

# Charterparties: New clauses for new risks

Simon Rainey QC  
Gemma Morgan  
Peter Stevenson  
Andrew Preston, Preston Turnbull

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With back to back wins, Quadrant Chambers demonstrates 'exceptional strength-in-depth for complex shipping disputes'

Legal 500 UK Awards 2020





“Simon is considered a legendary figure  
by the entire shipping world”

(Chambers & Partners UK, 2020)

## Simon Rainey QC

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### Areas of Expertise

International Arbitration  
Energy

Shipping  
Commercial Dispute Resolution

Commodities & International Trade  
Insurance

Simon Rainey is regarded as the foremost shipping and international trade QC at the English Bar today

He has been ranked in the unique category of “Star Individual” (a special category, ranked above Band 1) for ‘Shipping and Commodities’ by Chambers & Partners UK in 2015, 2016, 2017, 2018, 2019 and now again in 2020. Simon was awarded the title of ‘Shipping Silk of the Year’ by both Chambers and Partners UK and Legal 500 UK Awards in 2017. He was also shortlisted for ‘Shipping Silk of the Year’ at the Chambers UK Bar Awards 2018, for ‘Shipping Silk of the Year’ at the Legal 500 UK Awards 2019 and again for ‘Shipping Silk of the Year’ at the Legal 500 UK Awards 2020.

He was named one of the Top Ten Global Maritime Lawyers 2017, and again in 2018 and in 2019, by Lloyd’s List.

He has handled every possible type of shipping and maritime dispute, with particular emphasis in recent years on complex cases involving all of the main major casualties arising out of dangerous cargo incidents (e.g. most recently APL Austria, MSC Daniela; MSC Flaminia; Bulk Jupiter; Bremen Express; Amsterdam Bridge, MSC Napoli: see also the calcium hypochlorite casualties; Hanjin Pennsylvania, CMA Djakarta, Contship France, Aconcagua etc.), representing variously owners and charterers, and major safe port disputes, as well as almost all of the major appeals to the Commercial Court, Court of Appeal and Supreme Court on the major shipping cases raising shipping and commodity law points of principle (e.g. **Grand China v Spar Shipping**; **Bunge v Nidera**; **The Global Santosh**, **The Maria**, **Volcafe v CSAV**, **The Arctic**, **Classic Maritime v Limbungan**; **The CMA CGM Libra**; **The Ever Smart** etc).

Simon regularly acts in ground-breaking shipping and commodity cases at appellate level including **Bunge SA v Nidera SA** [2015] UKSC 43; **NYK Bulkship (Atlantic) NV v Cargill International SA (The Global Santosh)** [2016] UKSC; **Grand China Logistics Holding (Group) Co Ltd v Spar Shipping AS** [2016] EWCA Civ 982; **Volcafe Ltd v Compania Sud Americana de Vapores SA** [2018] UKSC 61 (one of the most important shipping appeals in recent times, dealing with issues as to the burden of proof under the Hague / Hague-Visby Rules and the inherent vice defence). He has been brought in to pursue the Supreme Court appeal in **Evergreen Marine Ltd v Nautical Challenge Ltd (The Ever Smart)** [2018] EWCA Civ 2173, on the application of the ‘crossing rule’ under the Collision Regulations (appeal to permission now granted).

He has long had special expertise in interpretation issues relating to the Hague and Hague-Visby Rules, having argued almost all of the leading cases in the last fifteen years: e.g. **The Jordan II (Jindal Iron and Steel Co Ltd and Others v Islamic Solidarity Shipping Company)** [2005] 1 Lloyd’s Rep 57 (House of Lords); **MacWilliam v Mediterranean Shipping Company (The ‘Rafaela S)** [2005] 2 AC 423; **CSAV v Hamburg Schiffahrtsgesellschaft (The Aconcagua)** [2006] 2 Ll. Rep 6; **Serena Navigation v Dera Establishment (The ‘Limnos’)** [2008] 2 Ll. Rep. 166; **Volcafe Ltd v Compania Sud Americana de Vapores SA** [2018] UKSC 61.

