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BRIDGE LOOK-OUT

PURCHASE OF A SHIP - MIND THE VESSEL'S DOCUMENTS

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In the modern shipping industry, the sale and purchase of vessels has become one aspect of the Shipowner's business model, especially in times of volatile markets. The process of taking over vessels has become quite standardised, however, the handover of the vessel's documents frequently still causes problems, as often, only limited documentation is passed on to the new Shipowner.

In this edition of our Bridge Look-Out, we intend to address the insurance-related difficulties that may arise from insufficient documents being made available to the new Shipowner, and to explore the legal and technical solutions to resolve the respective problems.

We are pleased to welcome Dr. Eckehard Volz and Luca Thönes of Clyde & Co. and Capt. Dirk Eggers of Sandomeer, Schulte Partner as guest authors sharing their professional opinions with us in order to raise the awareness of this topic.

In the event of a damage to the vessel's engine or its machinery, for example, Underwriters request and review by default the relevant maintenance and

overhaul documents in order to consider the main exclusions from cover, i.e. lack of maintenance and ordinary wear and tear. If the requested reports cannot be provided, the Shipowner may face difficulties in proving that the damage in question falls within their insurance period. Moreover, in case of General Average, the burden of proof towards Cargo Interests to show that due diligence was exercised in making the vessel seaworthy prior to the commencement of the voyage lies with the Shipowner. If the maintenance and overhaul history is unclear and unsupported by documents, courts will find the vessel to have been unseaworthy in most instances. Subsequently, this will result in Cargo Interests not being obliged to pay the cargo contribution in General Average.

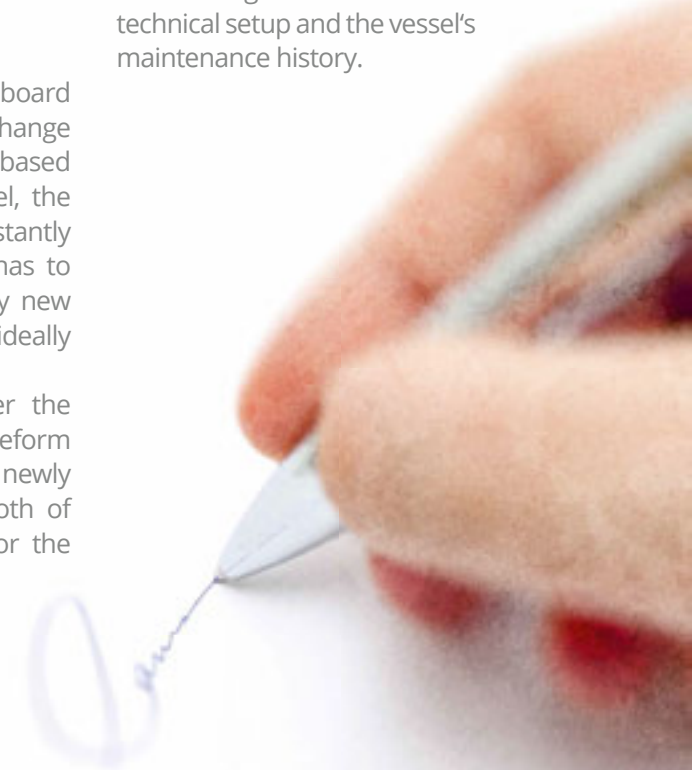
The ISM Code requires every company (whether this is the Shipowner, Manager or Bareboat Charterer, whoever has assumed the operational responsibility for a ship) to establish procedures for ensuring that the ship is maintained in conformity with the applicable rules and regulations. Inspections must be held at appropriate intervals, and records of

these must be maintained. According to the common classification rules, it is a prerequisite for maintaining the vessel's class status that the vessel's Shipowners or Managers ensure that the vessel, its hull structure, machinery, systems and equipment are properly maintained at all times. Maintenance on board sea-going vessels is usually arranged by means of a shipboard "Planned Maintenance System" ("PMS"). These days, most of the operated "PMS" are computer-based systems, for organising and recording the respective maintenance and inspection tasks.

Sellers often tend to remove shipboard records from the vessel upon change of ownership. When a computer-based "PMS" is removed from the vessel, the entire maintenance history will instantly be lost, and the documentation has to be gradually built up again in any new system installed subsequently, ideally including historical data.

