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# ITIC Ship Management International columns 2024

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BY **THOMAS  
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## Introduction

Here are the articles written in 2024 by ITIC for Ship Management International magazine. The ITIC column in Ship Management International provides loss prevention advice and opinions on topical events and issues.

You can read the articles online at:

**<http://shipmanagementinternational.com/>**



By Robert Hodge,  
General Manager at ITIC

## EU ETS - bare confusion



In the last edition of SMI, ITIC advised that managers should only become the responsible entity under the system if they were entirely comfortable with the liabilities and risks arising from the European Union Emissions Trading System (EU ETS). This is not just because the liabilities are high for non-compliance – such as fines and penalties – but because the legal position is still uncertain at the time of writing.

The contracted/responsible entity is responsible for reporting emissions and surrendering EU Allowances to the Authorising Authority. The responsible entity under the EU ETS is considered to be the shipping company, which is defined as “the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner...”.

The EU Commission’s advice differs from what has been drafted in the law. The Commission has clearly stated that in the context of EU ETS, the responsible entity can be either the registered owner or the company that has taken on the responsibility for International Safety Management (ISM) compliance. The registered owner can transfer the responsibility for compliance by a written mandate, which must be provided to the Authorising Authority. Without such a mandate, the registered owner will, by default, be the responsible entity.

It is highly recommended that you read the “FAQ – Maritime transport in EU Emissions Trading System” page

on the EU Commission website. Here, they clearly state they do not allow a bareboat charterer to become the responsible entity if they are not also the ISM Company. In one example, an ITIC ship manager member advised that an oil major who was the bareboat charterer (not the registered owner) demanded that their ISM manager arrange to transfer the Monitoring, Reporting and Verification (MRV) reporting and the responsible entity function to them. This is understandable as a large bareboat charterer may want to keep the compliance of the EU ETS in-house for their whole fleet. According to the EU Commission, this is simply not possible, and if they tried to mandate the bareboat charterer, it may not be legal, and it will simply snap back to the registered owner.

However, some Authorising Authorities are rumoured to be taking a different position. Some may accept the bareboat charterer as the responsible entity even if they have transferred ISM compliance to a third-party manager. Consequently, if you, as a manager, are asked by a bareboat charterer whether they can become the responsible entity, you suggest they speak directly to the Authorising Authority to find out if it is possible.

ITIC recommends that ship managers should not give direct advice to an owner or a bareboat charterer on how to comply with the EU ETS; it is complex, and the legal position remains uncertain. Owners and charterers should liaise directly with their own lawyers and EU ETS experts. ●



# Storms ahead for ship management sector as FuelEU likely to repeat EU ETS mistakes

By Mikaela Koni, Senior Claims Executive at ITIC



Whilst the European Union Emissions Trading System (EU ETS) has caused a stir in shipping, FuelEU has seemingly gone unnoticed. Nevertheless, FuelEU will be coming into force on 1st January 2025 and intense storms are forecast in the ship management sector.

FuelEU aims to build up demand and steady use of renewable and low carbon-fuels in vessels. As such, it sets maximum limits on a vessel's yearly fuel emissions, increasing over time. Emissions must decrease to at least 75% by 2050. FuelEU targets carbon dioxide, methane and nitrous oxide emissions. There is also a zero-emission requirement at berth, creating the need for an onshore power supply. All cargo and passenger vessels above 5,000 gross tonnes must comply, regardless of flag.

The issue that arises with FuelEU is the same as that with EU ETS. The entity responsible for complying with FuelEU is the entity responsible for the vessel's operation and the duties and obligations imposed by the ISM code. Therefore, in the same manner as the EU ETS, FuelEU could render a ship manager responsible for the vessel's compliance with the regulation when the ship manager has no power over the commercial operation of the vessel.

A further issue is the scheme allows for a voluntary pooling mechanism, whereby vessels can pool their compliance balance with one or more other vessels, and thus, the pool as a whole will have to meet the emission limits. This causes a problem as it is theoretically possible to 'pool' the vessels for which the manager is responsible. Such 'pooling' may be perceived as unfair towards some clients and beneficial towards others, creating friction points. Unlike the EU ETS, the FuelEU is a per-vessel requirement, and any detention of the vessel will be applied to the specific vessel. Nevertheless, if penalties are imposed for any breach, these could burden the ship manager.

