

An aerial photograph of a large port facility during sunset. A large container ship is docked on the left, with its deck covered in colorful shipping containers. Several yellow gantry cranes are positioned along the pier, and the ground is filled with stacks of containers in various colors (blue, red, green, yellow). The sun is low on the horizon, creating a warm, golden glow over the water and the port. The text "SHIP LEASING TRANSACTIONS" is overlaid in the center of the image.

SHIP LEASING TRANSACTIONS

Introduction

- Since the 2008 financial crisis, it has been a very turbulent and highly-fluctuating period for the **shipping industry**.
- The **banking industry** is now heavily regulated and scrutinized. Risk management and KYC assessment is of paramount importance to all Banks.
- Many **traditional banks** have sought either to **leave** altogether the **shipping finance** sector or **drastically reduce** their exposure thereto.

Introduction

- It was only a matter of time for the **shipping industry** to respond and search for alternative means of financing.
- **Ship leasing finance** has, to a degree, filled the gap in available credit caused, *inter alia*, by the abovementioned conditions.

Three Main Different Types of Leasing Structures

- The Finance Lease
- The Operating Lease
- Sale and lease-back

We shall examine first the concepts of the **finance and operating** leases in conjunction and then, separately, focus on the lease financing mechanism of **sale and lease-back**, which in our view constitutes nowadays the most popular lease financing mechanism.

Operating vs. Finance Lease

- The extent to which the risks and rewards lie with the lessor or the lessee.
- A lease is classified as a finance lease if it **transfers** substantially all the risks and rewards incidental to the ownership of the vessel to the lessee.
- A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to the ownership of the vessel to the lessee.

The Operating Lease

- The **lessor / owner** typically maintains ownership at the end of the lease.
- The **lessee** (usually) has considerable (within reasonability) discretion to terminate the lease.
- The possession and use of the vessel revert back to the lessor / owner (at the end of the lease).

The Finance Lease

- Title of ownership may or may not be eventually transferred to the lessee at the end of the lease.
- Ultimately however, whether a lease is a finance lease or an operating lease, depends on the **substance** of each particular transaction, always examined on an *ad hoc* basis.

Sale & Lease-back

- The essence of a sale and lease-back transaction is that a **ship-owning company** (“A”) sells its vessel to another company / SPV (“B”), which then leases it back to A for A’s use.

A = becomes the (‘ship-owner’) ‘lessee’.

B = becomes the (‘financing’) ‘lessor’.

B is typically a leasing company / house or even a private equity fund.

- It is not unusual to see a purchase obligation (not merely an option) at maturity.

Sale & Lease-back

- The expansion of **Chinese leasing companies** into this market has accounted for much of the recent growth.
- However, there are many other lessors based elsewhere who are also active in this sector.
- The vessel subject to a **sale and lease-back** finance transaction, can be both a newbuilding or a second-hand vessel.

