

When title stays with the seller but the cargo moves on

Why retention of title works only if the seller can still act on the cargo after buyer default

By Alina Butrim





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Author profile

Alina Butrim

Alina Butrim is a legal scholar and practitioner based in the United Arab Emirates. Her research has grown out of nearly two decades of senior legal work in shipping and port infrastructure. It examines how maritime and transport law operates when international trade is disrupted and how legal rules shape the allocation of risk within transport markets.



Her early work on port competition and berth use translated recurring operational problems into legal and economic methodologies that became the foundation of a wider research programme. Its results now include two specialist books and more than twenty academic and professional publications. She also contributes to legal scholarship through peer review and invited university teaching, while her findings have informed expert work on transport regulation. In 2021 her work received the Expert of the Year award for a methodology addressing risk planning in port and transport logistics.

Alina graduated in law from Higher School of Economics - National Research University (law faculty) before obtaining LL.M. degrees from the University of Hamburg and Brigham Young University. She practises as a Kazakh Legal Consultant through the Astana Chamber of Legal Consultants. Her international professional standing is also reflected in her selection as National Representative for Russia on the International Bar Association Young Lawyers' Committee. She contributes further to the development of transport law through the relevant commission of the Association of Lawyers of Russia.



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Today's international sale of goods operates at high speed. To deliver goods to the buyer within the required time, the seller often has to dispatch them as early as possible. At the same time, the seller takes a significant risk if property in the goods simply passes to the buyer, for example, upon delivery to the carrier, because payment may never be received. In this context, retention of title by the seller until payment appears to be an ideal solution. It allows delivery to the buyer to begin, while preserving, in the event of default and in addition to possible claims against the buyer, the ability to sell the goods to a third party by recovering physical possession or redirecting the cargo to that third party.

The legal possibility of this structure rests on the parties' contractual choice of the moment at which property passes. The Sale of Goods Act 1979 links the passing of property to the intention of the parties, while reservation of the right of disposal allows the seller to prevent property title from passing until the agreed condition is fulfilled.

Like any protective mechanism, retention of title is barely visible where the transaction proceeds in the ordinary course. The cargo moves under the agreed delivery arrangements, the documents support release, and title remains with the seller as reserved protection until the price is received. The real test of the clause begins when the buyer does not pay.

Unfortunately, the mere existence of a clause retaining property title to the goods with the seller until payment does not of itself mean prompt recovery of the price or return of the goods instead of lengthy litigation followed by a search for buyer's assets sufficient to satisfy the

claim. In the event of buyer default, the issue shifts, first, to proof that the goods were of the contractually required quality, so that the buyer cannot seek to reject them on the basis of non-conformity and thereby avoid liability, and, secondly, to the practical questions connected with return of the goods or their direction to a new buyer. These questions include:

- Where the goods are physically located;
- Whether the seller has the legal ability to resell them to a third party;
- What costs have already accrued in respect of the goods and whether the seller will have to reimburse them as owner of those goods;
- Whether the seller has incurred any obligation to pay penalties to public authorities; and
- Whether there is a risk that goods have been destroyed or their quality has deteriorated because the period for declaring them has expired.

In addition, goods owned by the seller may be carried on a vessel which is unexpectedly placed on sanctions lists, and it will then be the seller, as the party retaining title, who must decide whether the cargo can lawfully move, be released, returned or resold without creating a sanctions breach.

This is where the seller, if the contractual wording and the logistics of the transaction have not been fully thought through, may face unpleasant surprises. By the time of the buyer's default, the quality of cargo may already have deteriorated, while the seller will still have to prove in litigation that the problem arose on the buyer's side, or

the cargo may simply not be specific or ascertained, and ownership begins to drift apart from the practical ability to recover the cargo. The seller may retain the ownership, but its right to return the goods back under its control will depend on who holds the goods, which documents control release, and whether the person through whom release must be effected recognises the seller's rights.¹

Potential challenges

(1) Risks of re-characterisation where the buyer obtains rights to dispose of the goods before acquiring title

Quite often, while retaining property for itself, the seller permits the buyer to resell the goods to third parties. It should be kept in mind that, under English law, such a structure may be re-characterised from a sale of goods contract into an agency arrangement.²

In *Caterpillar (NI) Ltd v John Holt & Co (Liverpool) Ltd*,³ the buyer argued that the contractual structure was one of agency, because in substance title passed to the ultimate buyer without passing to the first buyer, and the court accepted that conclusion. This was, of course, largely driven by the contractual wording that "until such time as title passes, Buyer shall hold the products as Seller's fiduciary agent and shall keep them separate from Buyer's other goods. Prior to title passing Buyer shall be entitled to resell the products in the ordinary course of business and shall account to the Seller for the proceeds of sale". But it is clear that this was not the effect which the seller wished to achieve.⁴ The court here had regard not to the seller's commercial expectations, but to the specific wording by which the parties described possession of the goods, resale and proceeds.