The FuelEU penalties are proportional to the breach. That is, the penalty is based on the amount and cost of renewable and low-carbon fuels that the vessel should have used. Additionally, a penalty could also be imposed for each non-compliant port call. This could mean that multiple penalties could be imposed for one voyage.

The regulation states that the penalties remove any economic advantage of non-compliance. However, realistically, this is not the case. Ship managers, as per the ISM code, have the responsibility for checking and ensuring the sulphur

compliance of fuel delivered to the vessel and after that burned, but despite that, the fuel procurement decisions do not lie with the ship managers. Given this, nothing stops the procurement of non-compliant fuel, which will naturally be more economical, as more in-demand green fuels will be more expensive, letting the ship manager face the penalty. If such a scenario is possible, removing any economic advantage as envisaged by the regulation is simply impossible.

While the same issues were raised with EU ETS, the EU seems unable to adopt a lessons-learned approach and places the ship managers in an unfavourable position with a "polluter pays" approach that is easy to bypass.

Managers should act diligently to mitigate risks by ensuring that any ship management agreement considers the liabilities arising from FuelEU. BIMCO has established a dedicated subcommittee to examine the implications of FuelEU, so hopefully, new clauses will be available for their contracts, including SHIPMAN.

Despite the above, a positive thought for the future is that by the time FuelEU is implemented, ship managers will likely have mastered the perils of EU ETS, and their approach to the new scheme will surely be more confident. ●



# SHIPMAN 2024 – Evolution, not revolution

By Robert Hodge, General Manager at ITIC

One of the most important and widely used standard form contracts in shipping has now been revised. BIMCO SHIPMAN was last updated in 2009. ITIC was honoured to be part of the drafting team in 1998, 2009 and now 2024. The drafting panel consists of third-party ship managers, ship owners, lawyers and insurers. As ITIC insures the vast majority of third-party ship managers globally, we must be a part of the process. Moreover, the professional indemnity insurance that ITIC provides is on the condition the management agreement is on terms no more onerous than SHIPMAN. So, what is new? It is important first to discuss what has remained the same. SHIPMAN has been in place since 1988; it is a very well-understood and litigated contract, so the changes are one of evolution, not revolution.

Firstly, the contract remains one of agency, and the managers are given the authority to act for and on behalf of the owner. The manager must maintain their agency status with suppliers. If they do not clarify to a supplier that they are an agent acting for and on behalf of the owner, they can be held liable for non-payment. Secondly, the standard of care the manager owes to the owner is that they shall use their best endeavours to provide sound ship management. Some lawyers comment that SHIPMAN is manager-friendly. This is nonsense, as the standard of best endeavours is onerous and goes beyond the usual standard of reasonable skill and care. Thirdly, and importantly, the liability section broadly remains unaltered. The limitation is ten times the annual management fees, there is an indemnity from the owner to the manager, and the manager is not liable for the crew's negligence.

There have been some important changes. The agreement took well over a year to draft, as much of the time was spent drafting the European Union Emissions Trading Scheme (EU ETS) clause. This was



complicated as the EU initially targeted the manager as the sole party responsible for surrendering the EU Allowances (EUAs). The clause was drafted to suit this situation. The EU then (quite rightly) decided that the registered owner should be responsible unless the owner mandates the manager to provide the services. ITIC has recently noticed owners requesting managers to agree to a wide variety of EU ETS clauses not drafted by BIMCO. ITIC advises that the EU ETS clause from SHIPMAN must be used as it might not be insured if you agree to something more onerous.

A second major revision is to allow the manager to provide pre-delivery services and have the protection of the contractual terms. A manager may provide services several months in advance of delivery. If the agreement has not commenced and a mistake is made, none of the contractual protections will be enforceable. The solution was to define pre-delivery services and allow the parties to agree on remuneration. The ship is deemed to be delivered once the ISM manager is named on the Class Certificates – a clearly defined date.

