



**Marine Engineering Law and Marine Insurance**

**Boxtime 2004**

**April 2008**

**By Markus Brinkmann**

**MSc Marine Engineering and Management**

## **CONTENT:**

- 1. Introduction**
- 2. Charter Party**
- 3. BIMCO**
- 4. Contract History**
- 5. Advantages of Boxtime 2004**
- 6. Boxtime 2004 Part 1**
- 7. Boxtime 2004 Part 2**
- 8. Conclusion**
- 9. References**

## **1. Introduction**

Boxtime 2004 is a new Charter Party designed by BIMCO as a modern and well balanced contract that is connected to the current regulations and maritime rules.

This Charter Party is based upon the original Boxtime, which was first developed in 1990. The Charter Party was created to respond to the growing demand from the BIMCO members who were engaged in the time chartering for container-ships, as during this period there was no appropriate contract for the trade available.

Following 15 years existence several international legislations and regulations have come into force and have had a major impact on the shipping industry especially in respect to the fast growing container market.

BIMCO formed a specialist committee consisting of Lawyers, Owners and Charterers. The aim for the committee was to develop Boxtime 2004 for the container trade. The new Charter Party had to have a good balance between the right and obligations of the contracting parties and to be clear and easy to understand. Furthermore, by developing a good contract the amount of self-made Rider Clauses would be reduced, which is imperative to an effective Charter Party.

## 2. Charter Party

The word Charter Party originates from Latin: Charta Partita, which translates as legal paper or instrument, divided, i.e. creating one duplicate for each party.

The Charter Party is a legal document drafted between the Owner of a vessel and the merchant of a cargo. The merchant or Charterer is granted the permission through this legal document to use vessel for a certain time period or voyage for a set amount of hire for the use of the ship.

There are two main types of charter which are used in the marine industry:

- The Voyage Charter is a Charter Party for one or more voyages of a ship. In this particular document the cost for the Charterers is referred to as freight
- The Time Chartering is used when the Charterers need a ship for a specific time in which they can trade many different cargoes on various trading routes. The Charterer may sub-charter the vessel on Voyage Charter bases. The cost for Time Charter is referred to as hire.

The Bareboat Charter is not as common in the cargo ship market. It is a time charter in which the charter takes responsibility for the crewing and maintenance of the ship during the time of the charter, assuming the legal responsibilities of the Owner and is known as a disponent Owner. This type of charter is mainly being used for sailing-boat trips in the holiday travel industry.

## 3. BIMCO

BIMCO is the World's largest private shipping organisation, with members from all around the Globe. The company was established in 1905 in Copenhagen, when 112 individuals from the marine shipping industry gathered to discuss how to improve the European shipping industry that needed strengthening.

Since 1905 Bimco has developed many different contracts to suit the diverse trade routes and cargo requirements on vessels.

*"BIMCO's vision is to be the leading interest group and membership organisation offering practical and tangible services to shipOwners, managers, brokers, agents, operators, associations and other entities connected with the international shipping industry."*

(Source: Bimco)

Most of the services of Bimco members are nowadays accessible online. Depending on the status of the member the accessibility changes and different appliances, contracts and documents are accessible. For example, the websites provides member the option to write the contract online to ensure good quality of the contract. The quality guaranty is created by several different systems such as:

- When text is deleted it is simply crossed out so that all parties can see what the original document looked like before the change was implemented.
- If additional text is added the document shows this text in *italic* and red to make the change more visible.

It is possible to create a draft of the Charter Party online, which can then be send to all parties. Creating a draft document is free until the final copy is developed and printed.

The contracts on the website are restricted in their accessibility to ensure a conscientious outcome for both side. Unfortunately, the tables in the contract are not changeable and if they are not required the boxes use unnecessary space that might be required elsewhere.

#### 4. Contract History

The first Boxtime Charter Party was developed by Bimco in 1990, replacing the Baltime, Linertime and the heavily-amended New York Produce Exchange Forms (NYPE) which were used in the container trade.

*"It was developed in response to a growing demand from BIMCO members engaged in the time chartering of container vessels asserting that there was no appropriate form of charter available for that trade."* (Source: Bimco)

The Container market began in the late 1960s and has grown since then to one of the most important markets in the Marine Trading Industry. Approximately 90% of non-bulk-cargo worldwide moves in containers stacked on transport ships. Containers have the advantage to be easily transported with ships, lorries and trains carrying inside them a variety of products such vehicles, home products, frozen food and also fluids.