From a legal perspective, neither the commonly used "Norwegian Saleform 2012" ("NSF 2012") nor the newly introduced "Shipsale 22" form, both of which are standard sale forms for the

sale and purchase of vessels, contain a detailed description of which technical documents the Seller must hand over to the Buyer during the vessel purchasing process. The handover of the vessel's technical documentation therefore largely depends on what is negotiated by the parties. However, in the course of the vessel acquisition process, there are several contractual options which the Buyer could explore in order to identify and request the relevant technical documentation for the purpose of familiarising themselves with the technical setup and the vessel's maintenance history.



Firstly, the Buyer may carry out a pre-purchase inspection of all areas of the vessel and the vessel's classification records before signing the memorandum of agreement (MOA). During this inspection, the Seller usually makes the vessel's deck and engine logbooks and records available to the Buyer (if this has been agreed). However, the Buyer is usually not allowed to carry out their own test runs or to (re-) inspect the maintenance information.

Secondly, familiarisation during the change of personnel becomes a vital part of evaluating the status of the vessel and its engines. The "Shipsale 22" now specifies that the representatives must be granted reasonable access to the vessel's communication system.

However, this reasonable access is somewhat limited, as representatives are permitted to observe "for familiarisation purposes only", but may not interfere in any way with the work of the crew or the operation, maintenance, or service of the vessel.

It goes without saying that the Buyer's personnel charged with this task should be adequately qualified and experienced, and that sufficient time is allowed for the familiarisation. Besides that, the attending personnel should be clearly instructed that their attendance on board not only serves the purpose of familiarisation with the navigational and technical features of the vessel, but also the verification of the condition of the vessel and its equipment, its

maintenance status, the quantities of remaining fuels and lubes, available spare parts and so on. That said, the personnel should be duly instructed to collect as much information as possible. All relevant findings should be properly documented, preferably supported by photos or the like and should be made available to the Buyer in a timely manner.

Thirdly, if the previous maintenance records are no longer available after the actual changeover, the Buyer should inspect all critical and other essential shipboard equipment, e.g. main engine, auxiliary engines, turbochargers, etc. as soon as possible in order to establish their condition, and in order to plan the maintenance measures that are required to safeguard the vessel's continued and

reliable operation. In this respect, the Buyer might also consider contacting the respective equipment makers in an attempt to receive information with regard to the last services, inspections and so on. Although most of the reputable equipment makers operate databases where the relevant equipment history is recorded, it should be noted that the recorded information will be complete and reliable only to the extent to which the makers were involved in previous inspections, overhauls, repairs, the supply of spare parts and so on.

Furthermore, the Buyer may consider inviting the original equipment makers to attend on board in order to carry out an assessment of the actual condition of a particular equipment.



Various original equipment makers offer such condition assessment services, for example MAN Energy Solutions under the heading “Pre-docking inspection” and Wärtsilä under the heading “Health Check for 2-Stoke Main Engines”. Whilst the names of the offered services may vary, their principal scopes are almost identical, namely the assessment and evaluation of the condition of a particular equipment at the time of inspection and the provision of makers’ maintenance recommendations, including spare parts suggestions and retrofit recommendations. According to the agreed service scope, the attending makers’ experts may not only perform visual inspections but also take measurements, for example

an in-situ measurement of cylinder liner wear. The findings of the makers’ condition assessment may assist the new Owner to plan forthcoming necessary maintenance, in order to reduce equipment’s downtime and to prevent potential failures/ breakdown.

Finally, and most importantly, the parties must agree on the delivery documents to be exchanged during the final closing meeting and handover process. Both the “NSF 2012” and the “Shipsale 22” contain a list of relevant documents to be exchanged. However, this list is regularly amended and therefore provides the Buyer with the option of requesting additional (technical and maintenance) documents. Both sale

forms also contain the specification that “the Seller shall also hand to the Buyer the classification certificate(s) as well as all plans, drawings and manuals (excluding ISM/ISPS manuals), which are on board the Vessel.” Even if the Seller is required to retain these, the Buyer may make copies. Moreover, the „Shipsale 22” now contains an obligation for the Seller to deliver the technical documents that are on board the vessel to the Buyer, which removes the requirement for Buyers to request these. The “Shipsale 22” also includes a post-delivery obligation for the Seller, if requested by the Buyer, to provide any technical documents which are in the possession of the Seller but not on board the vessel.

All in all, any Buyer is well-advised to make use of the scope for negotiation with regard to requesting the handover of technical and maintenance documents, e.g. records of previous routine and unscheduled maintenance work, inspection and repair records. The request for the handover of these records should preferably be in line with the contractual provisions for the handover of the class records. In any event, at the very least, it should be agreed that a hard copy must be left on board, even if these records are part of the maintenance system put in place by the vessel’s former Manager.

Should you have any further questions, please feel free to contact your designated claims handler at GEORG DUNCKER.

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