While the revised contract includes several other changes, it's important to note that the contractual protections that ship managers benefit from remain unaltered. ITIC encourages all users to read BIMCO's explanatory notes carefully. ●

# SHIPMAN 2024: The introduction of pre-management fees

By Mikaela Koni, Senior Claims Executive at ITIC

The recently published BIMCO SHIPMAN 2024 has the potential to prevent claims and prepare managers for issues that can arise before and during the management of the ship.

Before a ship joins a manager's fleet, a substantial amount of time and costs may be incurred in pre-delivery services such as arranging for surveys, attending to the ship or transporting the crew to the handover location. The previous iteration of SHIPMAN did not expressly state that any costs, expenses or actions taken by managers before the commencement and delivery date were covered under the agreement. As such, if there were an error or non-payment during the pre-delivery stage, the manager would have no contractual rights against the owner or other third parties. Such a scenario would have had the potential for large claims, but more importantly, significant losses for the managers.

SHIPMAN 2024 explicitly deals with pre-delivery services. It ensures the managers are compensated and allows clauses covering liabilities and indemnity to apply.

Instead of having an annual management fee payable at the commencement date of the agreement, management fees are separated into an annual management fee payable from the delivery of the vessel, and a

pre-delivery management fee at a chosen date by the parties. A ship will normally be considered delivered once the new Document of Compliance (DOC) holder is named on the Class Certificate.

The pre-delivery management fee is intended to cover pre-delivery services provided by the manager. Pre-delivery services are defined as "the services performed by the Managers for and in respect of the vessel prior to delivery". The pre-delivery management fee also remains payable even if delivery of the ship does not occur for any reason, except if it's due to default by the managers. For instance, if there are delays in getting the crew off the ship due to port strikes, this may not be the fault of the manager, and they should still be paid for the service they have provided.

If the owner and manager do not include a pre-delivery fee, the agreement allows for a default of a twelfth of the annual management fee. It further provides that all management fees paid will be without set-off and free of any withholding for tax.

It is vital that a manager is protected from claims in the event of an alleged error. Previous SHIPMAN contracts, which did not extend to pre-delivery, leaving managers unprotected. Prior to SHIPMAN 2024, ITIC advised that pre-management services be carried



out under a separate contract. This was a cumbersome route for all concerned. Now, SHIPMAN 2024 addresses this issue and allows limitation and exclusion of liability to be available to the manager. Errors can occur at any stage, including during the pre-delivery services, and now managers are protected against such allegations, even at the pre-delivery stage.

The inclusion of pre-delivery services in SHIPMAN 2024 is a positive update. It addresses previous gaps that previously existed, streamlined the contractual arrangements and has resolved a common issue. The new contract not only shields the manager from claims but also enables them to recover their expenses. ●

# Importance of KYC for ship managers

The importance of processes around the topic of Know Your Customer (KYC) is growing rapidly. Ship managers must ensure compliance with international regulations and protection against various risks.

KYC involves due diligence processes to verify the identity, suitability, and risks associated with maintaining business relationships. For ship managers, this includes clients, business partners, and other entities involved in maritime transactions.

It also helps in identifying and mitigating risks such as money laundering, terrorism financing, fraud, bribery, and corruption. This is crucial in the maritime industry, where transactions often involve multiple parties across different jurisdictions.

Verifying the identity and intentions of a party during onboarding can help detect suspicious activities early. KYC is not solely about sanctions. Due diligence in knowing who you are dealing with is a good business practice.

Conducting a thorough inspection of a ship before it joins a manager's fleet is a crucial part of the due diligence process. A recent claim involved a bulk carrier, purchased on an 'unseen as-is basis', transitioned to new management without a pre-management survey. The bulk carrier soon found herself detained due to severe deficiencies, unveiling financial and operational difficulties. Repair costs, claims, and lost earnings amounting to millions of dollars underlined the value of meticulous ship assessments.

Implementing effective KYC procedures involves several key steps. Ship managers should start by identifying all parties involved in a transaction, including shipowners, charterers, and sub-charterers. This includes verifying their identities, understanding their business activities, and assessing their risk profiles.