Boxtime was quickly adopted by the container industry as it clearly filled an expanding gap. It is considered to be a well balanced document covering a number of issues common to the container trade.

Over the last 15 years Boxtime Charter Party became less effective due to new legislations constantly changing the trade and affecting the shipping industry. Despite the fact that Boxtime was well adopted by the industry it was agreed by the Members of Bimco to revise the Charter Party and bring it into line with the recent developments of the marine and commercial law.

BIMCO set up a specialist committee consisting of charter and ship Owners representatives to undertake a thorough study of the current contract in order to develop a fully comprehensive new Charter Party, which is based on the original Boxtime.

#### 5. Advantages of Boxtime 2004

BIMCO presented the new Boxtime 2004 on a special event in Tokyo and Shanghai in late 2005 to prospective Charterers and other interested parties.

The specialist Boxtime 2004 committee is equally consisting of ship Owner representatives and Charterer representatives, which have the responsibility to develop a fair and reasonable template for negotiation between the two parties. BIMCO's policy is to ensure that the new contract fulfils the two principles as listed below (Source: Bimco):

- To strike a reasonable balance between the rights and obligations of the contracting parties.
- To provide for clear and unambiguous terms and conditions.

BIMCO aims to produce a document that protects both of the contractual parties, otherwise other contracts will be used instead, such as the NYPE. The Charter Party takes a balanced approach to the responsibilities of the contractual parties, to minimise the use of individually drafted Rider Clauses that may result in one of the parties assuming unintended obligations. Many court cases or arbitrations materialise because parties have unbalanced the original document by introducing new Rider Clauses. Therefore, reducing the Rider Clauses is one of the main objective of this committee.

The applied standards for the contract is to have a clear and unambiguous terms and conditions in its documentation in order to avoid the contractual parties having to resort to unwanted court cases and arbitrations to solve disputes.

In adopting the above mentioned principles, the Sub-committee came to the conclusion to base the new Charter Party on BIMCO's recent GENTIME (General Time Charter). GENTIME is considered to be an extremely balanced and clear contract that take into account the principles agreed to by the BOXTIME Sub-committee.

#### 6. Boxtime 2004 Part 1

The structure of the new Charter Party has improved significantly to ensure that the user can quickly find relevant information. The information is clearly distinguishable between Owner and Charterer. Furthermore, the space in which details can be provided has increased, in order to provide the parties the necessary room and therefore create a document that keeps its appearance in the eyes of the reader.

Boxtime 2004 Part 1 is used by both parties to compile information regarding the vessel, voyage, and details of the parties itself. The overall size has been enlarged from one to two pages. This rearrangement of the contract provides the user with more space for each of the required details.

Comparing the Boxtime 2004 with the original Boxtime several boxes/tables changed in which information has to be provided.

- Boxes 7 – 13 are combined into one single box as the information is referring to the ship.
- The Maximum Bunker Capacity in Box 15 has been cancelled because it is not relevant for the Charterers as the crew of the ship is responsible for the voyage planning and calculation.
- Box 20 changed into 'Cancellation Date' as the 'Latest Date of Delivery' is no longer relevant due to a change in requirements by the Owners. Defining a date for cancellation provides the Owner with an indication when they have breached the contract.
- Box 28 changed as the lump sum rate for supercargo is normally calculated per month and not per day.
- The wording in Box 29 (Victualling Rate per Meal for other Charterers) is not easily understandable, which is why it has been changed into Box 25 (Monthly Lump sum for Representation Expenses).
- Box 32 which is for the Charterers maximum claim settlement authority is extended into three different boxes to reduce the importance of possible Rider Clauses.

In addition to these changes, several new boxes have been added to reduce the possible extension by Rider Clauses.

- Box 17 For listing excluded cargoes
- Box 22 To show Owners bank details for the Charterers
- Box 29 Replacement Cost for Vessel's loss or damage
- Box 30 Listing the payment for reefer container
- Box 33 For the commission to shipbrokers

## **7. Boxtime 2004 Part 2**

In the second part of the Boxtime 2004 Standard Time Charter Party for Container Vessels, several Clauses have been changed to accommodate the changes in the marine law as well as in the demand of the Owner and Charterers.

