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Sale of vessels for recycling

Analysis of the Standard Contract for the Sale of Vessels for Green Recycling in light of international ship recycling regulations

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1 INTRODUCTION

1.1 Statement of the problem

Each object has a period of useful life, and the moment when the item can no longer be used, sooner or later comes for all things in the world. The main ‘object’ that maritime law deals with is ‘a ship’. During her useful lifetime, a ship provides services and serves as a source of income for her owners. Towards the end of life, a vessel starts experiencing more technical problems and, at some point, it becomes unprofitable for the owner to keep such a vessel.¹ When this moment comes, the owner needs to somehow liquidate the ship.

However, even an obsolete vessel that can no longer be used in trade constitutes a value. Ships are technically complex structures built using various valuable materials. Many of the components that in aggregate create a vessel (mainly, steel) can be reused after a ship reaches the end of her useful lifetime. It is logical that after a vessel cannot be traded anymore, the owner would like to phase her out in a way that allows him to recover the value of such expensive and reusable materials. For these reasons, most end-of-life vessels are *recycled*. Ship-owners sell their vessels to be recycled at specialised facilities (ship recycling yards). There, vessels are dismantled, reusable components are extracted from them, and then sold.

For decades, ship recycling has not been considered as a part of the shipping industry. Ship-owners sold their vessels for recycling on the beaches of South Asia,² where vessels were demolished without any safety or environmental standards. A shipowner could receive his payment and forget about the end-of-life vessel he sold, without thinking about possible negative consequences.

In recent years, the situation has changed significantly. It was recognised that ship recycling performed in unsustainable way should not continue. Various legal mechanisms were adopted in order to establish sound standards of recycling. While the responsibility for the sustainable ship demolition was assigned primarily to the shipowners.

¹ I.e., when maintenance and other costs to keep the ship operative exceed the income from trading her. In addition to natural depreciation of a vessel, decision to phase a ship out can be caused by market fluctuations (meaning, when the earnings from the vessel become less than possible value of selling vessel for recycling). Changes in construction requirements (e.g., double hull requirements) may also result in the need to dispose of obsolete vessels.

² Mainly to India, Pakistan and Bangladesh.

Being responsible for the safe ship recycling, the shipowner does not perform the recycling process himself. Vessels *are sold* for recycling. The contract for the sale of ship for recycling will determine how the recycling process will be carried out. In addition to defining private rights and duties of the parties, such a contract shall also correspond with the existing public regime governing ship recycling.

This thesis is aimed at analysing the public and contractual framework for the sale of ships for recycling.

1.2 Purpose and scope of the thesis

The purpose of this thesis is to analyse the Standard Contract for the Sale of Vessels for Green Recycling (Recyclecon) in light of existing international ship recycling regulations.

When concluding a contract, the parties are generally free to create any terms for regulating their relations. However, ship recycling is subject to public rules regulating this industry. Therefore, the sale of a ship for recycling shall be drafted in such a way as to allocate the parties' private liabilities and to protect the parties from public liability.

Recyclecon incorporates key provisions of the International Convention for the Safe and Environmentally Sound Recycling of Ships.³ It is assumed that Recyclecon defines the rights and obligations of the parties in such a way as to ensure “recycling in a safe and environmentally sound manner”.⁴

The goal of the research is to ascertain whether and to what extent Recyclecon is an effective tool for ensuring responsible ship recycling and protecting the parties from possible risks within the existing legal framework.

The thesis is aimed at clarifying the legal position of the parties to the contract when selling ships for recycling, within the current legal regime. The ‘focus group’ of this study is shipping stakeholders and academics, not legislators. For this reason, I do not take a proactive position, suggesting possible amendments to the present legislation. The dissertation also does not address environmental, technical, labour and economic issues related to ship recycling.

³ The Hong Kong Convention, See section 2.2 below.

⁴ BIMCO, “Recyclecon. Overview”, available at: <https://www.bimco.org/contracts-and-clauses/bimco-contracts/recyclecon> (accessed 27.04.2021).

1.3 Structure and methodology

This research paper starts with a presentation of legal sources applicable to ship recycling at international and European levels. The existing legal instruments aimed at sound and safe ship recycling establish requirements for both shipowners and recycling facilities. Therefore, when concluding a contract for the sale of a ship for recycling, the parties should be aware of the existing legal regime, in order to avoid public liability. The relevant legal framework was analysed in Chapter 2.

Chapter 3 is devoted to the analysis of the Standard Contract for the Sale of Vessels for Green Recycling (Recyclecon) and forms the main part of the thesis. Recyclecon was not analysed in its entirety, the focus was mainly on the terms regulating *recycling* of ships.⁵ The Chapter is divided into two parts. In section 3.1, I analysed how and whether the terms of Recyclecon ensure the purpose of this Contract, i.e., safe and environmentally sound recycling of ships.

In section 3.2, I examined how a breach of Recyclecon by the parties can be assessed under English contract law (when the Contract itself is silent). Not all sorts of different default situations of the parties were discussed. Only breaches related to ship *recycling* were analysed. This issue was addressed using the English law, due to the fact that the parties to Recyclecon most often agree that the Contract shall be governed by English law. I analysed how Recyclecon can be interpreted, tried to “ascertain the meaning which the document would convey to a reasonable person”,⁶ based on the English rules of the interpretation of the contracts.

It was challenging to research the topic under consideration. There is practically no academic literature on contractual issues of the sale of ships for recycling. So, I studied the legal literature on English contract law⁷ and on sales of ships in general. Case law plays a significant role in the English legal system, analysis of a contract is impossible without reference to case law. Because there is almost no available case law on the topic, I referred to some relevant cases under the standard contract for the sale of ships for second-hand use,⁸ since Recyclecon is effectively a sales agreement based on this contract.

⁵ Recyclecon is based on the standard contract for the sale of ships for further use, and I did not examine such common provisions in detail.

⁶ Kim Lewison, “The interpretation of contracts”, Sweet & Maxwell, London, 2011, 5th ed., p. 22.

⁷ Mainly, Joseph Chitty, H.G. Beale, “Chitty on contracts: 1: General principles”, Sweet & Maxwell, London, 2012, 31st ed.; Joseph Chitty, H.G. Beale, “Chitty on contracts: 2: Specific contracts”, Sweet & Maxwell, London, 2015, 32nd ed.

⁸ Norwegian Shipbrokers’ Association’s Memorandum of Agreement for sale and purchase of ships (Saleform).

In search of empirical knowledge, I actively followed the ongoing discussions on ship recycling on the Internet. I was able to participate in a number of webinars on the topic. From these sources, I learned about the practical challenges and concerns of shipowners and yards related to the recycling of vessels. I managed to get in touch with some of the leading shipping practitioners⁹ who shared their insights with me.

The result of these interactions is Chapter 4 of the thesis – “How can a shipowner navigate the existing recycling framework”. In this Chapter, I described several practical considerations aimed at strengthening the shipowners’ position in connection to ship recycling. My focus was on the shipowners, as they decide how to arrange the recycling (sale for recycling) of their vessels and, accordingly, they are primarily responsible for this.

⁹ Mats E. Sæther from Nordisk Skipsrederforening (Nordisk Defence Club), available at: <https://nordisk.no> (accessed 27.04.2021); Jamie Dalzell from GMS (Singapore), available at: https://www.gmsinc.net/gms_new/index.php (accessed 27.04.2021).

2 How is ship recycling regulated at the international and European levels?

At the international level, ship recycling is regulated by two conventions: Basel Convention and Hong Kong Convention.¹⁰ In this Chapter, I present a short overview of the Conventions. My research is not focused on a deep analysis of the Conventions, due to the fact that the Basel Convention was not designed to regulate ship recycling specifically, and the Hong Kong Convention, which specifically addresses ship recycling, has not yet entered into force.

The European Ship Recycling Regulation, which is an implementation of the Hong Kong Convention at the European level, is currently the only regional legal mechanism in force that specifically regulates ship recycling. For these reasons, in section 2.3, I present a more detailed analysis of this legal instrument.

2.1 Basel Convention

The Basel Convention¹¹ was designed to regulate movement of wastes rather than ship recycling. However, the Convention applies to the industry in focus. The key point is that under the Convention a ship shall be considered waste once the owner intends to dispose of her.¹²

The Convention is aimed at as far as possible reducing transboundary movement¹³ of wastes to a minimum. Export of waste to the non-Party to the Convention is prohibited.¹⁴ Thus, it is not allowed to sell vessels for recycling from a Party to non-Party to the Convention.¹⁵

¹⁰ Both Basel Convention and Hong Kong Convention have been implemented at the European level through the European Waste Shipment Regulation No 1013/2006 and the European Ship Recycling Regulation No 1257/2013, respectively.

¹¹ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (*Basel Convention*), available at: <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx> (accessed 27.04.2021).

¹² Basel Convention, Article 2 (1). Decision VII/26 on Environmentally sound management of ship dismantling, available at: <http://www.basel.int/Portals/4/Basel%20Convention/docs/meetings/cop/cop7/docs/33eRep.pdf#page=63> (accessed 27.04.2021).

¹³ ‘Transboundary movement’ takes place when wastes are transported from one State-party to the Convention to or through another State-party; and when wastes are moved to or through an area not under the national jurisdiction of any State-party, provided that at least two States-parties are involved in the movement. Basel Convention, Article 2, 3.

Due to the fact that ships contain hazardous materials,¹⁶ such vessels constitute a category of hazardous waste.¹⁷ Export of hazardous waste from the members of OECD,¹⁸ EC and Liechtenstein is allowed only to the countries within the OECD.¹⁹ As a result, the movement of vessels from OECD, EC and Liechtenstein to the main recycling states (India, Bangladesh, Pakistan) is forbidden. While the movement for demolition in Turkey is allowed (Turkey is an OECD member).²⁰

Movement of wastes, including ships for recycling, is regulated based on the physical commencement of the movement. For the Convention to apply it is necessary that movement starts or is planned to start from state-Party to the Convention. If such a voyage for recycling commences from the OECD, EC or Liechtenstein, it can take place only to the OECD countries.

All cross-border movements of wastes are subject to the prior informed consent procedure, which forms the essential mechanism of the Convention.²¹ The purpose of this mechanism is that all the states involved²² into transboundary movement of waste (end-of-life ships), must be notified about this movement and give their consent to it.²³

The legal person responsible for organising the transboundary movement of wastes under the Basel regime is the exporter or the generator.²⁴ In shipping, a shipowner trades vessel, uses her, and consequently, makes a decision to dispose of her. After it is decided to discard the ship, shipowner arranges the vessel to be sold for recycling (i.e., exported). Thus, the obliga-

¹⁴ Basel Convention, Article 4 (5).

¹⁵ At the moment, there are 188 parties to the Convention. List of Parties to the Basel Convention, available at: <http://www.basel.int/Countries/StatusofRatifications/PartiesSignatories/tabid/4499/Default.aspx> (accessed 27.04.2021).

¹⁶ Ships contain or carry onboard materials like mercury, asbestos, polychlorinated biphenyls, and others. Such substances are described in Annex I of the Basel Convention and have hazardous characteristics mentioned in Annex III.

¹⁷ Basel Convention, Article 1 (1).

¹⁸ Organisation for Economic Cooperation and Development.

¹⁹ So-called “Basel Ban Amendment”, entered into force on 05.12.2019. Basel Convention, Article 4A, Annex VII.

²⁰ OECD, Member countries, available at: <https://www.oecd.org/about/document/list-oecd-member-countries.htm> (accessed 27.04.2021).

²¹ Basel Convention, Article 6, Article 7.

²² States of export, import and transit.

²³ The states may allow or forbid the movement. The system consists of four key phases: notification; consent and issuance of movement document; transboundary movement; confirmation of disposal.

²⁴ Basel Convention, Article 6.

tions arising from the Basel Convention primarily rest with shipowners (as either ‘exporters’²⁵ or ‘generators’²⁶). The shipowner is obliged to notify the authorities of all states involved about his intent to export the vessel for the purposes of recycling.

The country of origin of the cross-border movement (State of Export) is primarily responsible for the control of movement and the environmentally sound management of vessels intended for demolition.²⁷ The Export State shall also take measures²⁸ in case of illegal traffic²⁹ of end-of-life ships. No special obligations are imposed on states based on the flag of the vessel³⁰ or residence of shipowner. For the state to become an Export State it is only required that the voyage for the purposes of disposal physically commences or is planned to commence from this State.

The Basel Convention was adopted at the European level throughout the Waste Shipment Regulation No1013/2006.³¹ The desired effect of the Basel Convention at the European level was that hazardous wastes produced in the EU shall be managed within the OECD and not transported to developing countries (export ban).

Being a mechanism regulating transportation of waste in general, the Convention does not take into account the international nature of shipping and mobile characteristics of vessels. Firstly, if the voyage for recycling starts not in the State-party to the Convention, the Basel regime does not apply.³² Secondly, the application of waste shipment rules is dependent on

²⁵ Definition of ‘exporter’, Ibid., Article 2 (15).

²⁶ Definition of ‘generator’, Ibid., Article 2 (18).

²⁷ Ibid., Article 2 (8), Article 2 (10), Article 4 (10).

²⁸ The Export State must ensure that a vessel is taken back by shipowner (as exporter or generator of waste); if necessary, take the vessel back itself; otherwise dispose of a vessel. Ibid., Article 9 (2).

²⁹ Movement of vessels intended for recycling in violation of prior informed consent procedure and movement that results in deliberate disposal of wastes. Ibid., Article 9.

³⁰ Normally, the Flag State is the one having the strongest connection with the vessel, and therefore able to exercise enforcement. United Nations Convention on the Law of the Sea, 1982, Articles 91, 94, available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed 27.04.2021). In practice, a vessel may be registered in one country, owned and managed from another country and operate in another part of the world. As the Flag State is not necessarily the one from where the last voyage commences, the Flag State does not automatically obtain duties of the Export State under the Basel Convention.

³¹ Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste, 14.06.2006, (Waste Shipment Regulation), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006R1013> (accessed 27.04.2021).

³² Similarly, if the decision to recycle a European-flagged vessel is made while the ship is outside the European Community, the export ban does not apply and there is no breach of the regulations.

the disclosure of the intent to recycle a vessel.³³ Therefore, waste shipment rules may be easily circumvented by not notifying the authorities about the planned disposal.³⁴

Understanding the ineffectiveness of legal mechanisms treating obsolete vessels as waste has led to the adoption of legislation specifically regulating the ship recycling – the Hong Kong Convention.

2.2 Hong Kong Convention

The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships³⁵ (hereinafter – “Hong Kong Convention”) is aimed at regulating specifically ship recycling, taking into account the nature of shipping business. The Convention introduced a new approach to the industry. Unlike the waste shipment rules, which become applicable to an obsolete vessel once the owner decides to dispose of her, the Convention sets out provisions relevant for the whole lifetime of ships (‘cradle to grave’ approach).³⁶

During their entire life cycle, ships³⁷ must carry on board an Inventory of Hazardous Materials (IHM), which shall be verified by the vessel’s Flag State by issuance of an appropriate

³³ Being a subjective mental decision, the intent is extremely difficult to detect and prove, if the shipowner does not disclose this decision.