However, *Caterpillar* does not establish that every permission to resell destroys retained title. The risk arises where the contract at the same time retains property title to the seller, gives the first buyer a right of onward sale, and does not explain to whom the proceeds belong and in

what capacity the first buyer acts towards the subsequent buyer. In that situation, the dispute quickly moves away from the question of retention of ownership and towards the nature of the entire contractual structure.

A similar logic appeared in *PST Energy 7 Shipping LLC v OW Bunker Malta Ltd (The Res Cogitans)*,⁵ but through permission to consume the goods. The physical supplier delivered bunkers to the vessel, OW Bunker acted as an intermediate seller, and the ultimate recipient of the fuel was entitled to use the bunkers before payment and before title passed. This created an unusual situation: title could no longer pass in the consumed cargo because the cargo had disappeared through consumption. The Supreme Court therefore characterised the contract as a *sui generis* contract and explained the obligation to pay as a debt for the right conferred to receive and use the bunkers, rather than as an ordinary action for the price under a classic sale of goods.⁶

For the seller, this means that a general title clause does not deal with the consequences of the rights which the seller gives to the first buyer or to the ultimate recipient before property passes. The contract should define in advance the moment at which the payment obligation arises, the status of the first buyer on resale, the treatment of the proceeds, and the independent nature of the seller's monetary claim.⁷ If these questions are left without a direct answer, the seller may retain ownership but face a dispute as to which remedies are compatible with the structure created by the parties.⁸

(2) Retention of title is possible only in respect of identified goods

Many practitioners, consciously or unconsciously, treat title retention as a kind of security over goods, but as a more convenient one because title retention does not require registration, unlike charges. This overlooks the point that the absence of registration is connected precisely with the fact that this legal mechanism is not security of this kind.⁹ Accordingly, attempts to use it instead of charges can be inadequate.

¹ Carriage of Goods by Sea Act 1924, sections 2–3; *Scrutton on Charterparties and Bills of Lading* (25th Edition, Sweet & Maxwell, 2024); *The "K.H. Enterprise"* [1994] 1 Lloyd's Rep 593.

² *Caterpillar (NI) Ltd v John Holt & Co (Liverpool) Ltd* [2013] EWCA Civ 1232, [2014] 1 Lloyd's Rep 180; Louise Gullifer, "Sales' on Retention of Title Terms: Is the English Law Analysis Broken?", (2017) 133 LQR 244, 255–260.

³ *Caterpillar CA* [2014] 1 Lloyd's Rep 180.

⁴ *Caterpillar CA* [2014] 1 Lloyd's Rep 180; Herbert Smith Freehills, "Court of Appeal overturns Commercial Court on construction of retention of title clause", (25 November 2013).

⁵ *PST Energy 7 Shipping LLC v OW Bunker Malta Ltd (The Res Cogitans)* [2016] UKSC 23, [2016] 1 Lloyd's Rep 589.

⁶ *The Res Cogitans SC* [2016] 1 Lloyd's Rep 589.

⁷ *Caterpillar CA*; Duncan Sheehan, "Registration, Re-characterisation of Quasi-Security and the Nemo Dat Rules", (2016–2017) 32 Journal of Contract Law 139.

⁸ *The Res Cogitans SC* [2016] 1 Lloyd's Rep 589; Gullifer, "Sales' on Retention of Title Terms", (2017) 133 LQR 244, 260–69.

⁹ The Insolvency Service, "Technical Guidance for Official Receivers: Retention of Title", paras 13.1–13.20; the Companies Act 2006, Part 25.

For example, the seller may try to provide in the contract that property extends to processed goods. Unfortunately, this is not possible automatically. The seller has property title to the goods identified by the contract, but once the goods are processed, they become new goods which no longer belong to the seller. The seller can therefore preserve its security rights only if the charge is registered. *Re Bond Worth Ltd*, *Re Peachdart Ltd*, *Re Curtain Dream plc* and *Welsh Development Agency v Export Finance Co Ltd* show that the court is not bound by the parties' labels and will look at the substance of the arrangement. Retention of title cannot and should not be used as a surrogate for universal control over every economic consequence of the transaction.¹⁰

The other side of the identification problem, in relation to the goods in which the seller retains property title, is the need for their physical identification. For some reason, traders do not always consider in practice that, where, for example, bulk liquids are discharged into a tank, they may be mixed with other goods, even if formally of the same specification. Strictly speaking, this will not be a problem in every legal system, and a detailed analysis is required under the law applicable to the contract, but as a general rule of English law property cannot pass in unascertained goods under section 16 of the Sale of Goods Act 1979.¹¹

