



TRANSFER OF TITLE TO A SHIP UNDER VARIOUS TYPES OF CONTRACT

ZORAN TASIC

INTERNATIONAL MARITIME LAW

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Transfer of Title

Importance

- payment („chicken and egg”)
- transfer of risk
- Insurance

Types of Contract

- ▶ **Memorandum of Agreement (NSF 2012)**

*In exchange for payment of the Purchase Price the Sellers shall provide the Buyers with the **Legal Bill of Sale** in a form recordable in the Buyers' Nominated Flag State, **transferring the title of the Vessel.***

- ▶ **Shipbuilding Contract (BIMCO Newbuild)**

*Upon exchange of the Protocols of Delivery and Acceptance the Builder shall provide to the Buyer **Bill of Sale** or other document that certifies that **the title of the Vessel passes to the Buyer.***

*Title (...) to the Vessel shall rest with the Builder until exchange of the Protocol of Delivery and Acceptance is effected, **immediately upon which title and risk shall pass to the Buyer.***

- ▶ **Bareboat Charter Agreement - Part IV – Hire/Purchase Agreement (BIMCO Barecon 2001)**

*In exchange for payment of the last hire instalment the Sellers shall furnish the Buyers with **a Bill of Sale.***

Not: Judicial sale of ships

Sale of ships for recycling

Bill of Sale (Body Corporate) Form No. 10A

We, (a) AB Ltd. (hereinafter called 'the Transferors') having our place of business at XX in consideration of the sum of YY paid to us by (b) BC Ltd. hereinafter called 'the transferee(s) the receipt whereof is hereby acknowledged, **transfer** (all) shares in the Ship above particularly described (...).

Transfer of Title under English law

- ▶ English Law – law of choice in most cases
- ▶ Sale of Goods Act, 1979:

Property passes when intended to pass.

„It is open to the parties to agree to make their own provisions as to when the property is to pass and the courts will give effect to this expressed intention“.

Which courts?

s. 17 - (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

The seller cannot sue the buyer for the price until the **title is transferred**.

Transfer of Title under laws and regulations of Flag countries

- ▶ Contract v. Law of the Flag – Conflict?

CROATIA

- ▶ Maritime Act, 2004 (as amended)

*Transfer of title **only by registration of transfer** at the ships' registry.*

DENMARK

- When a ship registered in a Danish ship register changes owner, this must be **notified** to the Register of Shipping.

TUVALU

- ▶ Where a change occurs in the ownership of a ship registered in Tuvalu
 - (a) **notification of the change shall be given to the Registrar;** and
 - (b) (...), the certificate of registry shall be endorsed.

MALTA

- ▶ The ownership of any kind of vessels registered under the Malta flag is generally **transferred by means of a bill of sale** which shall contain a detailed description of the vessel and (...).
- ▶ Any **transfer of ownership shall be registered** at the Merchant Shipping Directorate of the Authority for Transport in Malta.

Delivery of Ship

► BIMCO - NEWBUILDCON - Standard Newbuilding Contract

Upon exchange of **the Protocols of Delivery and Acceptance** the Builder shall provide (...) Bill of Sale or other document that certifies that the **title of the Vessel passes to the Buyer.**

Sale of Goods Act, Rule 2. (of 4 rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer):

—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

Transfer of Risk

- ▶ A question of risk will arise when the goods which have been agreed to be sold are lost or damaged and it is necessary to decide whether the buyer or seller bears the loss.
- ▶ As a general rule and in accordance with s 20.1 of the Sale of Goods Act „unless otherwise agreed, the goods is said to retain at the seller's risk until the property in them is transferred to the buyer but when **the property in them is transferred** to the buyer, the goods are at the buyer's risk whether delivery has been made or not.“



THANK YOU