### **Clause 6**

*'The Owners shall deliver the Vessel in the Class indicated in Box 6 and in a thoroughly efficient state of hull and machinery....'*

According to the 'New Charter Party Document Requires Careful Negotiation' by Homan Fenwick & William the above wording appears to be an extension of the Owner's obligation to deliver the vessel in accordance with its charter party description. When comparing the Boxtime Charter Party with Boxtime 2004 Charter Party this text has not changed, which supports the argument that the ship has to be delivered in a thoroughly efficient state. This clause might be redundant as the ship should always be delivered in an efficient state, though this is not always the case, which is why the clause is necessary.

**Clause 6(a)(i)**

*'The Owner warrant that both the strength of the lashings and the design of the lashing patterns are adequate for stowage in accordance with the Cargo Securing Manual and that these have been approved by the Vessel's Classification Society.'*

The word warrant might seem as a burden to the Owner as these terms could be interpreted to the disadvantage for the Owners. Through the use of the words 'warrant' and 'adequate' the Owner is obliged to ensure that the cargo has been secured to the standards of the Vessel's Classification Society, which is at a matter of fact an advantage for the Owner even though it is a responsibility. This is because the captain of the ship has the most knowledge to ensure the safety of the ship and should therefore make the decisions and not the Charterer or Agent.

**Clause 6 (a) (ii)**

*'The Master shall supervise the stevedores undertaking the tasks outlined in Clause 7(a)..'*

This provides that the Master is responsible for safety of the ship and its crew and he has to ensure that all cargo is being stored according to good seamanship. Furthermore, the Master has obligation to inform the stevedores on how the cargo has to be stored. This concludes that the Charterer may say who the stevedores are but not how to store the cargo on the ship.

**Clause 7(a)**

*'The provisions of full and accurate details of containers and goods (...) their weights and stowage positions to the Master as early as possible but not later than upon arrival at the port of loading,...'*

This creates a risk that Charterers will fail to provide this information until the arrival of the ship. Though as the Charterer has to pay for the time spent in the port and every minute that the ship is under his charter it would be rather inappropriate to extend the required time.

To load a container ship efficiently the containers have to be prepared and stored in the port to comply with the ship's stowage plan to minimise time spent at the terminal. Furthermore, this clause's relevance is insignificant as most container terminals are equipped with highly efficient container bridges that store the containers on the ship. Which is why this clause should be linked to the agent in the port and not to the master.

**Clause 7(b)**

*'All stevedoring operations during the currency of this Charter Party including, but not limited to, receipt,...'*

This clause states that the Charterer is required to take care of the provision and payment of all stevedoring operations. Clause 6(a)(ii) which was presented earlier in this document, might seem to be not in line with this Clause. However, this is not the case as this Clause is purely for the payment of the costs that might occur, which was wrongly interpreted in the document 'New Charter Party Document Requires Careful Negotiation' by Holman, Fenwick and William.

**Clause 7(f)**

*'The Charterers shall ensure that stowage is effected in accordance with the requirements and lashing gear break loads are not exceeded.'*

The Charterer is therefore required to ensure that the cargo is suitable for the ship and its requirements. This does not contradict Clause 6(a)(ii) as it is for the containers' restrictions that those are not overloaded or miss packaged, otherwise it could lead to damages on the lashing gear or other containers.

**Clause 8(c)**

*'Charterers shall pay the amount due, failing which the Owners shall have the right to suspend the performance...'*

This provides the Owner with the option to suspend the vessel should the hire not be paid. It can happen that the money might be delayed and therefore the Owner has to act in its best interest.

**Clause 17**

*'The Charterers and/or agents are hereby authorised by the Owners to sign bill of lading, waybills, through bills of lading, or multimodal bills of lading ... on the Owners' and/or Masters behalf ...'*

This new Clause is based upon the Gentime rather than the original Bovertime. The original Bovertime and Gentime required the Charterer to sign the bills of lading and the other contracts only with the allowance of the Owners. However, the revised Bovertime now provides the Charterer with a standing authority to sign these contracts.

This liability structure is based upon the Hague and Hague-Visby Rules. If the Charterers issue a contract of carriage that applies to any other legislation other than the Hague-Visby Rules then they are required to issue a letter of indemnity to the Owners. Unlike in the original Bovertime the contractual parties should have a thorough understanding of the Hague-Visby Rules especially prior to any cargo claim.