In addition he has long experience in major shipbuilding disputes. In arbitration he has represented buyers and yards covering every sort of vessel from new generation Q-Max LNG carriers, via state-of the art super-OSVs to the latest iteration of ‘super-superyacht’ such as the Benetti Zoza. He has also handled major shipbuilding s.69 Arbitration Act appeals: e.g. **Covington Marine Corp v Xiamen Shipbuilding** [2006] 1 Lloyd’s Rep 745; **Ravennavi SpA v New Century Shipbuilding Company Ltd** [2007] 2 Lloyd’s Rep. 24; **DSME v Songa**.



“A star junior, extremely intelligent and focused on the detail of every case”

(Legal 500, 2021)

## Gemma Morgan

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### Areas of Expertise

International Arbitration

Shipping

Aviation & Travel

Energy

Commercial Dispute Resolution

Salvage, Collision and Admiralty

Shipbuilding

Insurance

Gemma is a sought after junior with instructing solicitors and lay clients. She acts in a range of commercial disputes particularly in the fields of shipping, commodities, energy/offshore and construction (shipbuilding).

She provides an efficient and thorough service and combines accurate legal analysis and advice with practical commercial and tactical awareness. She has extensive experience of heavy and technically-complex cases, in particular those in the shipping and energy sectors, and enjoys working well as part of a team.

Gemma is identified by Legal Week as one of its ten Stars at the Bar for 2016 in a profile piece on the most promising young barristers. Gemma received the following praise from clients:

- » “razor sharp mind, ideally suited to complex commercial disputes”.
- » “... retains a strong sense of commercial awareness, which, allied with a combination of intellect, enthusiasm, and emotional empathy, marks her out as someone special.”
- » “Her confident advocacy means she can win the ear of the judge even when pitted against far more senior opponents.”
- » “... excellent at giving a clear tactical steer at the outset and recognising the broader commercial considerations.”

Gemma is consistently recommended by Chambers UK as a ‘Leading Junior’. She has been identified as “a junior to play close attention to” and is “especially noted for handling complex shipbuilding cases and matters of a highly technical nature”.

### What the directories say

*“She has a laser-like focus, sees the big picture and is able to set out the approach in a clear and precise way.”* (Legal 500 Asia Pacific, 2021)

*“Gemma Morgan is completely committed and very enjoyable to work with. She is extremely good with clients and excellent on her feet in cross-examination.”* (Chambers UK, 2021)

*“She demonstrates real thoroughness and care in her work.”* (Chambers UK, 2021)

*“She is razor-sharp in cutting through voluminous documents.”* (Chambers UK, 2021)

*“A star junior, extremely intelligent and focused on the detail of every case.”* (Legal 500, 2021)

*“Laser-like focus on contract terms and the big picture of interpretation and able to set out the approach in a clear and precise way that is easy for a Tribunal to understand and adopt.”* (Legal 500, 2021)

*“Very clever and thoughtful - one of the first names on any list of who to instruct.”* (Legal 500 Asia Pacific, 2020)



He is razor-sharp, very commercial and excellent with clients, and he has an impressive ability to deftly get to the heart of any issue.

(Legal 500, 2021)

## Peter Stevenson

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### Areas of Expertise

Shipping	Insurance	Shipbuilding
International Arbitration	Commercial Dispute Resolution	Energy
Commodities and International Trade	Insolvency	

Peter has a broad commercial practice with a particular emphasis on shipping, international trade, commodities, shipbuilding/offshore construction and marine insurance. He is ranked as a leading junior in Legal 500 UK, Chambers UK, Chambers Global and the Legal 500 Asia Pacific directories.