³⁴ See *Tide Carrier* case, NGO Shipbreaking Platform, “Press release – Norwegian ship owner sentenced to prison”, 01.12.2020, available at: <https://shipbreakingplatform.org/norwegian-ship-owner-sentenced-to-prison/> (accessed 27.04.2021). See *Seatrade* case, although the appeal court in July 2020 has cancelled the decision of the first instance, the case is relevant for the topic in question. NGO Shipbreaking Platform, “Press Release – Seatrade convicted for trafficking toxic ships”, 15.03.2018, available at: <https://shipbreakingplatform.org/press-release-seatrade-convicted-for-trafficking-toxic-ships/> (accessed 27.04.2021). See Judgement of the District Court of Rotterdam, 15.03.2018, 10/994550-15, English version, available at: <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Rotterdam/Nieuws/Documents/English%20translation%20Seatrade.pdf> (accessed 27.04.2021).

³⁵ The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, (*Hong Kong Convention*), available at: <http://www.basel.int/Portals/4/Basel%20Convention/docs/ships/HongKongConvention.pdf> (accessed 27.04.2021).

³⁶ The Convention regulates not only the last stage of ship’s life cycle (recycling), but also design, construction, survey, certification and operation of ships. Hong Kong Convention, Article 1 (1), Regulation 2.

³⁷ The Convention does not apply to warships, and other state-owned vessels used only on government non-commercial service. Ships of less than 500 GT and ships operating only in national waters are also excluded from the scope of the Convention. *Ibid.*, Article 3.

Certificate.³⁸ The Inventory must be maintained in order to reflect the real condition of a vessel (repairs, installation of new materials must be described). Closer to the recycling, IHM must be updated and complemented, a Ready for Recycling Certificate must be issued by the Flag State of a ship.³⁹ Duties on IHM and preparation for recycling lie on shipowners.⁴⁰

The Convention also sets out requirements for ship recycling facilities (yards). Recycling of ships is allowed only at facilities located in the countries which are Parties to the Convention and are authorised by their states to perform ship recycling.⁴¹ In order to be authorised to perform ship recycling, a facility must be designed, constructed and operated in a safe and environmentally sound manner.⁴² Authorised recycling yards are allowed to demolish only vessels that are in compliance with regulations, of the type (size) that this facility is authorised to recycle.⁴³ All facilities must prepare Ship Recycling Facility Plan, where overall procedures followed by the facility shall be described.⁴⁴ Based on the information provided by the shipowner, facility must develop a Ship Recycling Plan, presenting the planned procedures in connection to recycling of a particular vessel.⁴⁵

Violation of the requirements of the Convention shall be prohibited by national laws of the Parties.⁴⁶ Flag States are assigned responsibility to ensure the compliance of ships with the regulations.⁴⁷ Vessels are subject to surveys and certification procedures.⁴⁸ Recycling yards are supervised, checked and authorised by their national authorities.⁴⁹ Parties to the Convention shall establish mechanisms for ensuring that facilities comply with the requirements.

The Hong Kong Convention was aimed at improving the global recycling industry and establishing sound international standards for ship recycling. Despite the fact that the Hong Kong

³⁸ Ibid., Regulation 5, Regulation 11.

³⁹ Ibid.

⁴⁰ Definition of ‘shipowner’ under Convention is broad. It covers operating shipowner, manager, bareboat charterer and cash buyer. Ibid., Regulation 1 (8), Regulation 24 (1).

⁴¹ Ibid., Article 6, Regulation 8 (1), Regulation 16.

⁴² Ibid., Regulation 15 (1).

⁴³ Ibid., Regulation 17 (2).

⁴⁴ Ibid., Regulation 18.

⁴⁵ Ibid., Regulation 9.

⁴⁶ Ibid., Article 10.

⁴⁷ Ibid., Article 4 (1).

⁴⁸ Ibid., Article 5, Regulation 10.

⁴⁹ Ibid., Article 4 (2).

Convention has not yet entered into force,⁵⁰ it is relevant for the industry in question. In recent years, numerous of ship recycling yards have improved their practices to meet the standards set by the Convention.⁵¹ And now it is common practice for responsible shipowners to choose such a yard, with a Statement of Compliance with the Hong Kong Convention, when selling a vessel for recycling.

2.3 European Ship Recycling Regulation

Recycling of ships at the European level is regulated by European Ship Recycling Regulation⁵² (hereinafter - “ESRR”, “Recycling Regulation”). The Recycling Regulation is based on the provisions of the Hong Kong Convention. The goal of the Regulation is to make the recycling of European (and EEA)⁵³ ships sustainable without waiting for the Convention to enter into force. Due to the fact that the ESRR is currently the only one active legal instrument regulating ship recycling specifically, it will be presented in more detail.

Like the Hong Kong Convention, the Recycling Regulation sets requirements for both ships and recycling facilities. The key point of the Regulation is that recycling of EU/EEA-flagged vessels is allowed only at the recycling yards included in the European List of ship recycling facilities (hereinafter - “European List”).

⁵⁰ The conditions for entry into force are set in Article 17. After the ratification by India in 2019, the requirement on a number of States is fulfilled. However, the conditions on the percentage are still not met. See International Maritime Organization, “India accession brings ship recycling convention a step closer to entry into force”, 28.11.2019, available at: <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/31-India-HKC.aspx> (accessed 27.04.2021).

⁵¹ Such yards have received Statements of Compliance (SoC) with the Convention. These SoC are issued by classification societies, after inspection of a yard. See International Shipping News, “Why the beaching method of ship recycling should not be criticized”, 11.08.2020, available at: <https://www.hellenicshippingnews.com/why-the-beaching-method-of-ship-recycling-should-not-be-criticized/> (accessed 27.04.2021).

⁵² Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship recycling, 20.11.2013, (*Recycling Regulation, ESRR*), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R1257> (accessed 27.04.2021).

⁵³ ESRR was incorporated into EEA agreement by the Decision of EEA Joint Committee No257/2018, 05.12.2018, available at: <https://www.efta.int/sites/default/files/documents/legal-texts/eea/other-legal-documents/adopted-joint-committee-decisions/2018%20-%20English/257-2018.pdf> (accessed 27.04.2021).

The recycling relationship in connection with the demolition of a particular vessel arises between the ship recycling facility⁵⁴ and the shipowner.⁵⁵ The responsibilities of these parties to the relationship are analysed below.

2.3.1 What are the requirements for ship recycling facilities?

The Recycling Regulation applies to recycling facilities located in EU/EEA Member States and facilities located in third countries (if these facilities want to demolish European/EEA flagged vessels).⁵⁶ To recycle European ships, recycling facilities must be included in the European List.⁵⁷ Both European and non-European facilities may be included in the List.⁵⁸ In order to be included in the List, recycling yards must meet the requirements set out by the ESRR and be authorised by their national authorities to perform ship recycling.

The requirements that a recycling facility must comply with are the same for European and non-European facilities.⁵⁹ These requirements cover design, operation of the yard, safety procedures and management of hazardous materials and waste. Some of the requirements are not established by the Hong Kong Convention,⁶⁰ thus, the ESRR introduces a more stringent regime, compared to the Convention it is based on.

⁵⁴ ‘Ship recycling facility’ means a defined area that is a yard or facility located in a Member State or in a third country and used for the recycling of ships. Recycling Regulation, Article 3 (1) (6).

⁵⁵ ‘Shipowner’ means natural or legal person registered as the owner of the ship, including the natural or legal person owning the ship for a limited period pending its sale or handover to a ship recycling facility (cash buyers). Ibid., Article 3 (1) (14).

⁵⁶ Ibid., Article 3 (1) (7).

⁵⁷ As of 27.04.2021, the European List includes 43 ship recycling facilities: 34 EU/EEA facilities and 9 non-European yards (8 located in Turkey and 1 in the USA). The 7th version of European List of ship recycling facilities from 11.11.2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020D1675&qid=1605170136460> (accessed 27.04.2021).

⁵⁸ EU/EEA facilities are included in the European List automatically if they were authorised by their national authorities to perform ship recycling (Article 16 (1, a)). If a third-country facility wants to be included in the List, it shall apply to the European Commission. The facility must prove its compliance with the regulations and confirm that it will only accept EU/EEA ships to be recycled in accordance with the ESRR (Article 15 (2)).

⁵⁹ Article 13 (1).

⁶⁰ ESRR requires that facilities operate from built structures, demonstrate control of any leakage, in particular in intertidal zones, ensure safe and environmentally sound management and storage of hazardous materials and waste.

As in the case of the Hong Kong Convention, each facility must operate in accordance with a Ship Recycling Facility Plan (SRFP).⁶¹ Previous to the recycling of a specific vessel, based on the information received from the shipowner, the recycling facility must also prepare a Ship Recycling Plan (SRP).⁶² SRP must describe procedures and systems that are planned to be followed by the yard in connection to the recycling of a particular ship.⁶³

The SRP must be approved by the competent authority of the state where the ship recycling facility is located.⁶⁴ After that, the Plan shall be sent by the yard to the shipowner and his Flag State authority.⁶⁵ The recycling facility must also inform its competent authority that the facility is ready to start recycling of a particular ship.⁶⁶ On the completion of recycling, the yard must inform the vessel's Flag State.⁶⁷

2.3.2 What are the requirements for ships and shipowners?

European/EEA flagged ships⁶⁸ are controlled throughout their lifespan ('cradle to grave' perspective). This approach is aimed to enhance safety during the whole life of a vessel, but in particular, to ensure that future recycling of a vessel will be performed in a sound manner. Owners of European/EEA flagged vessels are allowed to recycle them only at ship recycling facilities included in the European List.⁶⁹ As for foreign ships, only certain provisions of the ESRR apply to them.

⁶¹ SRFP describes operational processes and procedures performed by the ship recycling facility, internal allocation of responsibilities, safety and training systems as well as procedures aimed at protection of human health and the environment. Recycling Regulation, Article 3 (1) (17), Article 13 (1) (e).

⁶² Ibid., Article 7 (2).

⁶³ Ibid., Article 3 (1) (16).

⁶⁴ Ibid., Article 7 (3).

⁶⁵ Ibid., Article 13 (2) (a).

⁶⁶ Ibid., Article 13 (2) (b).

⁶⁷ Ibid., Article 13 (2) (c).

⁶⁸ Definition of 'ship' under ESRR is broad, it basically includes all types of vessels, Article 3 (1) (1). Ships of less than 500 gross tonnage, ships operating only in domestic waters, warships, and other governmentally owned vessels used only on non-commercial governmental service are excluded from the scope of the Regulation (Article 2).

⁶⁹ From 31 December 2018, Recycling Regulation, Article 6 (2) (a).

2.3.2.1 “Whole life” obligations, IHM

All hazardous materials⁷⁰ contained in a particular vessel must be identified in the Inventory of Hazardous Materials (IHM).⁷¹ Each vessel shall carry the description of hazards (Part I of IHM) on board during her lifetime. Part I must be properly updated throughout the life of the ship and verified by the Flag State authorities.⁷² If everything is in order, the Inventory Certificate is issued.⁷³

IHM plays an important role in the ship’s operational life by disclosing hazards in a vessel. This allows for the crew on board to avoid possible negative effects of such substances. The importance of IHM increases when a vessel reaches the end of life and is intended for recycling. Since the recycling facility obtains information on the hazardous materials in a particular vessel, the recycling yard is able to prepare for the recycling in a prudent way.

It is responsibility of the shipowner to comply with the IHM obligations. If a vessel is sold for second-hand use, the IHM must be transferred from the previous owner to the next one. Thus, each owner of the vessel is responsible for maintaining and updating IHM while the vessel is in his possession.

The rules on IHM and Inventory Certificate are applicable to all new EU/EEA flagged vessels from 31 December 2018. To the existing European ships these rules apply from 31 December 2020.⁷⁴ Likewise, non-European-flagged vessels calling at a port or anchorage of an EU member state are required to carry IHM from 31 December 2020.⁷⁵

⁷⁰ Specified in Annex I and II of the ESRR. Certain hazardous materials shall not be used on the new ships, their use in the existing vessels shall be minimised. *Ibid.*, Article 4.

⁷¹ *Ibid.*, Article 5.

⁷² *Ibid.*, Article 5 (3, d) (7), Article 8 (1,2). Verification of Part I takes place during the initial, renewal and additional surveys of the vessel. *Ibid.*, Article 8 (4,5,6).

⁷³ Subject to renewals, Article 9 (1, 2, 3), Article 10 (1).

⁷⁴ Due to Covid-19 pandemic, the European Commission suggested Member States to apply a transitional period of 6 months (i.e., until 30.06.2021). Thus, absence of completed certificates and IHM may be justified, if caused by Covid-19 pandemic. See European Commission, “Guidelines on the enforcement of obligations under the EU Ship Recycling Regulation relating to the Inventory of Hazardous Materials of vessels operating in European waters No2020/C 349/01”, 20.10.2020, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2020_349_R_0001 (accessed 27.04.2021).

⁷⁵ Due to Covid-19 pandemic, a transitional period of 6 months may be applied by the European States. See No. 74 above; Recycling Regulation, Article 2 (1), Article 12, Article 32 (2, b).

2.3.2.2 *Preparation for recycling, Ready for Recycling Certificate*

Once the owner decides to recycle a ship, he shall make sure that the IHM is complemented by Part II (inventory of operationally generated wastes) and Part III (inventory of stores).⁷⁶ All relevant information about the vessel and the completed IHM (all three parts) shall be conveyed by the shipowner to the recycling facility prior to recycling. The Flag State authority must also be notified.⁷⁷

Shipowners are allowed to recycle European/EEA flagged vessels only at ship recycling facilities included in the European List.⁷⁸ The shipowner must prepare the vessel for recycling - minimise cargo residues, fuel oil and waste on board the ship.⁷⁹ Before the recycling, in order to verify that the documents and the vessel are in compliance with the ESRR, the Flag State's authority conducts the final survey of the vessel.⁸⁰ If all the conditions are met, the Flag State (or delegated classification society) shall issue a Ready for Recycling Certificate.⁸¹ All vessels intended for recycling shall carry this Certificate on board.⁸²

2.3.2.3 *Inspections of ships*

In addition to surveyance and certification procedures, all vessels falling within the scope of the ESRR (both European and non-European) are subject to inspections throughout Port State Control procedures.⁸³ If a ship fails to comply with the requirements, she may be warned, detained, dismissed or excluded from the ports or offshore terminals under the jurisdiction of the Member State.

⁷⁶ Recycling Regulation, Article 5 (5), (7).

⁷⁷ Ibid., Article 6 (1).

⁷⁸ From 31 December 2018, Article 6 (2) (a).

⁷⁹ Ibid., Article 6 (2) (b).

⁸⁰ Ibid., Article 8 (7).

⁸¹ Ready for Recycling Certificate must be supplemented by IHM. Ibid., Article 9 (9), Article 6 (2) (c).

⁸² Ibid., Article 6 (2) (c).

⁸³ Recycling Regulation, Article 11. See also EMSA, "Guidance on inspections of ships by the port States in accordance with Regulation (EU) 1257/2013 on ship recycling", 27.09.2019, available at: <http://www.emsa.europa.eu/we-do/sustainability/environment/150-ship-recycling/3721-guidance-on-inspections-of-ships-by-the-port-states-in-accordance-with-regulation-eu-1257-2013-on-ship-recycling.html> (accessed 27.04.2021).

2.3.3 Transfer of responsibility for the ship

The responsibility for the ship is transferred from the shipowner to the recycling yard when the facility *accepts responsibility for the ship*. Prior to this point, the shipowner is responsible for the ship and her compliance with the Flag State's requirements (Article 6 (5)).

If a vessel is in the condition which does not correspond *substantially* with the Inventory Certificate,⁸⁴ the facility may *decline to accept the ship for recycling*. In such case, the ship owner remains responsible for the ship.

