes. Bills of lading are generally essential for the international sale of goods and the charterers or their customers will require such documents to enable them to satisfy the terms of their sale contracts. Time charterers are usually given the right to obtain such documents by the terms of the time charter employment clause. However, if the bills of lading are signed either by or on behalf of the master, they will generally evidence a separate contract between the shipowners and the holders of the bills who are likely to be parties other than

the time charterers. Indeed, bills of lading usually impose greater liability on the shipowners than the liability that they have agreed to bear to the time charterers under the time charter.

The aim of this chapter is to analyse the extent of the charterers' rights to obtain bills of lading in the form that they require and the rights of the shipowners to refuse to provide such bills in some circumstances.

### **7. Charterers are to Provide**

Whereas it is the shipowners who have the obligation under a voyage charter to provide and pay for most of the services that are necessary to enable them to earn the freight, the position is very different under a time charter. Indeed, the usual balance is that, in exchange for the right to control the commercial operation of the ship, the charterers assume responsibility for the provision and expense of operational items such as stevedoring, bunkers, port costs, agencies etc.

This chapter examines the extent of the time charterers' duties in that regard.

### **8. Loading, Stowage, Discharging etc.**

Despite the fact that time charters are essentially contracts for the use of a ship for a specified period regardless of whether cargo is actually carried, the reality of the situation is that cargo will normally be carried pursuant to a time charter. Therefore, disputes will often arise between the shipowners and the charterers as to who is to pay for stevedoring services and as to who is to be responsible for the acts and omissions of such stevedores. The particular terms of the charter will often have a direct and sometimes surprising impact on such issues.

The aim of this chapter is to analyse the rights and duties of each party and to comment on the effect of standard terms and special agreements such as the New York Produce Exchange Inter-Club Agreement which are designed to minimise the scope of such disputes.

### **9. Dangerous Goods**

The problems caused by the carriage of dangerous goods have proliferated in recent years resulting in the loss of a number of expensive ships. However, it is not true to say that ships should never carry dangerous goods since ships carry such goods regularly and without difficulty. The crucial and relevant issue is whether the shipowners are aware of the danger before agreeing to carry the goods.

The aim of this chapter is to analyse the precise nature of the charterers' duties in this regard both at law and under the Hague and Hague-Visby Rules and to consider why it is not usually possible for the charterers to limit their liability for damage to the ship in such circumstances.

### **10. Safe Ports**

The law draws a necessary distinction between the time charterers' rights to control the commercial operation of the ship and the rights of the shipowners to control the manner in which such orders are to be carried out for the safety of the ship, her crew etc. Therefore, whilst the charterers are given wide rights to determine where the vessel is to go, the law imposes a duty on them to ensure that any port that they nominate will be safe for the particular ship to use.

The aim of this chapter is to analyse exactly what constitutes a safe port and the nature of the charterers' responsibilities in that regard.

### **11. Paramount Clauses**

Whilst the Hague and Hague-Visby Rules do not apply compulsorily to charter parties it is common for parties to incorporate such Rules into the charter by agreement through the medium of a Paramount Clause. When the

Rules are incorporated in this manner they may have a dramatic effect on the validity of other terms of the contract which are designed to protect the shipowners against liability.

The aim of this chapter is to examine the different forms of Paramount Clause which are commonly used, the effect which they may have on the other terms of the time charter and the importance of distinguishing between various forms of Paramount Clause.

## **12. Time Charter Liens**

The courts have repeatedly emphasised the benefit which liens on cargo provide to shipowners since such clauses can provide a very effective form of self-help remedy. However, whilst most time charters do include lien clauses, they are generally of limited benefit to shipowners.

The aim of this chapter is to consider why this is so and to discuss the possibility of other alternative remedies such as liens on sub-freight and liens on cargo for freight (not hire).

## **Course Prerequisites**

Students should be involved and worked within general maritime sectors through their daily work. This requirement includes employment by owners, charterers, brokers, law firms, insurance companies, maritime authorities and classification societies etc. Otherwise, a basic knowledge of shipping can be obtained by joining BeDP Module 1 "Introduction to Shipping".

## **Examination**

At the end of the module, students are required to attend a formal close-book written examination at a pre-arranged, controlled examination centre with an invigilator present. Successfully passing the final examination will lead to a "Certificate of Achievement" signed by the Secretary General of BIMCO.

## **Teaching Methods**

BIMCO eLearning Diploma Programme is entirely web-based with material delivered via a combination of text, PowerPoint presentations, case studies, library items, recorded webinars and expert tutor assistance. Students will get three months' access to these study materials as well as online forum and self-testing questions.

## **Case Studies**

Two case studies will be added through the course for analysis and discussions. The success of case studies depends on the active participation of each student and student group. The tutor will teach and give feedback during the Webinar sessions which enable live interaction between students and tutor and among students themselves.

## **Extended Readings**

Most updated articles, news items and other material will be assigned for extended readings besides the online study material.