Peter is regularly instructed in the Commercial Court and in international arbitrations and is variously described in the directories as *“razor-sharp, very commercial and excellent with clients”*, *“intellectual and approachable”* and *“a strong advocate in court and arbitration hearings.”*

Peter has been instructed in a wide range of charterparty and bill of lading disputes concerning issues including (amongst others), unsafe port/berth claims, cargo claims (for damage and delay), unsafe cargo claims, laytime/demurrage claims, claims concerning liens on cargo and freights, speed/performance claims and off-hire claims, claims concerning piracy and war risk, claims under the NYPE implied indemnity and claims for contributions to general average. Peter is regularly instructed in collision and salvage matters.

Peter has also acted on a number of reported cases including, **Shanghai Shipyard v Reignwood** [2020] 2 BCLC 108, **Agile Holdings Corp v Essar** [2018] Buss LR 1513, **Ultrabulk AS v Jagatramka** [2018] 1 Lloyd’s Rep 384, **Aquavita v Ashapura** [2015] EWHC 2807, **Tartsinis v Navona** [2015] EWHC 57, **SK Shipping v STX Pan Ocean** [2017] 7 WLUK 1015, **The Alexandros T** [2013] UKSC 70) and the leading case on anti-suit injunctions.

### What the directories say

*“He has an incredibly impressive ability to navigate the complex and deftly get to the heart of any issue, he is razor-sharp.”* (Legal 500 Asia Pacific, 2021)

*“Peter Stevenson is knowledgeable, bright and extremely perceptive.”* (Chambers UK, 2021)

*“Peter’s advice is concise and to the point, which always helps when feeding back to clients.”* (Chambers UK, 2021)

*“Sharp, focused and results-driven.”* (Legal 500, 2021)

*“He is razor-sharp, very commercial and excellent with clients, and he has an impressive ability to deftly get to the heart of any issue.”* (Legal 500, 2021)

*“He’s quick to respond and very easy to communicate with, as well as proactive, relaxed and tremendously competent.”* (Chambers UK, 2020)

*“Very reliable, thorough, diligent and extremely hardworking.”* (Legal 500, 2020)

*“A strong advocate in court and arbitration hearings.” “Approachable and commercial.”* (Chambers UK, 2019)



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He acts for a wide range of international banks, corporates and trade houses on all types of commercial litigation disputes. Andrew specialises in general commercial litigation, shipping and trading disputes. Over twenty five years, he has acted for a large number of corporates, oil majors, shipowners, insurers, charterers, operators, suppliers and cargo interests and their insurers both nationally and internationally. He has litigated in every level of Commercial Court up to the Supreme Court on two occasions (*Datec –v- UPS* and *The Far Service*). Throughout his career he has applied his skills to find commercial solutions for clients. Andrew has been rated by the directories as one of the leading shipping lawyers for many years acting for a wide range of shipowners, trading houses, charterers and their insurers. One client in the directories said "*Probably the best lawyer for head on the block advice. Andrew Preston exercises sound judgment as a gift simplifying even the most complex problems*".

He steered Clyde & Co as the Global Head of Shipping for over a decade taking it to a tier 1 ranking.

Andrew is recognised as one of the leading lawyers in the world at liabilities arising out of bunker/fuel supply disputes. He was involved, together with James Kennedy, in the new Bimco bunker contracts and centrally involved in all of the major bunker events over the last years including the OW collapse, the collapse of Hanjin and the Houston problems of 2018. He is advising many industry figures in relation to 2020 issues and the forthcoming sulphur caps.

## EXPERIENCE

- *English Electric Company –v- Alstom UK [2015] and on appeal [2016] (the Oliver litigation) and English Electric Company Limited –v- Alstom UK [2017] (the Critchley litigation)*. These cases developed the law on liabilities and indemnities under commercial contracts for personal injury liabilities.
- *FCMB –v- Zumax [2018]*. This Court of Appeal decision established principles on trust relationships in banking and the extent of quistclose trusts.
- *Access Bank –v- Capitol Oil [2012]*. The series of linked interlocutory and final hearings established principles on freezing orders, search and seizure orders and contempt proceedings.
- *Osmium Shipping Corporation –v- Cargill International SA* – one of the leading cases on piracy, payments of hire following hijack and the impact of conwartime clauses on charterparty obligations.
- *Enviroco Limited –v- Farstad Supply A/S* – a Supreme Court case on construction of charterparty terms and obligations and defences.
- *Elbourne Mitchell –v- Iron Mountain (UK) Limited* – a High Court decision on the applicability of terms and conditions to warehousing contracts.
- *Datec Electronic Holdings –v- UPS* – House of Lords decision on applicability of package limits, the CMR Convention and wilful default.
- *Mayban –v- Alstom* – Commercial Court decision on cargo exclusions relating to inherent vice.