Various tools and resources, such as third-party databases (e.g., WorldCheck, Orbis), registries, and trade press, can aid in this process. Additionally, ship managers can utilise KYC service providers like Marcura or Windward to enhance their due diligence efforts. The level of due diligence should be tailored to the risk profile of each party, with more rigorous checks for entities in high-risk jurisdictions.

ITIC requires all ship managers to be co-assured with an International Group P&I Club. IG Clubs are rigorous with their own KYC process. This has meant that some shipowners who have failed in this due diligence process to gain entry to an IG P&I Club have resorted to some fixed premium providers. Therefore, if a ship being accepted into management has fixed premium P&I, it should raise a red flag, prompting enhanced checks to understand the reasons behind it.

Ongoing monitoring of business dealings and transactions is essential, as the status of principals can change. ITIC recently settled a case where a ship manager was caught up in a dispute between a supplier of grabs and an insolvent owner.

The ship manager was supervising the build of two new ships in a



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Chinese yard and had arranged the purchase of two grabs, assuming they were doing so as agent on behalf of the owner. However, the owner had become insolvent and was no longer in existence. The supplier of the grabs held the ship manager responsible for payment, claiming a breach of warranty of authority. The claim was for the cost of the grabs, US\$710,000, plus interest. The matter was eventually heard by a court who found in favour of the supplier. This was appealed, and eventually, the supplier settled at US\$420,000. ITIC covered this cost as well as legal fees of US\$70,000.

In conclusion, KYC is an indispensable process for ship managers, providing a framework for managing risks, ensuring legal compliance, and protecting their reputation. As the maritime landscape continues to evolve, the importance of KYC will only grow, making it a critical component of successful ship management. ●

# Let's get secure with FuelEU



The FuelEU Maritime regulation is an attempt by the EU to encourage the adoption of fuels with lower greenhouse gas emissions by issuing penalties for non-compliance. It applies to all ships over 5,000 GT calling at ports within the EU from 1 January 2025. Penalties will amount to EUR 2,400 per ton of fossil fuel exceeding the current limit for the vessel. A ship must be compliant and have a FuelEU Document of Compliance (DoC). To obtain this, there needs to be no deficit on account. Either the ship's intensity is below that limit and there is no deficit; or there is a deficit, and a penalty is issued, but that penalty has been paid off. Afterwards, a FuelEU DoC will be issued.

An owner may decide, rather than incurring the cost to upgrade the machinery of their ship, or a charterer, rather than paying the cost of cleaner fuels, to just accept and pay a penalty. However, if a vessel has a deficit for two consecutive reporting periods, the penalty grows by 10% each year. If penalties are incurred that are not paid off, a DoC will not be issued. If a DoC is not held for two or more reporting periods, a ship may be refused entry to EU ports or subject to flag detention. Therefore, the cost of non-compliance is high and will aggregate over the years.

Unlike EU ETS, where there was a last-minute change of heart by the EU, the only party who will be subject to and liable to pay penalties for non-compliance is the ISM manager. A third-party ship manager has no say in what fuel is used on board the ship. Therefore, the manager must ensure they will not be left exposed to penalties by putting in place a robust

contractual arrangement between them and the owner. BICMO has been drafting FuelEU Maritime clauses for both time charters and also SHIPMAN. At the time of writing, a clause for SHIPMAN has still not been agreed upon by the Documentary Committee.

Any FuelEU Maritime clause for a ship management agreement must include adequate security. From 1 January 2025, all ships above 5,000 GT will incur a liability arising from a choice of bunkers on that ship. The only party who will be held responsible for that choice, will be you: the ship manager. Therefore, when these penalties become due, you do not want to have a large credit exposure, as you will have to pay those penalties and then seek recovery from the owner. Consequently, one of the most important issues in the drafting of any clause between a manager and an owner is the matter of security.

The position on security is even more important based on the fact that the ISM manager who has the ship on 31 December will be responsible for the entire reporting period. This is irrespective of whether there is a change in the manager or the sale of the ship. Therefore, the new manager will be responsible for reporting and payment of penalties, even though the ship had not been in their fleet. On this basis, the security provided by an owner must include the entire reporting period.

With all this in mind, ITIC advises all ship managers not to accept management of a ship unless the appropriate form and amount of security have been agreed upon. ●