The Recycling Regulation does not specify what moment shall be considered as an 'acceptance' by the facility. The consequences of the shipyard's refusal to accept the ship are also not regulated.⁸⁵ The ESRR is silent about the situation when a non-compliance of the vessel is detected after the delivery, during the process of recycling. The yard is not granted the right to return the vessel to the owner in this case. Therefore, these important issues should be in detail regulated by the contract between the shipowner and the recycling facility.

2.3.4 Liability and enforcement

Enforcement of the ESRR is the responsibility of the Member States. The States must establish penalties for infringement of the ESRR⁸⁶ and take measures to ensure that these penalties are applied.⁸⁷

⁸⁴ Including where Part I of the IHM has not been properly maintained and updated, reflecting changes in the ship's structure and equipment.

⁸⁵ There are no provisions on the shipowner's obligation to take the vessel back.

⁸⁶ The following penalties are established in some European countries. In Norway, the shipowner who wilfully or through gross negligence substantially violates provisions on environmental certification (IHM, Inventory Certificate, Ready for Recycling Certificate), shall be liable to fines or imprisonment for a term not exceeding two years; Act of 16 February 2007 No. 9 relating to ship safety and security (Ship Safety and Security Act), Section 64, Section 33, available at: <https://www.sdir.no/en/shipping/legislation/laws/ship-safety-and-security-act/> (accessed 27.04.2021).

In France, if a ship does not have the required by ESRR documentation on board, the penalty for the shipowner is one year imprisonment or a fine of €100 000. Code des transports (the Transport Code), 19.08.2015, Articles L5242-9-1, L5242-9-2, available at: <https://www.legifrance.gouv.fr/codes/id/LEGIARTI000031052601/2015-08-19/> (accessed 27.04.2021).

Under UK law, violation of the ESRR by the shipowner is punishable with a fine or/and imprisonment for a term not exceeding two years. Ship Recycling Regulations 2018 No.1122, 30.10.2018, Regulations 9, 10, 11, available at: <https://www.legislation.gov.uk/uksi/2018/1122/made> (accessed 27.04.2021).

European States are obliged to monitor the compliance of EU/EEA flagged vessels and recycling facilities located on their territory with the ESRR. Compliance of third-country facilities is ensured by their inspection and approval by the European Commission. After being included in the European List, facilities may also be subject to inspections.⁸⁸

In addition to liability for violation of the ESRR, the Regulation provides for the ‘soft’ measures. The Commission shall develop a financial instrument that would facilitate safe ship recycling (Article 29). Various incentives were considered,⁸⁹ but as for now all of them were rejected. However, when an appropriate instrument will be adopted, shipowners will have additional financial incentives to recycle their vessels sustainably.

⁸⁷ Article 22. See European Commission “Information on designated competent authorities, administrations and contact persons in the Member States (Articles 18 and 19 of the Ship Recycling Regulation 1257/2013)”, 11.09.2020, available at: [https://ec.europa.eu/environment/pdf/waste/ships/List%20of%20designated%20CAs%20and%20administrations%20and%20contact%20persons%20in%20the%20MS%20\(updated%2011.09.2020\).pdf](https://ec.europa.eu/environment/pdf/waste/ships/List%20of%20designated%20CAs%20and%20administrations%20and%20contact%20persons%20in%20the%20MS%20(updated%2011.09.2020).pdf) (accessed 27.04.2021); See European Commission, “Relevant national laws relating to the enforcement of the EU Ship Recycling Regulation and applicable penalties”, 23.10.2020, available at: [https://ec.europa.eu/environment/pdf/waste/ships/MS%20enforcement%20provisions%20SRRR%20\(website\).pdf](https://ec.europa.eu/environment/pdf/waste/ships/MS%20enforcement%20provisions%20SRRR%20(website).pdf) (accessed 27.04.2021).

⁸⁸ Recycling Regulation, Article 15 (4).

⁸⁹ The last initiative was to introduce a Ship Recycling Licence that would be required for the entry to EU ports, regardless of the vessel’s flag. See Ecorys, DNV, Erasmus, “Financial instrument to facilitate safe and sound ship recycling”, June 2016, available at: http://publications.europa.eu/resource/cellar/68d273df-433c-11e6-9c64-01aa75ed71a1.0001.01/DOC_1 (accessed 27.04.2021).

3 How is ship recycling regulated by the Standard Contract for the Sale of Vessels for Green Recycling?

This Chapter is devoted to the examination of the Standard Contract for the Sale of Vessels for Green Recycling - Recyclecon⁹⁰ (hereinafter – “the Contract”).⁹¹ As the name suggests, the Contract is intended to regulate the relationship between the parties in such a way as to ensure responsible (green) recycling. Aiming at sound ship recycling, Recyclecon incorporates crucial provisions of the Hong Kong Convention.⁹²

In section 3.1 below, I examine how the specific purpose of the Contract (recycling of a vessel) is reflected in its terms. I look into the key stages of a sale of ship for recycling and analyse how Recyclecon regulates parties’ relations and whether it ensures responsible ship recycling.

Section 3.2 aims to examine how the parties’ breaches of Recyclecon can be governed by the general principles of contract law in cases where the Contract itself is silent. Due to the fact that the parties to Recyclecon most often agree that the Contract is governed by English law, the issue is addressed from the English contract law perspective.

3.1 How is the purpose of recycling reflected in the Contract?

Recyclecon is based on the standard contract for the sale and purchase of second-hand ships (Saleform).⁹³ Yet, the objective of a sale of ship for recycling differs significantly from a typical second-hand sale.

⁹⁰ Recyclecon was developed by Baltic and International Maritime Council (BIMCO). Standard Contract for the Sale of Vessels for Green Recycling (Recyclecon), available at: <https://www.bimco.org/contracts-and-clauses/bimco-contracts/recyclecon> (accessed 27.04.2021).

⁹¹ For the sake of clarity and convenience of the reader, the Sample copy of Recyclecon with the permission of the copyright holder BIMCO is attached in Appendix I.

⁹² Recyclecon includes such mechanisms as IHM, SRFP and SRP (described above). Due to the fact that the ESRR is an implementation of the Hong Kong Convention at European level (see sections 2.2, 2.3 above), it may be said that Recyclecon as well incorporates key points of the ESRR.

⁹³ When developing the Recyclecon, provisions from the Saleform 2012 were incorporated in the Contract. BIMCO, Norwegian Shipbrokers’ Association’s Memorandum of Agreement for sale and purchase of ships (Saleform 2012), available at: <https://www.bimco.org/contracts-and-clauses/bimco-contracts/saleform-2012> (accessed 27.04.2021).

The purpose of sale of a ship for recycling is exercise of demolition of the vessel. The sale may take place directly to a recycling facility or via a cash buyer.⁹⁴ Accordingly, the parties to Recyclecon are Sellers (shipowner) and Buyers (yard or cash buyer).⁹⁵ The Sellers' interest is to liquidate the vessel. While the Buyers undertake to buy the vessel and exercise recycling with an eye to selling the extracted materials after.

Taking into account public rules on ship recycling described above, the Sellers under Recyclecon are interested not only in selling the vessel and making a profit. Shipowners (Sellers) are also concerned about *how* the recycling process will be carried out.⁹⁶ In the following sections, I analyse how this specific objective (recycling) is provided by the terms of the contract at different stages of the sale: conclusion of contract, delivery of ship, exercise of recycling.

3.1.1 Conclusion of the Contract

In the vast majority of second-hand sales of ships, Buyers make the decision about the acceptance of the vessel after physical and documentary inspection,⁹⁷ whereas the description of the vessel is limited. Is the conclusion of a contract of sale for recycling different?

“The practice in demolition sales is for there to be no inspection of the vessel by either the intermediary cash buyer or by the end-buyer”.⁹⁸ It is stated in Clause 2 of Recyclecon that “the vessel *has been accepted* by the Buyers and the sale is outright”. The Contract does not provide for the inspections of the vessel by the Buyers. Such inspections do not form “part of the approval process”.⁹⁹ The Buyers normally decide to buy a vessel and accept her *based on*

⁹⁴ Cash buyers are professional intermediaries in sales of ships for recycling. Shipowners often sell vessel to a cash buyer and then the cash buyer enters into a contract with the recycling facility.

⁹⁵ In a situation where the vessel is sold directly to the recycling facility, the yard will be the Buyers. In a case of sale to the cash buyer, there will be no contractual relation between the Sellers and the yard. The cash buyer will enter into a contract with the recycling yard. This contract must reflect the previous agreement between the cash buyer and the shipowner.

⁹⁶ Otherwise, the shipowner may face legal proceedings and public liability for violation of the recycling regulations, as described in Chapter 2 above.

⁹⁷ Saleform 2012, Clause 4 (a), Clause 4 (b).

⁹⁸ Malcolm Strong, Paul Herring, “Sale of ships: the Norwegian Saleform”, Sweet & Maxwell, London, 2016, 3d ed., p. 313.

⁹⁹ BIMCO, “Recyclecon. Explanatory notes”, available at: <https://www.bimco.org/contracts-and-clauses/bimco-contracts/recyclecon> (accessed 27.04.2021).

the description provided by the Sellers. The sale of ships for recycling is considered to be “the only one type of sale in which a detailed description is usually included”.¹⁰⁰

The main interest of the Buyers under Recyclecon is extraction of valuable materials (mainly, steel) from the ship. Does this goal affect how the purchase price is determined? The amount of extractable steel directly depends on the tonnage of the vessel which forms part of the description. The purchase price to be paid for the vessel under Recyclecon is determined based on the description and set out as the price per ton.¹⁰¹ In order to protect the Buyers’ interests, before signing the Contract, the Sellers shall provide confirmation of the vessel’s tonnage.¹⁰²

After the parties agree on the terms and sign the Contract, Buyers shall lodge a part of purchase price as a deposit in the joint names of the parties.¹⁰³ This payment is no different from the deposit under the Saleform.

Recyclecon is a contract for the sale of ships for green recycling. How is the ‘green’ recycling ensured at the stage of concluding the Contract? Like the Hong Kong Convention and the ESRR, the Contract stipulates that the yard shall have a Ship Recycling Facility Plan¹⁰⁴ describing the overall procedures followed by the facility. A responsible Seller is likely to visit the facility and/or check the SRFP to see whether the planned yard is capable of performing safe and sound ship recycling.

Recyclecon stipulates that *on the Sellers’ request* the Buyers shall provide a copy of the SRFP or of an attestation that the yard has a SRFP.¹⁰⁵ As well, on the Sellers’ request, the Buyers shall allow the Sellers to visit the yard to review the SRFP and to verify that the yard is compliant with it.¹⁰⁶ The Contract does not specify the consequences if Sellers are not satisfied with the SRFP or if they discover the facility’s non-compliance with SRFP during the visit to the yard. If such a non-conformity is discovered by the Sellers before the Contract is concluded, they are likely to choose alternative Buyers (or the yard, if the contract is concluded with a cash buyer).

¹⁰⁰ Strong, Herring, “Sale of ships: the Norwegian Saleform”, p. 32.

¹⁰¹ Recyclecon, Box 12.

¹⁰² Clause 13.

¹⁰³ Box 13, Clause 4.

¹⁰⁴ Definition of SRFP is similar to the one given in Hong Kong Convention and ESRR. Recyclecon, Clause 1.

¹⁰⁵ Clause 18, sub-clause 1.

¹⁰⁶ Ibid.

The planned procedures for the recycling of a particular vessel shall be described by the facility in Ship Recycling Plan.¹⁰⁷ This Plan shall be prepared based on the information received from the Sellers (mainly, based on Inventory of Hazardous Materials). The Contract specifies that Part I and provisional Parts II and III of the IHM shall be provided by the Sellers to the Buyers *as soon as possible after the date of the Contract*, if not already provided.¹⁰⁸ *Without undue* delay after having received these documents, the Buyers shall hand over SRP to the Sellers.¹⁰⁹

Thus, the Buyers' obligation to provide SRP is not related to the moment of conclusion of the Contract, but to the moment when the Sellers hand out necessary Parts of IHM to the Buyers. Are the Sellers allowed to demand changes to the SRP or cancel the contract if they are not satisfied with the SRP? No, the Recyclecon does not oblige the Buyers to agree on a SRP with the Sellers.

3.1.2 Delivery of the vessel

Delivery is the next stage of the sale. Shortly prior to the expected delivery, the Sellers agree to allow the Buyers to place their representatives on board the vessel.¹¹⁰ There are no provisions granting these representatives the right to inspect the ship in order to verify her compliance with the description. Therefore, it may be concluded that the purpose of this provision is Buyers' familiarisation with the vessel.¹¹¹

Delivery usually takes place at the recycling yard or at agreed intermediary port or anchorage. The vessel shall be delivered at the agreed place, at the agreed time, in standard seagoing condition.¹¹² The Sellers may not be held liable for any representations, errors, omissions and/or overall condition of the vessel upon arrival at the place of delivery, other than those stated in Part I and Annex A (Vessel details).¹¹³ Nothing shall be removed from the vessel except items from Annex B (Excluded Items) and other agreed objects.¹¹⁴

¹⁰⁷ Definition of SRP is similar to the one given in Hong Kong Convention and ESRR. Recyclecon, Clause 1.

¹⁰⁸ Clause 18, sub-clause 2, sub-clause 3.

¹⁰⁹ Clause 18, sub-clause 5.

¹¹⁰ Clause 16.

¹¹¹ The equivalent clause in Saleform specifies that these representatives are on board for the "purposes of familiarisation and in the capacity of observers only". Saleform 2012, Clause 15, sub-clause 2.

¹¹² Clause 9 (a).

¹¹³ Clause 2.

¹¹⁴ Clause 12.

Upon delivery of the vessel, the Sellers must provide the Buyers with final Parts II and III of the IHM.¹¹⁵ It is specifically stated that the information contained in the IHM “is given to the best of the Seller’s knowledge but always without guarantee”.¹¹⁶

The time when the ship shall be delivered is determined by setting the interval between earliest date of delivery¹¹⁷ and the cancelling date.¹¹⁸ Prior to the delivery, the Sellers shall give the Buyers advance notices of arrival¹¹⁹ and notice of readiness for delivery.¹²⁰ The Buyers have the right to accept or reject the notice of readiness, a rejection shall be reasoned.

Delayed delivery is regulated by Clause 10. If the Sellers anticipate that “notwithstanding the exercise of due diligence”, the vessel will not be delivered within the agreed period of time (before the cancelling date), they may notify the Buyers and propose a new date.¹²¹ If Buyers do not accept the new date, they have the right to cancel the Contract. Regardless of the decision to cancel the Contract or to maintain it, Buyers are entitled to claim damages from the Sellers.¹²²

The risk and expense for the vessel are transferred from the Sellers to the Buyers after the delivery.¹²³ When the vessel is delivered, the parties sign a protocol confirming the date and time of delivery.¹²⁴ Upon delivery of the vessel, but not later than three banking days after the notice of readiness, the Buyers shall release the deposit and pay the remaining purchase price in full.¹²⁵

¹¹⁵ Clause 18, sub-clauses 2 and 3.

¹¹⁶ Clause 18, sub-clause 4.

¹¹⁷ Box 17.

¹¹⁸ Box 18.

¹¹⁹ The purpose of this notification is to give the Buyers time to prepare for delivery. Clause 7.

¹²⁰ Notice of readiness for delivery shall be given when the vessel is physically ready for delivery. The notice shall be accompanied by the necessary documents. Clause 8.

¹²¹ This provision is intended to relieve Sellers of the obligation to deliver ship to the agreed location if they realize that timely delivery will not be possible. See BIMCO, “Recyclecon. Explanatory notes”, available at: <https://www.bimco.org/contracts-and-clauses/bimco-contracts/recyclecon> (accessed 27.04.2021).

¹²² Clause 10 (b) (ii).