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The BIMCO Cyber Security Clause 2019

Gemma Morgan

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## BIMCO Cyber Security Clause 2019



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- ❖ In this Clause the following terms shall mean:
- ❖ **“Cyber Security Incident”** is the loss or unauthorised destruction, alteration, disclosure of, access to, or control of a Digital Environment.
- ❖ **“Cyber Security”** is technologies, processes, procedures and controls that are designed to protect Digital Environments from Cyber Security Incidents.
- ❖ **“Digital Environment”** is information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems.

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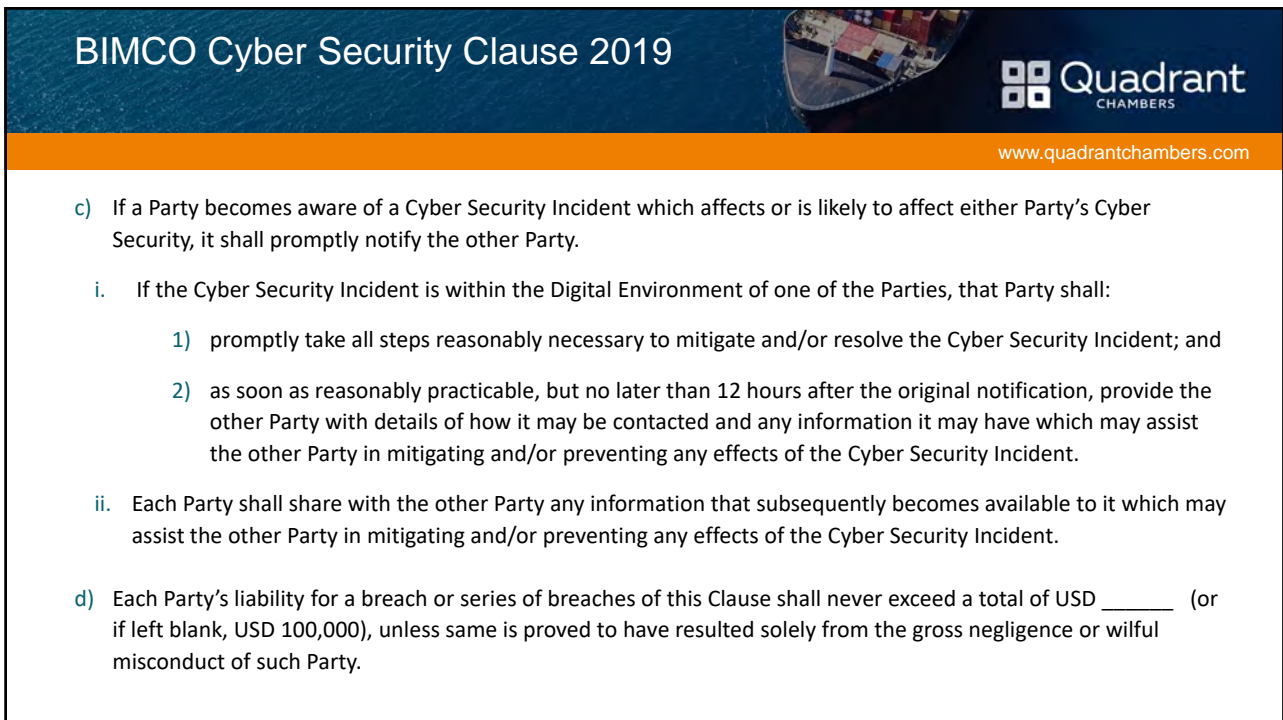
## BIMCO Cyber Security Clause 2019



