

If I plan to undertake a charterparty with an unfamiliar entity, what steps can I take to ensure the charterer will pay their hire?



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Due to the difficult conditions currently existing in the shipping market, particularly in the offshore sector, Members are increasingly contacting the Club regarding claims against Charterers for unpaid hire.

Unfortunately, in some cases there is little prospect of successfully enforcing any judgment or award against Charterers, as they have few or no assets against which to enforce. In such a situation, the Club's Legal Costs Cover, regardless of the strength of a Member's claim against the charterer, is unlikely to respond as there is no realistic prospect of recovering the hire.

Although there are other ways in which Members can pursue Charterers for unpaid hire, the most straightforward and effective solution is for Members to carry out thorough due diligence (also known as KYC or 'know your client') on potential Charterers before entering into any charterparty.

Due diligence is an investigation of a potential charterer to determine whether any problems could arise from entering into a charterparty with them. Most importantly, this involves investigating the financial solvency and assets of a potential charterer so that:

- a) Members can satisfy themselves that Charterers will be able to pay hire as it falls due.
- b) If problems do arise, Members will be able to obtain security for any claim for unpaid hire

Although the level of appropriate due diligence will vary in each case, the following are steps

which the Club would expect a Member, as a prudent insured, to take.

i. Make enquiries regarding the potential charterer's reputation

The potential charterer's reputation within the industry will be a useful guide to the likelihood of any potential problems. For example:

- a) The potential charterer may have a reputation for not paying hire or other behaviour which would be detrimental to a Member's interests, such as forcing a vessel to wait long periods before loading cargo or sending vessels to ports where loading is not possible.
- b) The potential charterer may have been involved in previous litigation or arbitration with vessel owners regarding hire payment or other issues.
- c) As a result of such behaviour the potential charterer might have been blacklisted by various parties within the shipping market, which would indicate that Members might be advised not to contract with them.
- d) The potential charterer may be subject to economic sanctions.

Aside from any specific contacts a Member may have, the Club recommends approaching BIMCO, or other trade-specific entities such as Intertanko or Intercargo, in order to conduct enquiries in relation to the aforementioned issues. Brokers, P&I clubs and Correspondents can also be good sources of information regarding potential Charterers, and basic internet searches are also helpful. If more detail is needed then specialist investigation companies such as Infospectrum, Gray Page, Dynamar, Marine Forensics or Lloyd's Maritime Intelligence unit can be employed to conduct further checks for an agreed fee.

A comment from CTRL

It is crucial to carry out proper due diligence on your charterers. You may have a very strong legal case for payment, but if your charterers have no assets which you can attach or arrest in order to enforce a judgment or award in your favour, then there is often no point in throwing good money after bad by pursuing them in court or arbitration.

Assuming a potential charterer has a consistent trading pattern then it should not be too difficult to obtain information regarding their reputation using the above sources. If information regarding a potential charterer is hard to find then this is a potentially worrying sign, as it suggests that the potential charterer may not have any assets against which to secure or enforce any subsequent claim for unpaid hire.

ii. Ensure that Members are protected by the terms of the charterparty

It is important that the terms of the charterparty negotiated between the Member and the potential charterer are clear and unambiguous regarding Charterers' obligations to pay hire. In this regard, the Club suggests seeking legal advice from lawyers regarding any confusing or otherwise potentially ambiguous terms of a draft charterparty (whether relating to the payment of hire or otherwise). Further, where possible Members should ensure that the terms of the charterparty give them a lien over the cargo that is carried, as this may help protect their position in the event that charterers do not pay hire.

iii. Obtain guarantees

Where possible Members should also obtain guarantees from a party whose financial position is stronger than that of the potential charterer (in practice this is usually the parent company of the potential charterer). This should reduce the risk of non-payment of hire by providing a Member with a more substantial entity to pursue in the event that a charterer fails to pay hire. However, we appreciate this won't always be possible, especially given the relative bargaining power when negotiating a lot of offshore contracts.

CASE STUDY

In 2014, the Club was asked to assist a Member who was owed large sums of unpaid hire by a charterparty. The Member eventually obtained an English arbitration award requiring the charterer to pay the unpaid hire.

An expert asset investigation company report revealed that the charterer's only discoverable assets were consistently opposed by the charterer by a series of appeals in the Nigerian Courts, on the basis that the appeal proceedings are likely to take a number of years, during which time our Member is unable to enforce the award.

This case shows the importance of carrying out due diligence when entering into a new charterparty. The Member might have been more aware of the likely difficulties of enforcing an award for unpaid hire. They could have sought a guarantee of their obligations under the charterparty and/or a guarantee from a more substantial entity with assets.