¹²³ Clause 9 (d), (e).

¹²⁴ Clause 6.

¹²⁵ Clause 5.

After the ship has been delivered, in exchange for the full payment of the price, Sellers are required to provide Buyers with a wide range of documents.¹²⁶ These documents are essential for the execute of legal transfer for the ship.

The Sellers also warrant that at the time of delivery the vessel will be free from all charters, encumbrances, maritime liens or debts.¹²⁷ Furthermore, the Sellers undertake to indemnify the Buyers for any claims made against the vessel, for which the Sellers are responsible, and which were incurred prior to the delivery.¹²⁸

An exemption clause (Clause 19) regulates that if the vessel becomes a total loss before delivery, or if the delivery of the ship by the cancelling date is otherwise prevented or delayed due to cause beyond the Buyers' or the Sellers' control, neither party shall be under any liability.

The analysis above demonstrates that, in general, delivery under Recyclecon is regulated in the same way as for second-hand sales of ships. After the ship is delivered, the Sellers' obligations under the Contract are, by and large, over.¹²⁹ The next stage is exercise of recycling of the vessel.

3.1.3 Exercise of recycling

Recyclecon is a standard contract for the sale of vessels for 'green' recycling. According to the Preamble, the Buyers agree to buy the named ship and to recycle her in a safe and environmentally sound manner consistent with international and national law and relevant guidelines.

Clause 17 highlights the purpose of the transaction: "the vessel is sold for *recycling purposes only*". The Buyers are not allowed to use the vessel in any other way other than recycling.¹³⁰

¹²⁶ The list of documents includes legal bill of sale, commercial invoices, confirmation of the ownership for the vessel, confirmation that the ship is free from encumbrances, etc. Clause 6.

¹²⁷ Clause 14, sub-clause 1.

¹²⁸ Clause 14, sub-clause 2.

¹²⁹ The Contract also provides for the post-delivery assistance by Sellers (Clause 11).

¹³⁰ Recycling market is linked to steel prices. Sometimes when the steel prices are low, cash buyer would like to wait before selling the vessel to the yard, in order to earn more. In such a case the buyer trades the vessel while waiting for a good offer from scrapyards. Clause 17 protects the Sellers from such situations. See *Priyanka Shipping Ltd v Glory Bulk Carriers PTE Ltd* where the cash buyer violated this provision and traded the vessel instead of recycling. Decision of England and Wales High Court (Commercial Court), 28.10.2019, available at:

Moreover, the Buyers “undertake and warrant that the vessel will be recycled at the defined yard in accordance with Ship Recycling Facility Plan and Ship Recycling Plan”.¹³¹

Clause 18 regulates the procedure for the safe and environmentally sound recycling. General requirement is that the recycling facility shall operate in accordance with the Ship Recycling Facility Plan. Whereas the recycling of the purchased ship must be performed in compliance with the Ship Recycling Plan.

As described above, the Sellers under the Contract are not given any authority to participate or influence the preparation of the SRP. The Contract provides only for the Sellers’ right to visit the facility to ascertain that the recycling of the vessel is being conducted in accordance with the SRFP and the SRP.¹³² This provision is aimed at ensuring the sound recycling of the ship and reflects the requirements of the Hong Kong Convention, on which Recyclecon is based. The effectiveness of the contractual stipulations under consideration is, however, questionable. The Contract does not specify what should be done if the Sellers discover that the recycling is carried out in violation of the agreed manner (in breach of SRFP and/or SRP). Thus, after the vessel has been delivered, the Sellers have no authority to influence the performance of recycling.

The Recyclecon does not contain any other provisions on how the recycling process shall be carried out. It is only stipulated that after the completion of recycling, the Buyers shall inform the Sellers by providing a Statement of Completion.¹³³

3.1.4 Default of the parties

Recyclecon is based on a standard contract for second-hand sale of vessels (Saleform 2012). The clauses on both Buyers’ default (Clause 20) and Sellers’ default (Clause 21) under Recyclecon are similar to the corresponding clauses of the Saleform.¹³⁴ Due to the fact that there is no publicly available case law on the Recyclecon, the cases on parties’ default under the Saleform will be used in the analysis below.

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Comm/2019/2804.html&query=\(priyanka\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Comm/2019/2804.html&query=(priyanka))
(accessed 27.04.2021).

¹³¹ Clause 17.

¹³² Clause 18, sub-clause 6.

¹³³ Clause 18, sub-clause 7, Annex C.

¹³⁴ Saleform, Clause 13, Clause 14.

3.1.4.1 Buyers' default

The Recyclecon (Clause 20) expressly regulates two cases of Buyers' default, both of them are connected to the failure to make a monetary payment.

The first possible situation of Buyers' default is non-payment of the deposit. As described above, the Buyers shall lodge the deposit, as a security for the due fulfilment of the Contract, within five days after the signing the Contract.¹³⁵ The first limb of Clause 20 states that if the deposit is not paid as agreed, the Sellers have the right to cancel the contract and claim compensation for their losses and for all expenses incurred.

Do the Sellers have the right to demand a full deposit in a situation where they cancel the contract due to the Buyers' failure to pay the deposit? The Contract does not explicitly grant such a right, but based on case law, Sellers are entitled to do so, even if the deposit exceeds the Sellers' loss.¹³⁶ Recyclecon clearly states that the deposit serves as "*a security for the fulfilment of the Contract*"¹³⁷ by the Buyers. Therefore, such a deposit is paid in order to ensure the proper execution of the Contract by the Buyers, and the Sellers are entitled to demand the deposit in full. While the right to claim compensation established by the first limb of Clause 20 is an additional remedy.

The second limb of Clause 20 regulates Buyers' failure to pay the purchase price. Clause 5 states that the Buyers shall release the deposit and pay the balance of the price in full on delivery of the vessel. If the Buyers fail to pay the purchase price in accordance with this provision, the Sellers may cancel the contract and forfeit the deposited amount together with the interest earned. If this sum does not cover the Sellers' losses, they have the right to claim further compensation for their losses and for all expenses incurred.

The Contract does not provide for a specific period of time for the Sellers to make a decision to cancel the contract. According to the common approach, if the Sellers are entitled to cancel the agreement, they must do so within a reasonable time. What is a reasonable time will be decided depending on the circumstances of each specific case.¹³⁸

¹³⁵ Recyclecon, Clause 4.

¹³⁶ See *Griffon Shipping LLC v Firodi Shipping Ltd*, Court of Appeal, [2013] EWCA Civ 1567 and Queens Bench Division (Commercial Court), [2013] EWHC 593 (Comm), available at: www.i-law.com (accessed 27.04.2021).

¹³⁷ Recyclecon, Clause 4 (a).

¹³⁸ Sellers should be aware that in *Ateni Maritime Corporation v Great Marine Ltd (No1) (Great Marine)* a week was considered too long and unreasonable. See Queens Bench Division (Commercial Court), [1990], Lloyd's Law Reports, Vol. 2, 245, available at: www.i-law.com (accessed 27.04.2021).

3.1.4.2 Sellers' default

Sellers' default is regulated by Clause 21 of Recyclecon. The first limb of the Clause states: "should the Sellers fail to give notice of readiness in accordance with Clause 7 (advance notices of arrival) or fail to execute a legal transfer or to deliver the vessel with everything belonging to her by the cancelling date, the Buyers shall have the right to cancel the Contract, in which case the deposit in full shall be returned to the Buyers together with interest earned".

Therefore, there are three possible situations of the Sellers' default. *Firstly*, failure to give advance notice of arrival.¹³⁹ *Secondly*, there is a default if the Sellers fail to execute legal transfer. Which, as analysed above, is a failure to provide the Buyers with the essential documents from Clause 6.¹⁴⁰ *The third* possible case of Sellers' default is failure to deliver the ship with everything belonging to her.¹⁴¹

According to the first limb of Clause 21, the Buyers are entitled to cancel the Contract if the Sellers fail to fulfil the three analysed terms "by the cancelling date". It is not clear whether the stipulation "by the cancelling date" applies to all three situations, to the last two, or only to the last one. Accordingly, to clarify this point, it is necessary to resort to the analysis of the text. There are no commas between the three described situations in the first limb of Clause 21. Thus, it can be concluded that the meaning of the provision is that the words "by the cancelling date" are applicable to each situation of the Sellers' default.¹⁴² And if Sellers violate any of the analysed obligations "by the cancelling date", Buyers have the right to cancel the Contract and retain the deposit.¹⁴³ The Buyers' right to cancel the Contract and claim the deposit does not depend on the Sellers' fault.

The second limb of Clause 21 regulates a situation where the Sellers' default is due to proven negligence. In such case, whether or not the Buyers cancel the Contract, the Sellers shall compensate the Buyers for any loss and for all expenses incurred by their failure to give notice of readiness, to execute a legal transfer or to deliver the vessel with everything belonging to her by the cancelling date.

¹³⁹ See Clause 7.

¹⁴⁰ See section 3.1.2 above.

¹⁴¹ See Clause 9 and section 3.1.2 above.

¹⁴² This conclusion follows from the analysis, by analogy, of Clause 14 in Saleform 1993. See Strong, Herring, "Sale of ships: the Norwegian Saleform", p. 223.

¹⁴³ If the Buyers elect to cancel the Contract due to the Sellers' default, they must do so within a reasonable time. A reasonable period of time will be established in each particular case. See *Great Marine* case, No. 138 above; See Strong, Herring, "Sale of ships: the Norwegian Saleform", p. 109.

There are three conditions for the Buyers to be able to claim compensation. *Firstly*, negligence must be on the Sellers' side. *Secondly*, negligence shall be proven by the Buyers. *And thirdly*, there must be a causal link between the negligence and the Sellers' failure. It may be assumed that according to the vicarious liability rules, the Sellers would be held liable for the negligent conduct of their servants (e.g., crew, master, etc.). However, there shall be a causal link between such negligence and the Sellers' default. Meaning, that the negligent conduct of Sellers' servant should have caused the established failure. Therefore, not any negligence in the behaviour of any Sellers' servant matters. Only the negligence "surrounding the arranging and ensuring" of these Sellers' duties (to tender notice, execute legal transfer or deliver the vessel by the cancelling date) will be relevant.¹⁴⁴

Summarizing the analysis of contractual provisions on Sellers' default, we can conclude that there are two different situations. In case of Sellers' default, Buyers are entitled to cancel the agreement and receive the deposit with the interest in any case, irrespective of the Sellers' fault. Where such a default was due to proven negligence of the Sellers, an additional remedy for the Buyers would be the right to claim compensation.

3.2 Breach of Recyclecon by the parties, under English contract law

It follows from the analysis above that Recyclecon reproduces the basic terms typical for the sale of ships for further use. The contractually defined default provisions under Recyclecon are limited to the monetary non-payment (by the Buyers) and failure to deliver the vessel (by the Sellers). These provisions do not take into account the purpose of the Contract, i.e., ship recycling.

There are no terms in Recyclecon governing situations where the Buyers do not perform the agreed "safe and environmentally sound" recycling. Neither does the Contract resolve a situation of an actual non-compliance of the vessel with the documents provided by the Sellers. Thus, in the event of breaches, which are not expressly regulated by the Contract, the terms of Recyclecon should be interpreted and construed in accordance with the principles of contract law.

Recyclecon is an international commercial contract, the parties to which are free to choose the applicable system of law to govern their relationship.¹⁴⁵ The most common practice is for the

¹⁴⁴ See Strong, Herring, "Sale of ships: the Norwegian Saleform", p. 227.

¹⁴⁵ Recyclecon, Clause 22.

parties under Recyclecon to agree on English law and arbitration in London.¹⁴⁶ Therefore, in the vast majority of cases, the terms of the contract, the rights and duties of the parties under Recyclecon will be determined in accordance with English law.

When interpreting a contract, the English courts will try to ascertain “the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract”.¹⁴⁷ Accordingly, in the following sections, I analyse how Recyclecon can be interpreted and how the principles of English contract law apply to Recyclecon in situations where the Contract is silent.¹⁴⁸

In section 3.2.1, I briefly describe the classification of contractual terms under English law. Thereafter, I analyse how terms of Recyclecon can be construed by the courts. I focus on breaches possibly deriving from the Contract as an agreement for the sale of ships *for recycling*. Consequently, I examine two specific cases. In section 3.2.2, I consider a situation where Buyers fail to perform agreed sound ship recycling. Section 3.2.3 provides an analysis of how the Sellers’ failure to provide correct information about the vessel can be assessed by the court in the event of a dispute. I focus on these two situations because they are inherent in ship *recycling*, while other possible breaches can also occur under conventional sales of ships for further trade.¹⁴⁹

3.2.1 Classification of contractual terms in English law

Contractual terms in English law are divided into conditions, warranties and intermediate (innominate) terms.¹⁵⁰ A *condition* is a term of agreement any breach of which entitles the innocent party to treat himself as discharged from further performance of the contract, and to claim damages for the losses incurred by the breach. A *warranty* is a stipulation which does not give the aggrieved party the right to rescind the contract, but only to claim damages. An

¹⁴⁶ Recyclecon, Clause 22 (a), which also is a default provision (Clause 22 (e)).

¹⁴⁷ Kim Lewison, “The interpretation of contracts”, Sweet & Maxwell, London, 2011, 5th ed., p. 22.

¹⁴⁸ Case law plays a significant role in English legal system. In fact, there is virtually no case law on Recyclecon in the public domain. For this reason, the case law on the standard contract for the sale and purchase of ships (Saleform) and other maritime contracts will be used by analogy (Recyclecon is based on Saleform 2012).

¹⁴⁹ There are many well-established precedents for second-hand sales of vessels, while the sale of ships for recycling is not as deeply researched by the courts.

¹⁵⁰ See Joseph Chitty, H.G. Beale, “Chitty on contracts: 1: General principles”, Sweet & Maxwell, London, 2012, 31st ed., p. 917; See *Bunge Corporation v Tradax Export S.A.*, House of Lords, 1981, Vol. 2, Lloyd’s Law Reports, available at: www.i-law.com (accessed 27.04.2021).

intermediate (innominate) term is a third category, “the failure to perform which may or may not entitle the innocent party to treat himself as discharged, depending on the nature and the consequences of the breach”.¹⁵¹

Construction of intermediate terms by courts has become widespread in recent years. It is generally agreed that “a court should not be over ready [...] to construe a term in a contract as a condition”.¹⁵² In construing a term as an innominate, courts are not strictly limited by the wording used by the parties, judges look at the contract as a whole.¹⁵³ Therefore, in the event of a dispute, the court is likely to interpret and construe a term of a contract as an intermediate term. The remedies of the innocent party will be decided depending on the nature and the seriousness of the breach.

3.2.2 Buyers’ failure to perform ‘green’ recycling

As described above, Recyclecon is a standard contract for the sale of vessels for green recycling. The Buyers under the Contract undertake and warrant that the vessel will be recycled at the ship recycling facility in accordance with SRFP and SRP (Clause 17). Despite this statement, there are no provisions in the Contract regulating situations where the Buyers breach these provisions.

The Sellers under the Contract are only granted the right to visit the facility to ascertain that the recycling is being conducted in accordance with SRFP and SRP.¹⁵⁴ They are not allowed to stop the work and demand the elimination of defects discovered in the yard’s performance. Therefore, in the event of breach, Clause 17 and the entire agreement will be interpreted by the court in order to resolve a dispute on such a matter.

Interpreting a contract, the courts ascertain the meaning of the document from the position of a reasonable person.¹⁵⁵ When interpreting a term of a contract, the courts look at the language

¹⁵¹ Chitty, Beale, “Chitty on contracts: General principles”, p.p. 917, 926.