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- a) Each Party shall:
  - i. implement appropriate Cyber Security measures and systems and otherwise use reasonable endeavours to maintain its Cyber Security;
  - ii. have in place appropriate plans and procedures to allow it to respond efficiently and effectively to a Cyber Security Incident; and
  - iii. regularly review its Cyber Security arrangements to verify its application in practice and maintain and keep records evidencing the same.
- b) Each Party shall use reasonable endeavours to ensure that any third party providing services on its behalf in connection with this Contract complies with the terms of subclause (a)(i)-(iii).

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The slide features a dark blue background with a photograph of a container ship at sea. The title 'BIMCO Cyber Security Clause 2019' is in white text at the top left. The Quadrant Chambers logo is at the top right. An orange bar at the bottom contains the website 'www.quadrantchambers.com'. The main content is a list of clauses in white text.

**BIMCO Cyber Security Clause 2019**

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- c) If a Party becomes aware of a Cyber Security Incident which affects or is likely to affect either Party's Cyber Security, it shall promptly notify the other Party.
  - i. If the Cyber Security Incident is within the Digital Environment of one of the Parties, that Party shall:
    - 1) promptly take all steps reasonably necessary to mitigate and/or resolve the Cyber Security Incident; and
    - 2) as soon as reasonably practicable, but no later than 12 hours after the original notification, provide the other Party with details of how it may be contacted and any information it may have which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.
  - ii. Each Party shall share with the other Party any information that subsequently becomes available to it which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.
- d) Each Party's liability for a breach or series of breaches of this Clause shall never exceed a total of USD \_\_\_\_\_ (or if left blank, USD 100,000), unless same is proved to have resulted solely from the gross negligence or wilful misconduct of such Party.

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The slide features a dark blue background with a photograph of a container ship at sea. The title 'The BIMCO AIS Switch Off Clause for Time and Voyage Charter Parties 2021' is in white text on the left. The Quadrant Chambers logo is at the top right. The London International Shipping Week logo is at the bottom right. An orange bar at the bottom contains the website 'www.quadrantchambers.com'.

**The BIMCO AIS Switch Off Clause for Time and Voyage Charter Parties 2021**

Simon Rainey QC

www.quadrantchambers.com

Quadrant Chambers  
LONDON INTERNATIONAL SHIPPING WEEK

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## Owners' AIS Obligations



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- a) For the purposes of this Clause:  
 "AIS" means an automatic identification system fitted to the Vessel in accordance with SOLAS Chapter V, Regulation 19.2. or any subsequent amendment thereto.  
 "Guidelines" means the IMO Revised Guidelines for the Onboard Operational use of Shipborne Automatic Identification Systems, Resolution A.1106(29) or any subsequent amendment thereto.
- b) Owners warrant that for the six (6) months prior to the arrival of the Vessel at the first or sole loading port under this Charter Party and throughout its duration they have not knowingly operated and will not knowingly operate the Vessel's AIS other than in accordance with the Guidelines. This includes, but is not limited to, not manipulating, knowingly switching off or otherwise disabling the Vessel's AIS other than in accordance with the Guidelines.
- c) In the event that Charterers reasonably believe that Owners are in breach of subclause (b) Charterers shall request Owners to explain the apparent breach. Owners shall provide such explanation within seventy-two (72) hours of receipt of Charterers' request.
- d) Without prejudice to other rights pursuant to this Charter Party, if Owners are in breach of subclause (b), Charterers may terminate this Charter Party. Charterers may only exercise this right after the expiry of the time period contemplated in subclause (c).