Sale & Lease-back

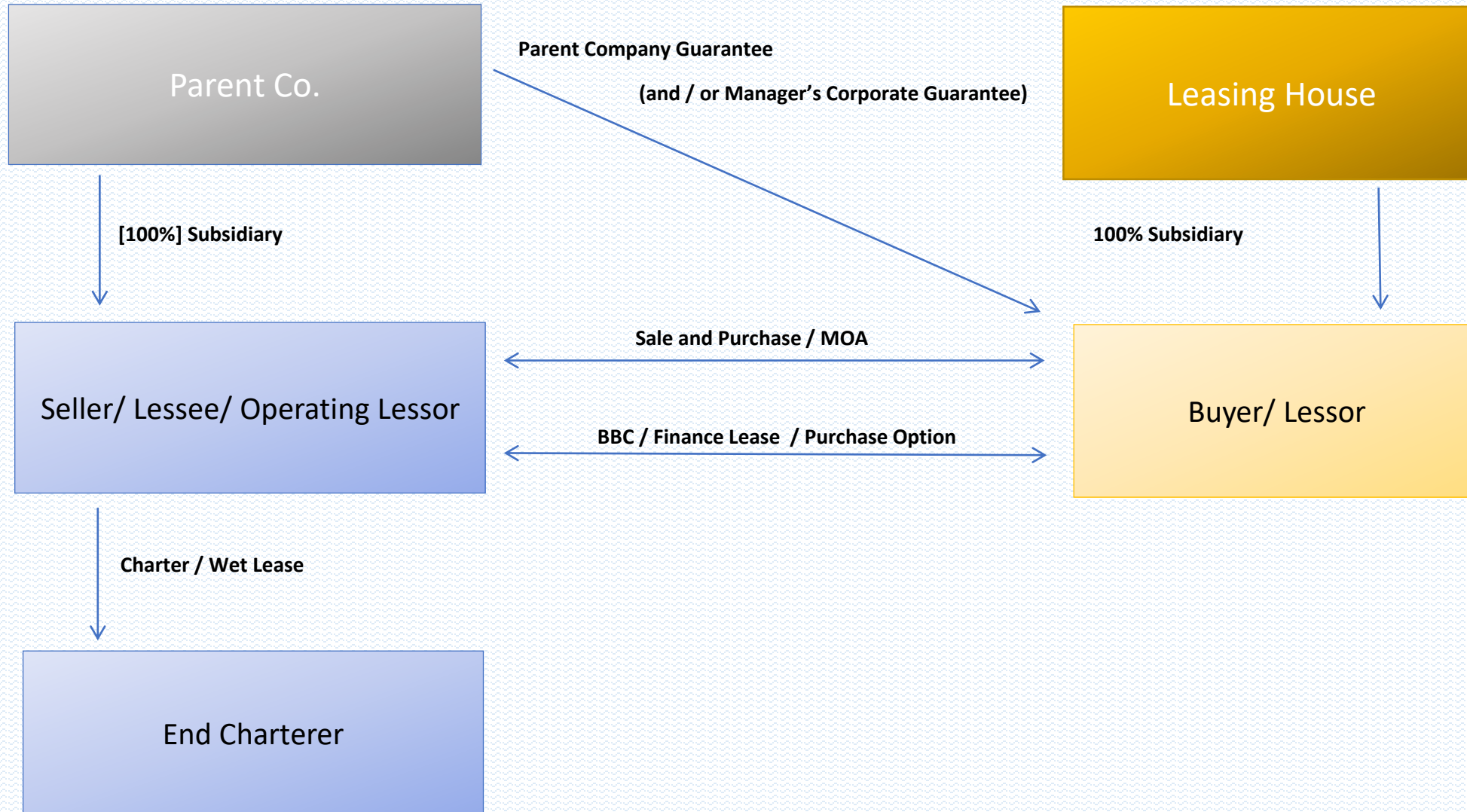
Main / Typical Transactional documents

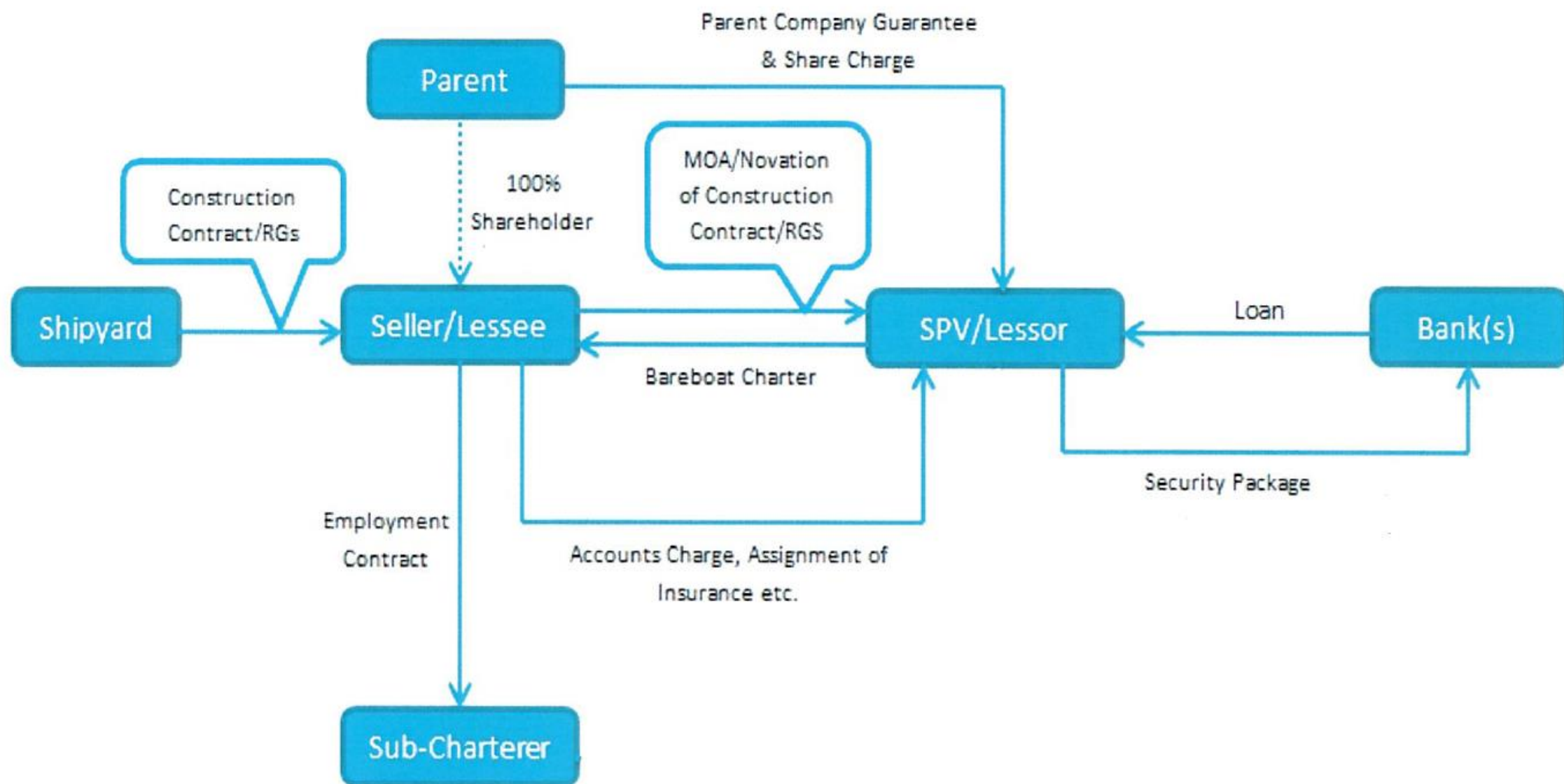
- The Memorandum of Agreement (MOA); and
- A typical '*hell or high water*' Bareboat Charter-party (BBC).