¹⁵² *Cehave M.V. v Bremer Handelgesellschaft (The Hansa Nord)*, Court of Appeal, 1975, Vol. 2, Lloyd’s Law Reports, p. 457, available at: www.i-law.com (accessed 27.04.2021).

¹⁵³ See *L. Schuler A.G. v Wickham Machine Tools Sales Ltd*, House of Lords, 1973, available at: <https://www.bailii.org/uk/cases/UKHL/1973/2.html> (accessed 27.04.2021); See *Aktion Maritime Corporation of Liberia v S. Kamas & Brothers Ltd*, Queen’s Bench Division (Commercial Court), 1987, Vol. 1, Lloyd’s Law Reports, available at: www.i-law.com (accessed 27.04.2021).

¹⁵⁴ Recyclecon, Clause 18, sub-clause 6. See section 3.1.3 above.

¹⁵⁵ See *Investors Compensation Scheme v West Bromwich Building Society*, House of Lords, 19.06.1997, available at: <https://www.bailii.org/uk/cases/UKHL/1997/28.html> (accessed 27.04.2021).

used by the parties.¹⁵⁶ Clause 17 states that the Buyers *warrant* recycling in accordance with SRFP and SRP. Thus, in case of breach of this provision, Buyers would argue that Clause 17 is a warranty, and the Sellers are entitled only to damages. However, according to the modern approach, a court will not be bound by the term ‘warranty’ used by the parties. The judges will look at the nature and the seriousness of the breach in order to decide on the Sellers’ remedies.¹⁵⁷

‘Safe and environmentally sound recycling’ in compliance with established requirements forms the basic *purpose* of the Recyclecon (Preamble and Clause 17). Performance of ‘green’ recycling constitutes Buyers’ undertakings. The Sellers conclude the contract in order to recycle the vessel in a ‘green’ manner. Thus, the grave breach of the term on safe and environmentally sound recycling in accordance with SRFP and SRP would most likely be seen as “a performance totally different from that which the contract contemplated”.¹⁵⁸ Consequently, in my opinion, the Buyers’ failure to undertake sound recycling would represent a breach that goes to the ‘root of the contract’.

When the failure “affects the substance and foundation of the adventure that contract is intended to carry out”, the innocent party is entitled to “treat himself as discharged from his liability further to perform his own unperformed obligations under the contract and from his obligation to accept performance by the other party”.¹⁵⁹ So, it can be concluded that in a situation where Clause 17 would be construed as a condition, the Buyers’ breach of this condition would entitle the Sellers to treat themselves as discharged from the contract. In such a case, the Sellers may elect between two options: to bring the contract to an end or to treat it as continuing. In either of these two scenarios, the Sellers, being an innocent party, have the right to sue the Buyers for damages.¹⁶⁰

However, the court’s decision may be different, depending on the *consequences of the breach*. Classification of contractual terms is not a rigid exercise. The modern approach is for the courts to look at the “events resulting from the breach, rather than the breach itself”.¹⁶¹ The consequences caused by the breach will be analysed by the courts in each particular case.

¹⁵⁶ For more on the rules of interpretation of contracts, see Kim Lewison, “The interpretation of contracts”, Sweet & Maxwell, London, 2011, 5th ed.

¹⁵⁷ See the classification of contractual terms, section 3.2.1 above.

¹⁵⁸ Chitty, Beale, “Chitty on contracts: General principles”, p. 1029.

¹⁵⁹ *Ibid.*, p. 1693, p. 1724.

¹⁶⁰ *Ibid.*, p. 1693.

¹⁶¹ *The Hansa Nord*, No. 152 above, p. 466.

Therefore, it may be concluded that not any breach of Clause 17 would be considered as a breach of condition giving the Sellers right to rescind the contract. The judges will try to answer the question whether the events which had occurred as a result of the breach “deprived [the Sellers] of substantially the whole benefit”¹⁶² which was intended in the contract. Therefore, if the Buyers’ breach was slight, or if the Buyers rectified the deficiencies in their performance in such a way that the Sellers were not ‘deprived from the whole benefit’ of the contract, it is likely that the courts will construe Clause 17 as a warranty. In this case, the Sellers will only be entitled to damages.

Thus, it is not possible to conclude from the Standard Contract whether Clause 17 on the Buyers’ duty to perform recycling in accordance with the Ship Recycling Facility Plan and the Ship Recycling Plan is a strict condition or a warranty. The term will be regarded as an innominate term. Depending on the facts and evidence of each particular case, the Sellers would or would not have the right to bring the contract to an end.

Economic and practical considerations may also influence the Sellers’ choice to only claim damages instead of terminating the contract. If the Sellers elect to bring the contract to an end due to the breach of condition by the Buyers, all primary unperformed obligations of both parties would be terminated. In a situation where in the middle of the recycling process the Buyers fail to exercise their obligations, and the Sellers decide to terminate the contract, the Buyers’ obligation to continue recycling would come to an end. From a practical point of view, in such a situation, Sellers would have to conclude the contract with another buyer, arrange transportation of a half-dismantled vessel to another yard, etc. Therefore, it is most likely that the Sellers would choose to affirm the agreement, treat it as ongoing and claim damages as a remedy. The amount of damages will be decided by the court for each particular case.

3.2.3 Sellers’ breach regarding description of the vessel and IHM

Recyclecon is a contract for the sale of vessels. Ships (including second-hand vessels) are under English law considered as goods. Contracts for the sale of goods are regulated by the Sale of Goods Act¹⁶³ (hereinafter – “SOGA”). When disputes arising from the sale of second-hand ships under Saleform are resolved under English law, ships are regarded as goods and the SOGA is applied.¹⁶⁴

¹⁶² *Hongkong Fir Shipping Company Ltd v Kawasaki Kisen Kaisha Ltd (The Hongkong Fir)*, Court of Appeal, 1961, Vol. 2, Lloyd’s Law Reports, p. 491, available at: www.i-law.com (accessed 27.04.2021).

¹⁶³ Sale of Goods Act 1979, available at: <https://www.legislation.gov.uk/ukpga/1979/54> (accessed 27.04.2021).

¹⁶⁴ See Strong, Herring, “Sale of ships: the Norwegian Saleform”, p. 29.

One might argue that Recyclecon differs from the sale of ships for further use. Under Recyclecon the Buyers do not only purchase the vessel but also undertake to exercise work – to perform recycling. Thus, the nature of the Recyclecon is of a mixed character. The contract can be considered as a sales contract and also as a contract for the supply of workmanship. In this sense, there are some similarities between Recyclecon and shipbuilding contracts (where there is also a mixed nature of the relationship).¹⁶⁵ Despite the hybrid character, it is established that shipbuilding contracts under English law are contracts for the sale of goods, and, accordingly, the SOGA applies to these contracts.¹⁶⁶

The SOGA defines a contract of sale of goods as “a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price”.¹⁶⁷ The term ‘goods’ includes all personal chattels other than things in action and money.¹⁶⁸ There is a number of cases where the SOGA was applied to second-hand sales of ships¹⁶⁹ and to shipbuilding contracts.¹⁷⁰ There are no provisions in the Act that exclude its application to the sale of ships for recycling. The Sellers under Recyclecon agree to transfer the property in the ship to the Buyers in exchange for the payment. The Buyers agree to buy the ship. Therefore, the Sale of Goods Act will be applicable to the sales of ships under Recyclecon.

Sections 12 to 15 of the SOGA provide for certain statutory implied terms as to title, compliance with description and quality or fitness to be applied to sales of goods. In the event of a dispute, such terms will be implied by the court in order “to establish what the contract would reasonably have been understood to mean having regard to the commercial purpose of the contract as a whole and the relevant available background of the transaction”.¹⁷¹

¹⁶⁵ The builder under a shipbuilding contract undertakes not only to build the ship, but also to sell and deliver her to the buyer.

¹⁶⁶ See Simon Curtis, Ian Gaunt, William Cecil, “The Law of shipbuilding contracts”, Informa Law from Routledge, London, 2020, 5th ed., p. 1.

¹⁶⁷ Sale of Goods Act 1979, Section 2 (1).

¹⁶⁸ Sale of Goods Act 1979, Section 61.

¹⁶⁹ *Ernst Behnke v Bede Steam Shipping Company Ltd*, King’s Bench Division, 1927, Vol. 27, Lloyd’s Law Reports, 24, available at: www.i-law.com (accessed 27.04.2021). *Dalmare SPA v Union Maritime Ltd*, Queen’s Bench Division (Commercial Court), 2012, 3537, available at: www.i-law.com (accessed 27.04.2021); See Strong, Herring, “Sale of ships: the Norwegian Saleform”, p. 29.

¹⁷⁰ *McDougall v Aeromarine of Emsworth Ltd*, Queen’s Bench Division (Commercial Court), 1958, Vol. 2 Lloyd’s Law Reports, 345, available at: www.i-law.com (accessed 27.04.2021); See Curtis, Gaunt, Cecil, “The Law of shipbuilding contracts”, p. 1.

¹⁷¹ Chitty, Beale, “Chitty on contracts: General principles”, p. 985.

The terms will be implied unless they are “negated by express agreement or by the course of dealing between the parties, or by such usage as binds both parties to the contract”.¹⁷² Thus, the parties may agree to exclude application of statutory implied terms. In order for such an exclusion to be effective, the relevant provision of the contract must be clear and explicit.¹⁷³

Recyclecon contains the entire agreement clause (Clause 23) which is aimed at preventing possible disputes for pre-contractual misrepresentations. It is stated that the Contract constitutes the entire agreement between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date of the Contract shall affect the agreement. Based on the existing case law, the wording of Clause 23, in my view, does not exclude the application of terms implied by statute or law, as there is no sufficient clarity in the wording of the Clause.¹⁷⁴ Therefore, it can be inferred that implied terms from the SOGA will apply to Recyclecon and give additional protection to the Buyers. The most likely case would be application to the Contract of the term on the vessel’s correspondence with the description (s.13 of the SOGA).

3.2.3.1 Description of the vessel

Recyclecon regulates only Sellers’ default in cases when the Sellers fail to deliver the vessel or execute legal transfer (Clause 21).¹⁷⁵ This Clause reflects typical approach in the sale of ships for second-hand use. When Buyers purchase the vessel for further trade, they physically inspect the vessel prior to the decision to buy her. In addition, under the Saleform, Buyers acquire the ship to Class standards,¹⁷⁶ which is a “general safeguard”¹⁷⁷ for the Buyers.

As described above, the way of conclusion of Recyclecon differs significantly from Saleform. The Buyers purchase the vessel based on the description provided by the Sellers. The sale is outright. The Buyers do not inspect the vessel. Therefore, description of the vessel is of great importance for the Buyers. It is stated in Clause 9 (a) that upon delivery, the vessel must comply with Part I of the Contract and Annex A. The Sellers shall not be held liable for any repre-

¹⁷² Sale of Goods Act, Section 55 (1).

¹⁷³ See *Dalmare SpA v Union Maritime Ltd (The Union Power)*, Queen’s Bench Division (Commercial Court), 2012, EWHC 3537, available at: www.i-law.com (accessed 27.04.2021); See *KG Bominflot Bunkergesellschaft für Mineralöle mbH & Co KG v Petroplus Marketing AG (The Mercini Lady)*, Court of Appeal, 2010, Case NA3/2009/1451, available at: <https://uk-westlaw-com> (accessed 27.04.2021).

¹⁷⁴ See *The Union Power* and *The Mercini Lady*, No. 173 above.

¹⁷⁵ See section 3.1.4.2 above.

¹⁷⁶ Saleform 2012, Clause 4.

¹⁷⁷ Strong, Herring, “Sale of ships: the Norwegian Saleform”, p. 6.

sentations, errors, omissions and/or overall condition of the vessel upon arrival at the place of delivery except for the items specified in Part I and Annex A.¹⁷⁸

A possible issue arising from the Contract is what remedies are available to Buyers if the vessel does not match the description provided by Sellers. As analysed above, the Buyers are entitled to cancel the agreement and claim damages if the Sellers fail to deliver the ship with everything belonging to her by the cancelling date (Clause 21). However, there are no express provisions entitling the Buyers to reject the vessel if the provided by Sellers description does not match the ship's condition. Moreover, the Buyers may discover that the vessel does not correspond with Part I and Annex A of the Contract during the process of recycling, i.e., after the delivery and payment of price. Therefore, it is necessary to analyse how the Sellers' breach to deliver the vessel in compliance with her description (on which the Buyers relied) could be evaluated by the court.

Under English law, a situation where “the buyer contracts in reliance on the description of the goods in contract without having seen them”, is categorised as a *sale by description*.¹⁷⁹ As analysed above, the Sale of Goods Act will be applicable to the sale of ships for recycling. According to the SOGA, “where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description”.¹⁸⁰ If the goods do not correspond with the description given by the seller, the buyer is entitled to “reject the goods and normally treat the contract as repudiated and to recover damages for any loss sustained as a result of the breach”.¹⁸¹ A commercial buyer does not have such right if the breach is slight. In such case, the breach shall be treated not as a breach of condition, but as a breach of warranty.¹⁸²

Historically, the courts applied the implied term on correspondence with the description strictly.¹⁸³ It was regarded as a condition, and any deviation was seen as entitling the Buyers to reject the goods. This approach has changed.

¹⁷⁸ Recyclecon, Clause 2.

¹⁷⁹ Joseph Chitty, H.G. Beale, “Chitty on contracts: 2: Specific contracts”, Sweet & Maxwell, London, 2015, 32nd ed., p. 1971.

¹⁸⁰ Sale of Goods Act, Section 13 (1).

¹⁸¹ Chitty, Beale, “Chitty on contracts: Specific contracts”, p. 1974.

¹⁸² Sale of Goods Act, Section 15 (A); See Chitty, Beale, “Chitty on contracts: 2: Specific contracts”, p. 1962.

¹⁸³ See *Arcos Ltd v E.A. Ronaasen & Son*, House of Lords, 02.12.1933, available at: [\(https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1933/1.html&query=\(ronaasen\)+AND+\(son\)+AND+\(1933\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1933/1.html&query=(ronaasen)+AND+(son)+AND+(1933)) (accessed 27.04.2021).

It is established now that absolute compliance with the description is not a strict condition. Not every term of a description identifying the subject of the contract will be a fundamental term, irrespective of the consequences of the breach. The misdescription will be considered a breach of condition only “if it is sufficient to make a fundamental difference to that which the party had contracted to take”.¹⁸⁴ The courts will apply the test of a reasonable man and look at the consequences of the breach, rather than the breach itself.¹⁸⁵ The crucial question is whether “a reasonable person would regard the goods as distinct from those he contracted to buy”.¹⁸⁶

Buyers under Recyclecon contract for a particular vessel, based on her description. The purchase price for the ship will be calculated based on the tonnage of the vessel and the costs of her recycling. Thus, the misdescription could be considered as a grave one, by showing that the vessel in her actual state is of substantially less value than in comparison with the described condition (included in Part I and/or Annex A). Moreover, misdescription of the vessel may affect the Buyers’ obligation to perform recycling in a safe and environmentally sound manner in accordance with SRF and SRP.¹⁸⁷ The SRP is developed based on information provided by the Sellers. Consequently, if the provided description is significantly misleading, the Buyers may be not able to follow the Ship Recycling Plan and exercise the recycling.

Therefore, from my point of view, if misdescription is *commercially significant* to such an extent that the actual ship could be seen as a vessel substantially different from the one the Buyers contracted for, the Buyers may be entitled to the protection provided by Section 13 of the SOGA. While, when there is a slight non-conformity (e.g., misdescription as to the name, minor difference in the tonnage, etc.), the Buyers will not be entitled to rely on the SOGA and rescind the agreement.¹⁸⁸ Following the *Hongkong Fir* approach,¹⁸⁹ the court or arbitrator will look at the consequences of the breach in each particular case.