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## Charterers' AIS Obligations



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- e) Charterers warrant that throughout the duration of this Charter Party they shall not:
  - i. request Owners to operate the Vessel's AIS other than in accordance with the Guidelines. This includes, but is not limited to, manipulating, switching off or otherwise disabling the Vessel's AIS other than in accordance with the Guidelines; or
  - ii. give orders to conduct a ship-to-ship cargo transfer (STS) with a vessel whose AIS has not been operated in accordance with the Guidelines throughout the last six (6) months prior to the orders.
- f) If at any time Charterers are in breach of:
  - i. subclause (e)(i) above, then Owners may reject the request and/or terminate this Charter Party and/or claim damages resulting from the breach; or
  - ii. subclause (e)(ii) above, then Owners may refuse to conduct the STS cargo operation and request new orders.

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“Just in Time” Clause for Voyage Charterparties  
- Andrew Preston

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## THE BACKSTORY

- 2015 Paris Agreement
- April 2018 IMO strategy for reducing emissions by 50% by 2050
- current system :“Hurry and wait”

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## BIMCO JUST IN TIME ARRIVAL CLAUSE FOR VOYAGE CHARTER PARTIES 2021

  
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- a) *The owners and charterers shall use their best endeavours to obtain and share information regarding the Vessel's arrival time, this shall include, but not be limited to, information from, or required by, any relevant third party. Any port specific requirements shall be met.*
- b) *Notwithstanding any other clause in this Charter Party, the charterers shall be entitled to request the owners in writing to adjust the Vessel's speed to meet a specified time of arrival, or closest thereto, at a particular destination. Such request shall always be subject to the owners' consent which shall not be unreasonably withheld and, in the case of an approach voyage, also subject to agreeing an amended cancelling date. The charterers shall not be entitled to request an adjustment of speed outside the normal safe operational limits of the Vessel.*

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- c) *Extra time used on a sea voyage as a direct consequence of the Vessel adjusting speed pursuant to the charterers' request shall be the difference between:*

- i. *(i) the "estimated time of arrival" as provided by the Vessel prior to the charterers' request to adjust the Vessel's speed to meet a specific time of arrival, or closest thereto, at a particular destination; and*
- ii. *(ii) the "actual time of arrival" at that particular destination, or closest thereto.*

*Such extra time shall be compensated by the charterers to the owners at USD \_\_\_ per day pro rata or as otherwise agreed by the parties which shall take into account the savings in fuel by the owners and shall be payable by the charterers to the owners, prior to completion of final discharge.*

  
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- d) *Where the Vessel proceeds at a speed adjusted in accordance with subclause (b), this shall constitute compliance with, and there shall be no breach of, any obligation as to despatch and shall not constitute a deviation.*
- e) *The charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the owners provide that compliance by owners with this Clause does not constitute a breach of the contract of carriage. The charterers shall indemnify the owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in the imposition of more onerous liabilities upon the owners than those assumed by the owners under this Clause.*

  
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## Will the market adopt this clause ? Reasons to be fearful

- The economics
- legal pitfalls

  
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## REASONS TO BE OPTIMISTIC

- The future is green
- MEPC 76
- The Sea Cargo Charter
- “to ensure that charterers have the information necessary for them to calculate the emissions that result from their chartering activities and subsequently assess how their overall emission profile is developing in comparison to the requirements of the IMO’s initial strategy on reduction of green house gas emissions from ships”.