Typical Security Documents

- A Charterer's Assignment of the vessel's insurances and earnings;
- A Shares' Pledge;
- A Corporate Guarantee of the lessee's parent company and / or from the vessel's Manager;
- An Account Pledge over the Charterer's bank accounts; and
- A Manager's Undertaking.

Financial Leasing Basic structure





Sale & Lease-back

Newbuilding vs. Secondhand

- It is worth mentioning that even in a case of a new-building vessel the **same structure**, namely MOA and BBC, is usually applied.
- This is despite the potential availability of the – more straightforward – alternative of the ship-owner, the buyer under the ship-building contract, simply novating or assigning the ship-building contract towards the financing leasing house.

The Bareboat Charter-party

- The cornerstone in any sale and lease-back financing, is the concept of a (financing) bareboat charter-party (**BBC**).
- The BBC will – in addition to the standard BARECON 2001 clauses – contain a **rider** with all usual financing provisions, similar to a traditional loan agreement.
- The BBC will usually be non-cancellable, through the inclusion of a '*hell or high water*' clause.

Parallel Registration

- Before proceeding with a bareboat chartering, in the context of any lease financing transaction, a ship-owner / borrower should carefully examine the flag of its preference and ensure that the said flag allows parallel registration.
- Registries allowing parallel registration allow ships from another flag, the **original and / or the underlying flag**, to fly their own flag for a limited period of time on the basis of a bareboat charter-party, namely for the duration of the bareboat charter-party.

Ship-owner – Lessee vs. Ship-owner – Borrower

Traditional Bank Financing

- The ship-owner borrower retains legal title over the asset.
- The lender receives interest on its loan to the borrower (plus fees).

Lease Financing

- There is no borrower.
- The traditional ship-owner **operating** in the shipping market, is merely the lessee.
- The **lessor**, namely a leasing house / financier, not interested in operating and trading in the shipping market, becomes the owner.

Protection & Remedies

- Overall, one could argue that a creditor being the lessor / owner of a vessel is **better protected** when compared to the position / capacity of a creditor being merely the secured lender.
- English law treats an owner re-possessing its (own) asset, leased to a lessee, differently from the way it treats a secured lender enforcing a security i.e. its mortgage.
- Relief from forfeiture is an equitable doctrine which operates to protect a party (i.e. the lessee) from the forfeiture of a proprietary and / or possessory right, where the purpose of the right of forfeiture is to secure the payment of money.
- Since relief from forfeiture is a discretionary equitable remedy it is not altogether easy to be definitive about when it would or would not be granted.

Conclusion

- Overall, sale and lease-back transactions have become a widely used feature of the global financing of ships.
- It allows ship-owners to free-up cash, improving, therefore, their liquidity, when at the same time they may have difficulties in obtaining bank financing.
- It usually comes with a purchase option, not to say obligation, thus, any capital appreciation throughout the lease will not accrue to the lessor alone.

Conclusion

- However, caution is required *vis-à-vis*:
 - Their varying and potentially complex **structures**;
 - In terms of **legal fees** they are usually more expensive than traditional loan agreements; and
 - The creditor / lessor seems overall in a **better position** to attempt enforcement.
- Notwithstanding the above, sale and lease-back reflects today a highly developed ship-financing mechanism.
- But is it **suitable** for the Greek shipping sector?

Conclusion

- Following the amendment of landmark Greek Shipping Law 27/1975, by recent Greek Law 4646/2019, bareboat chartering is now a **regulated / eligible** activity.
- The Greek shipping community, through the Union of Greek Ship-owners, was fast and effective in securing an, overall, regulation of the sector.
- New Greek law 4646/2019, introduced for the first time the notions of bareboat chartering and ship-leasing in to the Greek Tonnage Tax System.

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END OF PRESENTATION

THANK YOU