3.2.3.2 IHM

Another possible issue arising from potential inconsistencies in the information provided by Sellers is the accuracy of the Inventory of Hazardous Materials. As described above, the

¹⁸⁴ *Reardon Smith Line Ltd v Yngvar Hansen Tangen (The Diana Prosperity)*, Court of Appeal, 1976, Vol. 2, Lloyd’s Law Reports, p. 67, available at: www.i-law.com (accessed 27.04.2021).

¹⁸⁵ See *The Hansa Nord* (No. 152 above) and *The Hongkong Fir* (No. 162 above).

¹⁸⁶ Aleka Mandaraka-Sheppard, “Modern Maritime Law, Volume 2: Managing risk and liabilities”, Informa, London, 2013, 3d ed., p. 234.

¹⁸⁷ Recyclecon, Preamble and Clause 17.

¹⁸⁸ See *Diana Prosperity* case, No. 184 above.

¹⁸⁹ No. 162 above.

Sellers shall provide the final Part I and provisional Parts II and III of IHM to the Buyers as soon as possible after the contract.¹⁹⁰ Based on the IHM, the Buyers will prepare the Ship Recycling Plan.¹⁹¹

Recyclecon states that the Sellers do not guarantee that the information in IHM is full and correct, they provide the IHM “to the best knowledge but always without guarantee”.¹⁹² It is not specified what remedies the Buyers would have in a case of breach of this term. Here it is important to note that according to the Article 6 (5) of the European Ship Recycling Regulation, the recycling facility may *decline to accept* the ship for recycling if her condition does not correspond substantially with the particulars of the inventory certificate, including where Part I of the IHM has not been properly maintained and updated, reflecting changes in the ship’s structure and equipment.¹⁹³

In contrast to the ESRR, the Buyers under Recyclecon are not expressly entitled to reject the ship and cancel the contract due to the fact that the vessel’s condition does not correspond with the IHM. Therefore, the consequences of the Sellers’ breach to provide IHM to the best knowledge will be determined based on the general principles of English law and the SOGA.

Recyclecon does not specify what is the nature of the stipulation regulating IHM (condition, warranty or innominate term). “In order to determine whether a contractual provision is a condition, an innominate term or a warranty, this must in each case be construed against the background of the contract as a whole and the factual matrix of which it forms a part”.¹⁹⁴

As a starting point, the Inventory of Hazardous Materials is the most important document for the planning and performance of ship recycling. The IHM reflects hazardous materials in the vessel’s structure and equipment, including the location and weight of such materials.¹⁹⁵ Based on this information, the yard plans the process of recycling and prepares the Ship Recycling Plan. Moreover, the purchase price for the ship is agreed depending on the volume and location of hazardous materials and the difficulty of procedures that the yard will have to undertake to recycle the vessel.

¹⁹⁰ Recyclecon, Clause 18, sub-clauses 2, 3.

¹⁹¹ Clause 18, sub-clause 5.

¹⁹² Recyclecon, Clause 18, sub-clause 4.

¹⁹³ See section 2.3.3 above.

¹⁹⁴ Curtis, Gaunt, Cecil, “The Law of shipbuilding contracts”, p. 113.

¹⁹⁵ Recyclecon, Clause 1.

An inaccurate IHM may result in an incorrect SRP. SRP is a technical and operational plan for the safe and environmentally sound recycling. It shall include procedures on how the recycling facility is planning to manage materials identified in the IHM.¹⁹⁶ Thus, if the IHM is misleading, it may make it impossible for the Buyers to meet their contractual obligations and to recycle the vessel in a sound manner. On the other hand, if there are slight discrepancies in the IHM, they are unlikely to affect the contractual undertakings.

Therefore, it can be concluded that in the event of a dispute, the court is likely to construe the Sellers' obligation to provide IHM to their best knowledge as an innominate term. Consequently, the Sellers' failure to do so "may or may not entitle the innocent party [Buyers] to treat himself as discharged, depending on the nature and the consequences of the breach".¹⁹⁷ If the breach caused minor problems that can be easily corrected, the Buyers will not have the right to treat the contract as at an end. However, if such a breach resulted in serious consequences for the Buyers, the Sellers' obligation to provide IHM will be considered as a condition, entitling the Buyers to terminate the contract.

In a situation where the Sellers' failure to provide information goes to the "root of the matter",¹⁹⁸ if this failure is so significant as to prevent the Buyers from fulfilling their promise to exercise sound recycling, then such a breach may entitle the Buyers to treat themselves as discharged from further performance. Another option for the Buyers is to affirm the contract and continue performance. Such a decision may be based on commercial considerations. In any event, regardless of the Buyers' choice (to affirm the contract or to rescind it), they are entitled to claim damages for the Sellers' failure.

It can be concluded, that neither Recyclecon, nor the general principles of English law do clearly classify the Sellers' duty to provide IHM "to the best knowledge". Sellers' breach of this obligation will be analysed by the courts on a case-by-case basis, and the relevant contractual terms will be construed with regard to particular circumstances.

¹⁹⁶ Definition of SRP, Recyclecon, Clause 1.

¹⁹⁷ Chitty, Beale, "Chitty on contracts: General principles", p.p. 917, 926.

¹⁹⁸ Ibid., p. 1724.

4 How can a shipowner navigate the existing recycling framework?

Analysis of the public and contractual legal frameworks shows that the responsibility for the safe and sound ship recycling lies primarily with the shipowners. Recycling of vessels in violation of legal requirements can lead to public (violation of recycling regulations) and private (e.g., contractual liability, damage to third parties) liability. In addition, unsound ship recycling can cause reputational and financial losses.

Shipowners going for unsound ship recycling may face financial problems, as more and more shipping stakeholders show concern for the methods of ship recycling. Many large cargo owners, concerned about the sustainability of their business, analyse the shipowners' recycling policies when choosing a shipowning company to cooperate with. Even "fully compliant with legal requirements, a shipowner may be subject to reputational and financial risks if the ship recycling process is not in line with recognized regulations and standards".¹⁹⁹

In this Chapter, I present possible solutions that can protect shipowners from the adverse consequences associated with the sale of ships for recycling. I focus on the shipowners' position due to the fact that the shipowners decide how to recycle their vessels, and it is they who can mainly be held accountable for this.

4.1 Strengthening of the contract for the sale of ships for recycling

Being primarily responsible for the safe and sound ship recycling, shipowners do not perform recycling themselves. Ships *are sold* for recycling, and the relevant contract of sale determines how the vessel will be recycled. Chapter 3 above demonstrated that the Standard Contract for the Sale of Vessels for Green Recycling does not expressly regulate the relationship between the parties in such a way as to ensure 'green' ship recycling. Recyclecon is silent on many crucial matters, and the contractual responsibilities of the parties are not as clear as they should be. To secure themselves, shipowners can develop a better contractual structure, using Recyclecon as a skeleton.

¹⁹⁹ DNV, "Ship Recycling: Navigating a complex regulatory landscape", June 2020, p. 8, available at: <https://www.dnv.com/maritime/publications/ship-recycling-navigating-complex-regulatory-landscape-download.html> (accessed 27.04.2021).

The general observation is that parties should clearly refer in the contract to the relevant legislation which the recycling process should comply with.²⁰⁰ In addition, the contract should contain more detailed provisions on the obligations of the parties.

First of all, Sellers can be given the right to demand regular reports from Buyers on how the ship is being recycled.²⁰¹ This will allow the shipowner to monitor the recycling process to ensure compliance with the standards and may serve as a good evidence in the event of future legal proceedings.

Secondly, Sellers may be entitled to stop the process of recycling if it is discovered that the work is not in compliance with the requirements of the contract. And Buyers should undertake to rectify the deficiencies.²⁰² As it was described above, Sellers under Recyclecon are allowed to visit the recycling facility to ascertain that the recycling of the vessel is being conducted in accordance with the SRFP and the SRP.²⁰³ A more detailed provision in the contract can provide for the Sellers' right to have their representatives at the site throughout the whole process of demolition. These representatives, with special knowledge in the field of ship recycling, should supervise the process and be entitled to halt the work in a case of serious non-compliance. Without such a clause, a shipowner will not be able to protect himself from possible risks.

Thirdly, it is possible to secure the Sellers by using performance bonds. These bonds issued by the Buyers to the Sellers serve as a guarantee against the Buyers' failure to fulfil their contractual obligations.²⁰⁴

Fourthly, clauses on reimbursement of costs can be included in the contract. If the Sellers' order to stop work is reasonable, Buyers should undertake to compensate possible Sellers' losses. Similarly, in a situation where it is established that the facility is unable to continue recycling in a sound way, the Buyers should indemnify the Sellers.

²⁰⁰ If we are dealing with recycling of a European-flagged vessel, the Preamble of the Contract should include a wording that the Buyers undertake to recycle the vessel in accordance with the ESRR.

²⁰¹ Accompanied by pictures from the yard.

²⁰² We discussed in an interview with Mats E. Sæther that Nordisk Skibsrederforening (Nordisk Defense Club) recommends that its members use this approach.

²⁰³ Recyclecon, Clause 18, sub-clause 6.

²⁰⁴ Releasing of such payments should be linked to the stages in recycling process, e.g., issuance of SRP, stages in cutting the vessel, etc.

Another possible problem that shipowners should be aware of is a situation where a vessel is sold for further trading, but shortly after the sale the new owner sends her for recycling. If such a ship would be sold for demolition in violation of public regulations, the previous shipowner may be subject to liability. For these reasons, a shipowner can clearly document his intentions and include recycling clauses into the contract for second-hand sale of a ship. These clauses should provide for the buyer's obligation to sell the vessel for recycling in compliance with the relevant public legal framework and undertake duties similar to the described above.²⁰⁵

One might argue that Buyers will not agree to such onerous obligations. However, it is important to keep in mind that ship recycling is a business, and commercial motives will play a significant role. If a ship is sold for recycling by a prudent owner who wants to control the demolition process actively, such a vessel will most likely be prepared to the recycling in a proper way. IHM and necessary certificates will reflect her actual condition. Hence, the recycling facility will be able to plan and prepare for the process in such a way that no 'unpleasant surprises' shall happen. Furthermore, a shipowner seeking for sound recycling will be ready to receive a lower price for the vessel in exchange for a security that the process will be carried out safely. Therefore, the yard's (or cash buyer's) expenses will be reflected in the price paid for the ship. In this way, if all the parties involved act conscientiously, their interests will be balanced. Buyers will receive their profits, and Sellers will be able to make sure that no possible negative consequences arise for them.

4.2 Active exercise of rights

Nowadays, the legal responsibilities and obligations of a shipowner selling his ship for recycling do not cease at the time of the transfer of ownership of the vessel.²⁰⁶ Even in a situation where the ownership of the vessel is transferred through the chain of middlemen, the beneficial shipowner may be held liable for the damages suffered by third parties in the course of recycling.

²⁰⁵ The former owner shall be entitled to monitor yard's work and stop it, the buyer shall undertake to indemnify the seller, etc.

²⁰⁶ Before shipowners considered themselves free from risks after the ship was sold for recycling via cash buyers. See Nikos Mikelis, "The interface between Shipowner & Cash Buyer and Cash Buyer & Recycling Yard", 28.10.2013, p. 3, available at: <http://www.gmsinc.net/gms/images/presentations/2013%20Ship%20Recycling.pdf> (accessed 27.04.2021).

In *HAMIDA BEGUM v MARAN*,²⁰⁷ the courts decided that the sub-agent, who did not have any control over the recycling yard, may be held liable for the death of the yard's worker.²⁰⁸ The judge pointed out that the sale of vessel was "legitimate and lawful",²⁰⁹ but it was *wrongful*. The court concluded that, when arranging the sale of the ship, the defendant knew that the vessel would not be recycled safely. Thus, it was established that the defendant could be considered responsible for creating a danger that caused harm to third parties (i.e., the death of the yard's worker in this case).

In addition to these findings of the court of first instance, the appeal court stated that the defendant "could, and should, have insisted on the sale to a so-called 'green' yard, where proper working practices were in place".²¹⁰

The *HAMIDA BEGUM v MARAN* case demonstrates that the last operating (beneficial) shipowner, as well as agents, managers, brokers, insurers, etc., are at risk of liability as long as they participated in organising foreseeably unsafe and unsustainable ship recycling.²¹¹

To avoid such risks, shipowners should actively exercise their rights provided by the contract. As a Seller, shipowner can and should exercise due diligence towards the Buyer and the scrapyards. Shipowner can visit and inspect the recycling facility prior to demolition. Shipowner can request the SRFP and check it. The SRP should also be analysed for compliance with the characteristics of a particular vessel intended for recycling and her IHM. If the documents submitted by the Buyer are not satisfactory, shipowner should choose another Buyer (and/or another yard).

²⁰⁷ *HAMIDA BEGUM v MARAN*, England and Wales High Court (Queen's Bench Division), EWHC 1846 (QB), 13.07.2020, available at: [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/1846.html&query=\(maran\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/1846.html&query=(maran)) (accessed 27.04.2021); *HAMIDA BEGUM v MARAN*, The Court of Appeal of England and Wales, EWCA Civ326, 10.03.2021, available at: [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2021/326.html&query=\(HAMIDA\)+AND+\(BEGUM\)+AND+\(v\)+AND+\(MARAN\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2021/326.html&query=(HAMIDA)+AND+(BEGUM)+AND+(v)+AND+(MARAN)) (accessed 27.04.2021).

²⁰⁸ The decision in *HAMIDA BEGUM v MARAN* was held considering the defendant's application to strike out the claim. The courts did not decide the case in full, but were merely answering the question whether the claimant, based on the facts presented, had a prospect of success. Both the court of first instance and the appeal court decided in favour of the claimant. The courts' findings are relevant for scrupulous shipowners.

²⁰⁹ *HAMIDA BEGUM v MARAN*, England and Wales High Court (Queen's Bench Division), EWHC 1846 (QB), 13.07.2020, §61.

²¹⁰ *HAMIDA BEGUM v MARAN*, The Court of Appeal of England and Wales, EWCA Civ326, 10.03.2021, §67.

²¹¹ These participants may be considered as aiding and abiding environmental crime, and thus, also punished.

When selling a vessel for recycling, the shipowner should play an active role and ensure that the Buyer (yard or cash buyer) fulfils his contractual obligations. A simple inclusion of a standard clause on ‘safe and environmentally sound’ recycling will not protect the shipowner from possible adverse consequences.

Shipowners should not ‘keep a blind eye’ to the actual recycling process. To be in a strong position, shipowners should actively exercise their rights and, as described in section 4.1 of the thesis, incorporate additional provisions ensuring responsible recycling in the contract for the sale of ship.²¹² Without these measures, the shipowner will bear the burden of proving that there was no negligence on his side and that there were no indications that the recycling process would not be sustainable.²¹³ The shipowner’s risks will be mitigated if the described additional measures are taken.

4.3 Trends in ship recycling, transparency

Today, ship recycling is given more attention in the society than before. The analysis of existing legal instruments regulating ship recycling (Chapter 2) showed that there are currently no *legally binding* international standards for the responsible ship recycling. Despite this fact, the *socially accepted* standards for the sale of ships for recycling are evolving as a result of ‘push’ from society.