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## “JUST IN TIME” CLAUSE FOR VOYAGE CHARTERPARTIES



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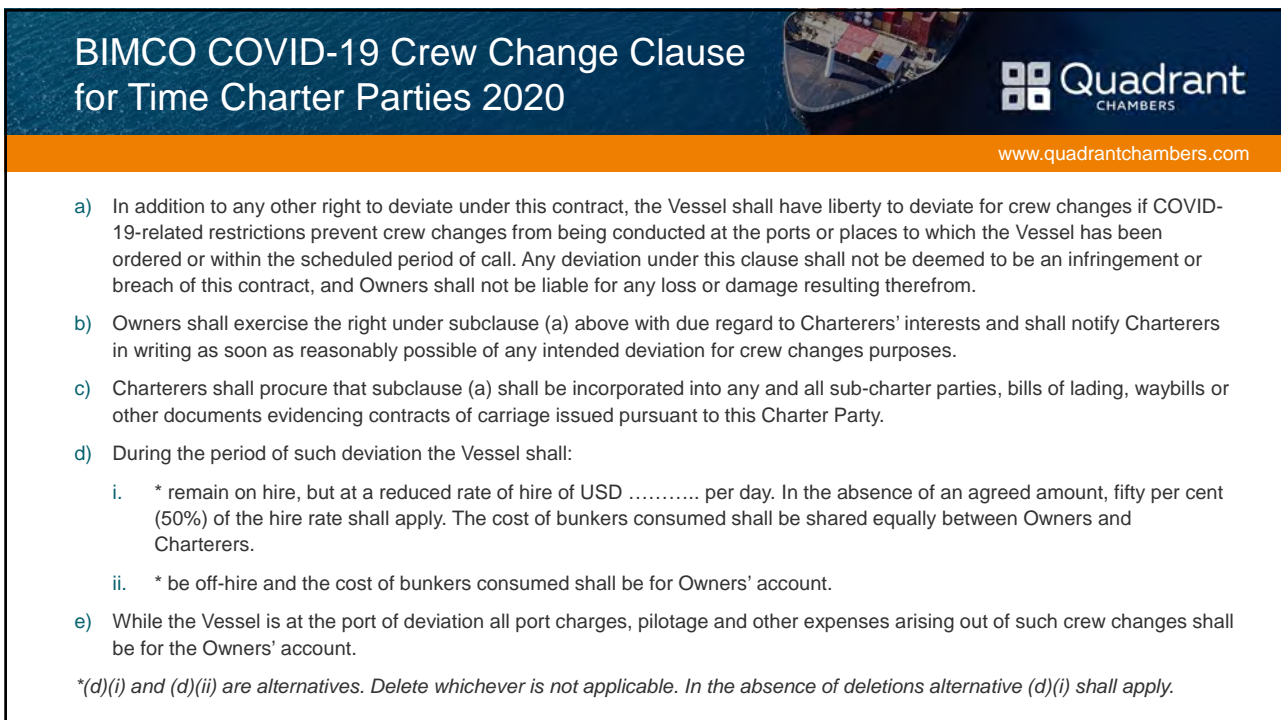
## BIMCO COVID-19 Crew Change Clause for Time Charter Parties 2020

Peter Stevenson




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## BIMCO COVID-19 Crew Change Clause for Time Charter Parties 2020



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- a) In addition to any other right to deviate under this contract, the Vessel shall have liberty to deviate for crew changes if COVID-19-related restrictions prevent crew changes from being conducted at the ports or places to which the Vessel has been ordered or within the scheduled period of call. Any deviation under this clause shall not be deemed to be an infringement or breach of this contract, and Owners shall not be liable for any loss or damage resulting therefrom.
- b) Owners shall exercise the right under subclause (a) above with due regard to Charterers' interests and shall notify Charterers in writing as soon as reasonably possible of any intended deviation for crew changes purposes.
- c) Charterers shall procure that subclause (a) shall be incorporated into any and all sub-charter parties, bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.
- d) During the period of such deviation the Vessel shall:
  - i. \* remain on hire, but at a reduced rate of hire of USD ..... per day. In the absence of an agreed amount, fifty per cent (50%) of the hire rate shall apply. The cost of bunkers consumed shall be shared equally between Owners and Charterers.
  - ii. \* be off-hire and the cost of bunkers consumed shall be for Owners' account.
- e) While the Vessel is at the port of deviation all port charges, pilotage and other expenses arising out of such crew changes shall be for the Owners' account.

*\*(d)(i) and (d)(ii) are alternatives. Delete whichever is not applicable. In the absence of deletions alternative (d)(i) shall apply.*

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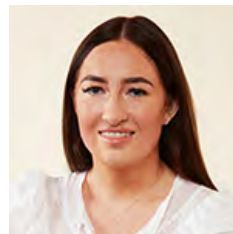
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