**Clause 18**

*'Except as provided in Clause 19, and without prejudice to the Charterers' right to initiate recovery against the Owners under Clause 19, the Charterers shall be responsible for all third party claims...'*

In different Clauses of the original Bovertime dealt with the liabilities, which was revised by the Sub-committee. The liability provisions are now under Clause 18 and 19 to make the Charter Party more user friendly. Furthermore, Responsibilities/Liabilities are segregated into Clause 18 for Charters and Clause 19 for Owner.

For example, liability provisions in respect of lashing was in the original Bovertime in Clause 10(e) and can be found now in Clause 19(a)(v).

**Clause 19**

*'The Owners shall be liable for loss, damage or expense in respect of containers and goods arising or resulting from ...'*

This Clause is being used for the all liabilities concerning the Owner this includes defective lashing gear, failure to exercise due diligence towards the TEU, FEU or other goods.

Detailed provisions concerning refrigerated goods have been dealt with in the new Clause 20.

**Clause 20**

*'In respect of integral refrigerated containers or any other container with any machinery for temperature/atmosphere control containing goods,...'*

In the original Bovertime this Clause formed part of Clause 19. The special circumstances connecting to refrigerated goods do differ from the standard cargoes, which is why this clause has been developed separately.

The clause extends the responsibility for the Owners as it is required to monitor and record the performance of the refrigerated containers at least once daily, which was previously dealt with in the Rider Clauses.



**Clause 21**

*'As between the Owners and the Charterers, responsibility for any loss, damage, delay or failure of performance under this Charter Party not dealt with in Clauses 18 and 19 shall be subject to the following mutual exceptions...'*

The 'Exceptions Clause' prevents both parties from raising any claims for damages against each other if they result from an act of God, war, terrorism, civil commotions, strikes, lockouts, restraint rulers, and quarantine restrictions.

Therefore, this Clause deals with all claims other than cargo claims and provisions of this clause do not refer to the counting of hire, which is only affected by the provisions in Clause 9.

## **8. Conclusion**

It's worth mentioning, however, that the Sub-committee spent a long period developing this new Boxtime Charter Party and considering the changes in the shipping market this new Charter Party is very recent.

This Charter Party is described by BIMCO as a "Modern, clearly worded, balanced and comprehensive Container Vessel Charter Party, which reflects current commercial shipping practice and law." This statement is true to some extent as the contract is incorporating not only BIMCO's contract but also the NYPE and the most common Rider Clauses that are being used in the market.

Considering all the different scenarios and regulations, this contract is well balanced and reflects the requirements of both parties.

To ensure that the contractual parties are within the boundaries of the law, it is recommended that the contract is reviewed and updated at least every 5 years and not every 20 years as it is currently the case in order to reduce the increasing demand of the Rider Clause.

## **9. References**

1. The Baltic and International Maritime Council (BIMCO), Uniform Time Charter Party for Container Vessels, Code Name: "Boxtime"
2. BIMCO, Standard Time Charter Party for Container Vessels, Code Name: Boxtime 2004
3. Asian debut for BOXTIME 2004 (26.10.05), Boxtime Presenations Far East 2005, downloaded from <http://bimco.com/Members%20Area> (20<sup>th</sup> March 2008)
4. New Charterparty Document Requires Careful Negotiation' written by Holman, Fenwick and Willan, downloaded from <http://www.internationallawoffice.com/Newsletters/detail.aspx?g=dc0ef2e0-f0a2-4029-8672-906972944d89> (20<sup>th</sup> March 2008)
5. Complete boxship charterparty solution?, written by Justin Draeger, Brian Zhu, Homan Fenwick & Willan, Loyd's List, 28 December 2005, downloaded from: <http://www.hfw.com13/new/new13c078.html> (20<sup>th</sup> March 2008)
6. BIMCO documentary update, The Baltic online, downloaded from: [http://www.thebaltic.co.uk/september\\_2006/p\\_30php](http://www.thebaltic.co.uk/september_2006/p_30php) (2<sup>nd</sup> April 2008)
7. Introduction to Shipping (2005), for the Distance Learning Programme of The Institut of Chartered Shipbrokers.
8. SPS London Ltd. Heavy-Lift, Project & Dry Cargo Shipbrokers, research facilities and Shipbrokers.