As a party organising the recycling of vessels, shipowners are under the scrutiny of various environmental organisations. One of the most active is NGO Shipbreaking Platform.²¹⁴ This NGO collects data on recycling practices worldwide and makes this information public. The Platform’s activities have triggered some “criminal investigations by EU enforcement authorities against shipping companies”.²¹⁵ The Shipbreaking Platform publishes annual reports on

²¹² It is interesting to note that the judge of the Court of Appeal in *HAMIDA BEGUM v MARAN* to some extent confirmed the author’s proposal to use performance bonds (see section 4.1 above): safe recycling “could have been achieved by the use of provisions within the MoA which [...] could have endeavoured to link the inter-party payments to the delivery of the vessel to an approved yard”. *HAMIDA BEGUM v MARAN*, The Court of Appeal of England and Wales, EWCA Civ326, 10.03.2021, §68.

²¹³ The courts will look at the facts of the case. The price paid for the ship (per ton) can obviously indicate that the recycling was not planned to be responsible.

²¹⁴ NGO Shipbreaking Platform, available at: <https://shipbreakingplatform.org> (accessed 27.04.2021).

²¹⁵ NGO Shipbreaking Platform, “Impact Report, 2018, 2019”, p. 14, available at: <https://www.shipbreakingplatform.org/wp-content/uploads/2020/06/NGOSBP-Bi-Annual-Report-18-19.pdf> (accessed 27.04.2021).

the state of the recycling market,²¹⁶ keeps records of vessels dismantled globally and makes lists of shipping companies with the worst recycling practices. Such activities of the NGO can lead not only to reputational losses of the shipping companies, but also to financial risks.

Information published by NGO is taken into account by financial institutions. Many financial institutions over the last few years have started to ‘screen’ shipping companies in order to “contribute to a shift towards better ship recycling practices [...], taking into account social and environmental criteria, not just financial returns, when selecting asset values or clients”.²¹⁷ A group of European financiers presented Responsible Ship Recycling Standards (RSRS).²¹⁸ These standards are aimed to stimulate “responsible ship recycling and minimize the dangers associated with hazardous materials on board of ships”.²¹⁹

According to the RSRS, eight European financial institutions have publicly acknowledged that ship recycling is “part of the shipping industry value chain”.²²⁰ These institutions undertake to finance new ships that only carry IHM in compliance with the ESRR. Relevant ship recycling standards shall be incorporated in the loan agreements.²²¹ When borrowing money from the bank, clients undertake to “maintain a safe, sustainable and socially responsible policy with respect to dismantling of vessels”.²²² Borrowers shall ensure that vessels, “when they are to be scrapped, are recycled at a recycling yard which conducts its recycling business in a socially and environmentally responsible manner in accordance with the EU Ship Recycling Regulation”.²²³

This initiative of the financiers demonstrates the growing awareness of the importance of improving ship recycling practises. An example of the effect of this modern approach is the action taken by the Norwegian Bank, which in 2018 decided to exclude several shipping com-

²¹⁶ NGO Shipbreaking Platform, Annual Reports, available at: <https://shipbreakingplatform.org/resources/annual-reports/> (accessed 27.04.2021).

²¹⁷ NGO Shipbreaking Platform, “Press Release – Platform publishes list of ships dismantled worldwide in 2019”, 04.02.2020, available at: <https://shipbreakingplatform.org/platform-publishes-list-2019/> (accessed 27.04.2021).

²¹⁸ ING, “ING, ABN AMRO and NIBC present the Responsible Ship Recycling Standards”, available at: <https://www.ing.com/Sustainability/ING-ABN-AMRO-and-NIBC-present-the-responsible-ship-recycling-standards.htm> (accessed 27.04.2021).

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ ING, Responsible Ship Recycling Standards, 2017, p. 4.

²²² Ibid.

²²³ Ibid.

panies from the Government Pension Fund Global. The decision was explained by unsound recycling practices of these shipowners.²²⁴

To protect their companies from social condemnation and financial hardship, some prudent shipowners over the last few years have started making their ship recycling policies public. Ship recycling policy is an extensive statement on the company's approach to ship recycling, covering environmental and social issues. By disclosing these policies, companies show their commitment to promote sustainable ship recycling. Moreover, in the event of a dispute, the shipowner would be able to demonstrate what the company's attitude to ship recycling is.²²⁵ With the present vagueness of international ship recycling standards, such a transparent responsible ship recycling policy may be seen as a 'best practice', which, in my opinion, might become standard in the future.

Transparency is also a key to the improvement of recycling standards. By sharing their knowledge, disclosing companies facilitate the exchange of useful information and mutual learning of parties concerned. "Transparency is crucial to give business partners, the public and environmental organizations the opportunity to make assessment of shipping companies' performance based on provided information".²²⁶

Twenty-seven stakeholders have joined Ship Recycling Transparency Initiative (SRTI).²²⁷ The SRTI is an online platform where "shipowners share information on their ship recycling policies and practices that in turn helps key stakeholders make informed decisions".²²⁸ Not only shipowners are signatories to the SRTI, cargo owners, banks, investors, insurers, etc., are also participating in this initiative. These players of shipping business do not want to be associated with unsound recycling practices and therefore evaluate the disclosed information about recycling when choosing their commercial partners.

These market trends demonstrate that the current state of play is very different from what it was 15-20 years ago. From my point of view, the changes are likely to evolve further. Ship-

²²⁴ Norges Bank, "Decisions on exclusion and observation from the Government Pension Fund Global", 16.01.2018, available at: <https://www.nbim.no/en/the-fund/news-list/2018/decisions-on-exclusion-and-observation-from-the-government-pension-fund-global/> (accessed 27.04.2021).

²²⁵ It may serve as additional evidence of the shipowner's intention to recycle his vessels sustainably.

²²⁶ Ship Recycling Transparency Initiative, "Testimonials", Statement of international environmental NGO Bellona Foundation, available at: <https://www.shiprecyclingtransparency.org/testimonials/> (accessed 27.04.2021).

²²⁷ As of 27.04.2021. Ship Recycling Transparency Initiative, "SRTI Signatories", available at: <https://www.shiprecyclingtransparency.org/srti-signatories/> (accessed 27.04.2021).

²²⁸ Ship Recycling Transparency Initiative, "Report 2020", p. 3, available at: <https://www.shiprecyclingtransparency.org/annual-report-2020/> (accessed 27.04.2021).

owners should have responsible ship recycling policies in place and comply with these policies. By being transparent about their recycling practices, responsible shipowners will benefit in the long run. Sustainable recycling will attract more investors and clients, who would like to work with responsible shipowners. We can also assume that in the future, more and more stakeholders will become concerned about how the shipowners they cooperate with recycle their vessels. Therefore, shipowners with transparent sound recycling practices, in my opinion, will be in a better competitive position compared to companies that go for unsustainable recycling.

5 Conclusions

The purpose of this thesis was to analyse the public and contractual framework for the sale of ships for recycling, with a focus on the Standard Contract for the Sale of Vessels for Green Recycling (Recyclecon).

As for public legal regime, the research demonstrated that ship recycling (sale of ships for recycling) is regulated by complex legal instruments, addressing the industry under consideration from various perspectives. There are currently no internationally applicable binding standards governing ship recycling. Different legal mechanisms apply to the sale of ships for recycling, depending on the geographical location of a ship and the flag a vessel flies.

When a ship is sold for recycling, the parties to the contract should be aware of the relevant public regulations in order to avoid liability for violations of the existing legislation. The responsibility for unsound ship recycling is primarily assigned to the shipowners, and this responsibility lasts until the vessel is recycled properly.

The Standard Contract for the Sale of Vessels for Green Recycling “aims to improve standards overall by reflecting green practices and making liabilities and obligations as clear as possible”.²²⁹ However, the research showed that, in fact, Recyclecon mainly reproduces the standard terms for second-hand sales of ships and does not clearly regulate the parties’ relationship, taking into account the specific purpose of this agreement (i.e., ship *recycling*). A mere conclusion of such a contract does not ensure safe and sound ship recycling, and consequently, does not safeguard its parties. Recyclecon is silent on possible breaches related to the failure to perform agreed ‘green’ recycling.

The sale of ships for recycling under English law is considered as a sale of goods, and the relevant rules are applicable to such a sale. The analysis showed that the application of English contract law to Recyclecon may clarify some controversial points. However, the study also demonstrated that the application of English law does not provide a clear answer to the question of how potential disputes can be resolved, since each case will be decided based on the specific circumstances.

Being responsible for the safe recycling of their vessels, shipowners are at great risk of negative consequences associated with unsound ship recycling. Such possible risks include both public and private liability. In order to mitigate such dangers, shipowners should develop a

²²⁹ Michael Galley, “Shipbreaking: Hazards and Liabilities”, Springer, Cham, 2014, p. 8.

better contractual structure to regulate sales of ships for recycling, since Recyclecon does not cope with this job. Shipowners are advised to actively control the process of recycling and take other measures to secure themselves. To summarise, I can paraphrase a Norwegian proverb and say that a shipowner can be happy twice: once when he acquires a vessel, and on the day when his ship is recycled properly. And achieving this second goal is certainly a Herculean task.

Appendix I



RECYCLECON

STANDARD CONTRACT FOR THE SALE OF VESSELS
FOR GREEN RECYCLING PART I

1. Place and Date of Contract (Cl. 1):		
2. Sellers/Place of business (state full style and address) (Cl. 1)	3. Buyers/Place of business (state full style and address) (Cl. 1)	4. Ship Recycling Facility (state full style and address) (Cl. 1)
5. Name of Vessel (Cl. 1, 6(b))	6. Type of Vessel (Cl. 1, 6(b))	7. Year and place built (Cl. 1, 6(b))
8. Flag (Cl. 1, 6(b))	9. Place of registry (Cl. 1, 6(b))	10. IMO number (Cl. 1, 6(b))
11. Light Displacement Tonnage (state metric or long tons) (Cl. 1, 8(a)) (a) Lightweight (b) Deductions (c) Contractual Weight ((a)-(b))	12. Purchase Price in figures and letters (state both lump sum price and the equivalent price per ton Contractual Weight)(Cl. 3) (a) Lump sum price (b) Equivalent price per ton Contractual Weight	
13. Deposit (Cl. 4, 5) (a) State percentage of purchase price (b) State name and place of bank to which the deposit shall be paid	14. Sellers' bank (state name and place and bank account details to which the balance of the purchase price shall be paid) (Cl. 4, 5)	
15. Place of closing (Cl. 1, 6)	16. Place of Delivery (Cl. 1, 2, 9(a))	
17. Earliest date of delivery (Cl. 10(a))	18. Cancelling date (Cl. 10(a))	
19. Post-delivery assistance (Cl. 11) (a) State number of days: (b) State daily cost:	20. Dispute Resolution (state 22(a), 22(b) or 22(c)); if 22(c) agreed place of arbitration must be stated)(Cl. 22)	
21. Notices to Sellers (state contact details) (Cl. 24(b))	22. Notices to Buyers (state contact details) (Cl. 24(b))	
23. Numbers of additional clauses covering special provisions, if agreed		

It is mutually agreed between the party named in Box 2 and the party named in Box 3 that this Contract consisting of PART I including additional clauses, if any agreed and stated in Box 23, and PART II as well as Annexes "A" (Vessel Details), "B" (Excluded Items) and "C" (Statement of Completion) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annexes "A", "B" and "C" shall prevail over those of PART II to the extent of such conflict but no further.

Signature (Sellers)	Signature (Buyers)
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PART II
RECYCLECON Standard Contract for the Sale of Vessels for Green Recycling

Preamble

The party stated in Box 2 (hereinafter “the Sellers”) has agreed to sell and the party stated in Box 3 (hereinafter “the Buyers”) has agreed to buy the Vessel named in Box 5 on the following terms and conditions which, in particular, include an undertaking to recycle the Vessel in a safe and environmentally sound manner consistent with international and national law and relevant guidelines.

1. Definitions

“Banking Days” are days on which banks are open both in the country of the currency stipulated for the purchase price in Clause 3 (Purchase Price) and at the place of closing stated in Box 15.

“Buyers” means the party stated in Box 3.

“Contractual Weight” means the LDT less the Deductions stated in Box 11.

“Deductions” means the permanent ballast and other weight deductions stated in Box 11.

“IMO” means the International Maritime Organization.

“Inventory of Hazardous Materials” means a list of hazardous materials (as defined in Appendix 1 of the IMO 2011 Guidelines for the Development of the Inventory of Hazardous Materials (Resolution MEPC.197 (62)) or any subsequent amendment thereto) in the Vessel’s structure and equipment, in operational wastes and stores on board the Vessel, including the location and weight of such materials.

“LDT” means the light displacement tonnage in tons stated in Box 11. (Box 11 to state whether metric or imperial measurement apply).

“Place of Delivery” means the place stated in Box 16.

“Recycling” means the activity of complete or partial dismantling of ships at the Ship Recycling Facility in order to recover components and materials for reprocessing and re-use, whilst taking care of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities.

“Sellers” means the party stated in Box 2.

“Ship Recycling Facility Plan” means a technical, operational and management plan for the safe and environmentally sound operation of the Ship Recycling Facility (as defined in the relevant guidelines to be developed by the IMO).

“Ship Recycling Facility” means a defined area that is an authorised site, yard or facility, as identified in Box 4, used for Recycling and that is designed, constructed, and operated in a safe and environmentally sound manner.

“Ship Recycling Plan” means a technical and operational plan for the safe and environmentally sound Recycling of the Vessel and also including how the type and amount of materials identified in the Inventory of Hazardous Materials will be managed and disposed of (as defined in the IMO 2011 Guidelines for the Development of the Ship Recycling Plan (Resolution MEPC.196 (62)) or any subsequent amendment thereto).

“Statement of Completion” means a written confirmation issued by the Ship Recycling Facility in the form as set out in Annex C (Statement of Completion).

“Vessel” means the vessel named in Box 5 details of which are set out in Boxes 6 to 11 and Annex A (Vessel Details) attached hereto.

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RECYCLECON Standard Contract for the Sale of Vessels for Green Recycling

2. Outright Sale

The Vessel has been accepted by the Buyers and the sale is outright and definite subject only to the terms and conditions of this Contract. The Sellers shall not be held liable for any representations, errors, omissions and/or overall condition of the Vessel upon arrival at the Place of Delivery stated in Box 16 except for the items specified in PART I and Annex A (Vessel Details).

3. Purchase Price

The purchase price is the sum stated in Box 12 payable in United States Dollars based on the Contractual Weight.

4. Deposit

- (a) As a security for the due fulfilment of this Contract, the Buyers shall lodge a deposit free of bank charges as stated in Box 13 to be placed with the bank stated in Box 14 in the joint names of the Sellers and the Buyers.
- (b) Such deposit shall be made latest within five (5) Banking Days after the date of signing this Contract.
- (c) Interest, if any, on such deposit shall be credited to the Buyers.
- (d) Any fees or charges for establishing and holding such deposit shall be borne equally by the Sellers and the Buyers.

5. Payment

The Buyers shall release the deposit stated in Box 13 to the Sellers and shall pay the balance of the said purchase price in full free of bank charges to the Sellers' bank stated in Box 14 on delivery of the Vessel, but not later than three (3) Banking Days from the time the Sellers have tendered or retendered (as the case may be) notice of readiness for delivery in accordance with Clause 8 (Notice of Readiness for Delivery).

6. Documentation

In exchange for the payment of the purchase price the Sellers shall furnish the Buyers with the following documents at the place of closing stated in Box 15, which shall be in English or with a certified English translation if in a language other than English:

- (a) legal bill of sale transferring title of the Vessel and stating that the said Vessel is free from all encumbrances and maritime liens or any other debts whatsoever, notarially attested, legalised or apostilled as appropriate by the Consul or other competent authority;
- (b) three (3) commercial invoices signed by the Sellers, stating the purchase price of the Vessel and her particulars as stated in Boxes 5-10 and Annex A (Vessel Details) as applicable;
- (c) a certificate or transcript of registry evidencing the ownership of the Vessel on the date of delivery and that the Vessel is free from registered encumbrances and mortgages. Such certificate or transcript of registry shall be dated not earlier than five (5) days prior to Sellers tendering notice of readiness for delivery;
- (d) a written undertaking from the Sellers to apply for and supply to the Buyers a certificate of deletion or closed transcript of registry latest thirty (30) days after delivery of the Vessel;
- (e) a written undertaking by the Sellers to instruct the Master or their agents to promptly release and physically deliver the Vessel to the Buyers;
- (f) the corporate authority of the Sellers according to which they decide the sale of the Vessel and a copy of the power of attorney authorizing the signature of the bill of sale; both documents to be notarially attested, legalised or apostilled as appropriate by the Consul or other competent authority;

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PART II
RECYCLECON Standard Contract for the Sale of Vessels for Green Recycling

- (g) a declaration according to which the Sellers guarantee that at the time of delivery the Vessel is free from all encumbrances and maritime liens or any other debts whatsoever;
- (h) an incumbency certificate or other corporate document listing the directors of the Sellers; and
- (i) power of attorney of the Buyers appointing one or more representatives to act on behalf of the Buyers in the performance of this Agreement, duly notarially attested and legalised or (as appropriate) apostilled.

At the time of delivery the Buyers and the Sellers shall sign a protocol of delivery and acceptance confirming the date and time of delivery of the Vessel. As soon as the full purchase price has been irrevocably credited to the Sellers' bank account stated in Box 14 the Sellers shall confirm in writing to the Buyers receipt of the full purchase price.

The Sellers shall make available to the Buyers copies, samples or drafts (as the case may be) of the documents listed in sub-clauses 6(a) to 6(i) within a reasonable time after the signing of this Contract, but no later than three (3) days prior to the date of the Sellers tendering notice of readiness for delivery.

7. Advance Notices of Arrival

The Sellers shall give to the Buyers fifteen (15), ten (10), seven (7), and three (3) days' notice of the expected time of arrival of the Vessel at the Place of Delivery.

8. Notice of Readiness for Delivery

When the Vessel is physically ready for delivery, the Sellers shall give to the Buyers a written notice of readiness for delivery. The notice of readiness shall be tendered during normal office hours at the Place of Delivery and, unless otherwise specifically provided elsewhere in this Contract, be accompanied by the following documents to the extent necessary:

- (a) a certificate issued by a local marine surveyor confirming the LDT of the Vessel as per the original of the valid trim and stability booklet on board the Vessel, which has been sighted;
- (b) a valid certificate issued by the relevant authorities on arrival at the Place of Delivery specifying that all the Vessel's cargo tanks, pump rooms and cofferdams are safe for entry and safe for hot work;
- (c) a letter from the Sellers' local agents at the Place of Delivery stating that there are no pending dues against the Vessel at the time of delivery; and
- (d) a letter signed and stamped by the Master stating that neither he nor the crew have any outstanding claims against the Vessel.

The Buyers shall either accept or reject the Notice of Readiness within one (1) Banking Day, failing which it shall be deemed accepted. A rejection of the Notice of Readiness shall be reasoned. In the event of a rejection, the Sellers may either maintain the original Notice of Readiness or make proper rectification and retender the Notice of Readiness.

9. Delivery

- (a) The Vessel shall be delivered by the Sellers to the Buyers at the Place of Delivery under her own power with main engine and all generators in working condition, safely afloat, substantially intact, free of cargo, with anchors in place, unless otherwise described in Annex A (Vessel Details).
- (b) If, on the Vessel's arrival, the Place of Delivery is inaccessible for any reason whatsoever including but not limited to port congestion, the Vessel shall be delivered and taken over by the Buyers as near thereto as she may safely get at a safe and accessible berth or at a safe anchorage which shall be designated by the Buyers, always provided that such berth or anchorage shall be subject to the approval of the Sellers which shall not be unreasonably withheld. If the Buyers fail to nominate such place within twenty-four (24) hours of arrival, the

PART II
RECYCLECON Standard Contract for the Sale of Vessels for Green Recycling

place at which it is customary for vessels to wait shall constitute the Place of Delivery.

- (c) The delivery of the Vessel according to the provisions of sub-clause 9(b) shall constitute a full performance of the Sellers' obligations according to sub-clause 9(a) and all other terms and conditions of this Contract shall apply as if delivery had taken place according to sub-clause 9(a).
- (d) All expenses incurred prior to delivery of the Vessel and all local fees/port disbursements relating to the Vessel, including repatriation of the crew shall be for the Sellers' account while all expenses after delivery of the Vessel, including import duties and other local taxes, if any, shall be for the Buyers' account.
- (e) The Vessel with everything belonging to her shall be at the Sellers' risk and expense until she is delivered to the Buyers.
- (f) The Vessel shall be delivered without any stowaways, contraband or arms and ammunition on board.

10. Earliest date of Delivery/Cancelling Date

- (a) The Vessel shall tender notice of readiness for delivery in accordance with Clause 7 (Advance Notices of Arrival) on or after the date stated in Box 17 but latest on the date stated in Box 18 (hereinafter "the Cancelling Date").
- (b) (i) Should the Sellers anticipate that notwithstanding the exercise of due diligence, the Vessel will not be ready for delivery by the Cancelling Date they may notify the Buyers in writing stating the date when they anticipate that the Vessel will be ready for delivery and propose a new date for the Cancelling Date. Upon receipt of such notification the Buyers shall have the option either to cancel the Contract according to Clause 21 (Sellers' Default) within two (2) Banking Days of receipt of such notice or of accepting the new date as the Cancelling Date. If the Buyers have not declared their option within two (2) Banking Days of receipt of the Sellers' notification or, if the Buyers accept the new date, the date proposed by the Sellers shall become the Cancelling Date.

(ii) If this Contract is maintained with the new Cancelling Date, all other terms and conditions hereof shall remain in full force and effect. Cancellation or non-cancellation by the Buyers in accordance with the provisions of sub-clause 10(b)(i) shall be without prejudice to any claim for loss and/or damages the Buyers may have against the Sellers under this Contract.

11. Post-Delivery Assistance

Following payment and delivery of the Vessel the Sellers shall assist the Buyers for a period not exceeding the number of days and at the daily cost stated in Box 19 with post delivery operations reasonably requested by the Buyers, provided the Sellers can arrange for crew as appropriate to remain with the Vessel for such period and obtain crew insurance cover. Such cost is payable by the Buyers to the Sellers on receipt of the Seller's invoice.

The Buyers shall assist in the safe disembarkation of the crew.

The Buyers shall indemnify and hold the Sellers harmless from any loss and/or liabilities incurred as a consequence of the post-delivery assistance.

12. Removals

- (a) The Vessel shall be delivered with everything belonging to her on board without removals other than statutory certificates, hired equipment and those items stated in Annex B (Excluded Items). The Sellers shall also have the right to take ashore without compensation the following items: crockery, cutlery, linen and other articles bearing the Sellers' flag or name, as well as library, forms, etc., exclusively for use in the Sellers' vessels. Master's, Officers' and crew's personal belongings including slop chest and the Vessel's log book shall be excluded from the sale.
- (b) Unless otherwise agreed, any remaining bunkers, lubricating oils, stores, equipment and spares used or unused

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on board at the time of delivery shall become the Buyers' property without extra payment.

- (c) The Sellers shall, at the time of delivery, hand to the Buyers all plans, specifications and certificates, or copies hereof, as available and whether valid or invalid.
- (d) The Sellers are not required to replace such material, spare parts or stores including spare tail-end shaft(s) and propeller(s), if any, which may be consumed or taken out of spare and used as replacement prior to delivery, but all replaced spares shall be retained on board and shall become the property of the Buyers.

13. Verification of Light Displacement Tonnage (LDT)

The Vessel's LDT shall be verified by the Vessel's valid trim and stability booklet, a copy of which shall be made available to the Buyers' representatives prior to the signing of this Contract.

The Sellers shall ensure that the original of the Vessel's trim and stability booklet is on board the Vessel at the time of tendering the notice of readiness in accordance with Clause 7 (Advance Notices of Arrival).

Should the Vessel's trim and stability booklet not be the builders' trim and stability booklet, the Buyers may request the builders' trim and stability booklet and any documentation relating to any subsequent modifications of the LDT, if available.

14. Charters, Encumbrances, Maritime Liens, Debts and Claims

The Sellers warrant that the Vessel, at the time of delivery, is free from all charters, encumbrances and maritime liens or any debts whatsoever.

Should any claims, which have been incurred prior to the time of delivery, be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for the aforementioned claims.

15. Charges

Any taxes, dues, fees and expenses connected with the purchase of the Vessel shall be for the Buyers' account, whereas similar charges connected with the closing of the Sellers' register shall be for the Sellers' account.

16. Buyers' Representatives

The Sellers agree to allow the Buyers to place up to three (3) representatives on board the Vessel once the deposit has been lodged in accordance with Clause 4 (Deposit) but not earlier than fifteen (15) days prior to expected delivery.

Whilst on board the Vessel, such representatives shall be at the sole risk, liability and expense of the Buyers and the Buyers shall indemnify the Sellers against any claim for loss and/or damages in this respect. The representatives must not interfere with the operation of the Vessel and they shall sign the Sellers' letter of indemnity prior to their embarkation.

17. Purpose of Sale

The Vessel is sold for Recycling only and the Buyers undertake and warrant that the Vessel will be recycled at the Ship Recycling Facility in accordance with the Ship Recycling Facility Plan and the Ship Recycling Plan.

18. Safe and Environmentally Sound Recycling

The Buyers shall on the Sellers' request (i) either provide a copy of the Ship Recycling Facility Plan or an attestation that the Ship Recycling Facility has a Ship Recycling Facility Plan and (ii) allow the Sellers to visit the Ship Recycling Facility to review the Ship Recycling Facility Plan and verify that the Ship Recycling Facility is compliant with the Ship Recycling Facility Plan.

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If not already provided, the Sellers shall provide the Buyers with Part I of the Inventory of Hazardous Materials as soon as possible after the date of this Contract.

The Sellers shall provide the Buyers with provisional Parts II and III of the Inventory of Hazardous Materials as soon as possible after the date of this Contract and final Parts II and III upon delivery of the Vessel.

The information contained in the Inventory of Hazardous Materials is given to the best of the Seller's knowledge but always without guarantee.

Following the receipt of Part I and the provisional Parts II and III of the Inventory of Hazardous Materials, the Buyers shall without undue delay provide the Sellers with the Ship Recycling Plan.

The Buyers shall ensure that after delivery the Sellers' representatives are allowed to visit the Ship Recycling Facility to ascertain that the Recycling of the Vessel is being conducted in accordance with the Ship Recycling Facility Plan and the Ship Recycling Plan.

The Buyers shall within two (2) weeks of completion of recycling of the Vessel provide the Sellers with a Statement of Completion as per Annex C (Statement of Completion).

19. Exemptions

Neither the Sellers nor the Buyers shall be under any liability if the Vessel should become an actual, constructive or compromised total loss before delivery, or if delivery of the Vessel by the Cancelling Date should otherwise be prevented or delayed due to outbreak of war, restraint of Government, Princes, Rulers or People of any Nation or the United Nations, Act of God, or any other similar cause beyond the Buyers' or the Sellers' control.

20. Buyers' Default

Should the deposit not be paid in accordance with the provisions of Clause 4 (Deposit), the Sellers shall have the right to cancel this Contract, and they shall be entitled to claim compensation for their losses and for all expenses incurred.

Should the purchase price not be paid in the manner provided for in this Contract the Sellers shall have the right to cancel the Contract, in which case the amount deposited together with interest earned, if any, shall be forfeited to the Sellers. If the deposit does not cover the Sellers' losses, they shall be entitled to claim further compensation for their losses and for all expenses incurred.

21. Sellers' Default

Should the Sellers fail to give notice of readiness in accordance with Clause 7 (Advance Notices of Arrival) or fail to execute a legal transfer or to deliver the Vessel with everything belonging to her by the Cancelling Date, the Buyers shall have the right to cancel the Contract, in which case the deposit in full shall be returned to the Buyers together with interest earned.

Whether or not the Buyers cancel this Contract the Sellers shall make due compensation to the Buyers for any loss and for all expenses incurred by their failure to give notice of readiness, to execute a legal transfer or to deliver the Vessel with everything belonging to her by the Cancelling Date, if such failure is due to the proven negligence of the Sellers.

22. BIMCO Dispute Resolution Clause

- (a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

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The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

- (c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (d) Notwithstanding Sub-clauses 22(a), 22(b) or 22(c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

(i) In the case of a dispute in respect of which arbitration has been commenced under Sub-clauses 22(a), 22(b) or 22(c) above, the following shall apply:

(ii) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(iii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iv) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

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(v) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(vi) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vii) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(viii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

- (e) If Box 20 in Part I is not appropriately filled in, Sub-clause 22(a) of this Clause shall apply.

Note: Sub-clauses 22(a), 22(b) and 22(c) are alternatives; indicate alternative agreed in Box 20. Sub-clause 22(d) shall apply in all cases.

23. Entire Agreement

This Contract constitutes the entire agreement between the Sellers and the Buyers and no promise, undertaking, representation, warranty or statement by either party prior to the date of this Contract stated in Box 1 shall affect this Contract. Any modification of this Contract shall not be of any effect unless in writing signed by both the Sellers and the Buyers.

24. Notices

- (a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, e-mail, registered or recorded mail or by personal service.
- (b) The address of the Parties for service of such communication shall be as stated in Boxes 21 and 22 respectively.

ANNEX "A" (VESSEL DETAILS)

**TO THE BIMCO STANDARD CONTRACT FOR THE SALE OF VESSELS FOR GREEN RECYCLING
CODE NAME: RECYCLECON**

Vessel Details (Cl. 1, 2, 6(b), 9(a))

Sample copy

**ANNEX "B" (EXCLUDED ITEMS)
TO THE BIMCO STANDARD CONTRACT FOR THE SALE OF VESSELS FOR GREEN RECYCLING
CODE NAME: RECYCLECON**

Excluded Items (Cl. 12(a))

Sample copy

**ANNEX "C" (STATEMENT OF COMPLETION)
TO THE BIMCO STANDARD CONTRACT FOR THE SALE OF VESSELS FOR GREEN RECYCLING
CODE NAME: RECYCLECON**

STATEMENT OF COMPLETION OF SHIP RECYCLING

This document is a statement of completion of Ship Recycling for:

(Name of the ship when it was received for recycling/at the point of deregistration)

RECYCLECON Contract dated:

Particulars of the Ship as received for recycling

Distinctive number or letters:	
Port of Registry:	
Gross tonnage:	
IMO number:	
Name and address of shipowner:	
IMO registered owner identification number:	
IMO company identification number:	
Date of Construction:	

THIS CONFIRMS THAT:

The ship has been recycled in accordance with the Ship Recycling Plan at:

(Name and location of the Ship Recycling Facility)

and the recycling of the ship as required by the Contract was completed on:

Date of completion: (dd/mm/yyyy)
(Date of completion)

Issued at:
(Place of issue of the Statement of Completion)

Date of issue: (dd/mm/yyyy)
(Date of issue)

Signature:
(Signature of the owner of the Ship Recycling Facility or a representative acting on behalf of the owner)

Statement of Completion (Cl. 1, 18)

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