For example, if the contract provides for the sale of 5,000 tonnes of diesel from a tank, the title to the cargo will not pass until those goods have been separated from the bulk. The contract should therefore link the identity of the cargo to segregation of the lot, marking, issue of a warehouse receipt, loading on board the vessel, or drawing of a specified quantity from the tank. Alternatively, the seller has a proportionate share in the commingled bulk stored in the tank, and this is the share being sold to the buyer. That may not be acceptable to the buyer, because the seller may sell the same share to several buyers, and those buyers will then face a question of priority of proprietary rights.¹²

(3) Evidence of the cargo's satisfactory quality as the basis for recovering losses from the buyer

Retention of title by the seller and the seller's subsequent dealings with the goods are not directly connected with the quality of the goods. However, confirmation that the goods conformed to the contract becomes the basis for the seller's claims against the buyer for reimbursement of costs incurred after the buyer's default and the subsequent sale of the goods to a third party. Such losses may include storage, customs payments, costs of release or re-documentation of the goods and, where the goods have deteriorated through the fault of the buyer or persons engaged by it, the difference between the price of goods of the contractually required quality and the price of the goods in the condition in which the seller was forced to deal with them.

If the quality of the goods does not conform to the contract, the buyer may have a basis for rejecting the goods. The seller is then left with goods that have already lost their original quality characteristics and must urgently decide whether to sell them or otherwise dispose of them so as not to increase its own losses, but without being able to shift responsibility for those losses to the buyer.

It is important here to mention that, when the buyer is in default, the seller needs more than simply a certificate of quality. Such a certificate may have invoice effect or evidential effect in relation to a limited fact and a particular operation. But what the seller needs is a certificate that has binding effect for the purpose of determining quality at the relevant moment.

This is precisely where it is dangerous to copy even carefully drafted standard terms, such as the BP General Terms, without thinking. Those terms provide that a certificate of quality, issued by the loading terminal, is used for invoicing purposes. If the parties at the same time try to give such a certificate binding effect, an inconsistency may arise which can operate against the seller. *Septo Trading Inc v Tintrade Ltd (The Nounou)*¹³ illustrates this risk well: the seller achieved the required result only in the Court of Appeal, having lost at first instance.

Accordingly, the contract should state expressly that the certificate of quality obtained while the goods remain under the seller's control is conclusive for the purposes

¹⁰ The Companies Act 2006, sections 859A and 859H; *Re Bond Worth Ltd* [1980] Ch 228; *Re Peachdart Ltd* [1984] Ch 131; *Re Curtain Dream plc* [1990] BCLC 925; *Welsh Development Agency v Export Finance Co Ltd* [1992] BCLC 148; Duncan Sheehan, "Registration, Re-characterisation of Quasi-Security and the Nemo Dat Rules", (2016–2017) 32 Journal of Contract Law 139.

¹¹ The Sale of Goods Act 1979, section 16; *Re Goldcorp Exchange Ltd* [1995] 1 AC 74 (PC).

¹² Sale of Goods Act 1979, sections 20A–20B; the Law Commission and the Scottish Law Commission, "Sale of Goods Forming Part of a Bulk", Law Com No 215 / Scot Law Com No 145 (1993); *Hunter v Moss* [1994] 1 WLR 452.

¹³ *Septo Trading Inc v Tintrade Ltd (The Nounou)* [2020] EWHC 1795 (Comm); [2021] 1 Lloyd's Rep 258; [2021] EWCA Civ 718, [2021] 2 Lloyd's Rep 591; 4 Pump Court, "Case Note on *Septo Trading Inc v Tintrade Ltd*" (27 May 2021).

of determining quality, save for fraud and manifest error.¹⁴ The buyer will then no longer be able to rely without consequence on unsatisfactory quality where the adverse changes arose after the goods passed under its control or under the control of persons engaged by it.¹⁵

Naturally, such a certificate does not turn all of the seller's subsequent costs into automatically recoverable losses. It does, however, help to prove that, at the relevant moment, the goods conformed to the contract, and that the subsequent deterioration, commingling, delay or loss of commercial value arose only after the goods had left the seller's sphere of control. As regards such costs, it is preferable for the parties to define in the contract from the outset what steps the seller may take to preserve and release the cargo, how the condition of the goods is to be recorded, and how the statement of costs and proceeds is to be prepared. If the seller cannot confirm the required quality at the relevant contractual date, the buyer's reliance on non-conformity will become one of the most convenient defences. The dispute will then no longer concern title alone, but also whether the seller's subsequent costs were caused by the buyer's wrongful refusal or by an initial quality problem with the goods.¹⁶

(4) Retention of title and release of the goods into circulation

Very often, the seller, as owner of the cargo, does not consider that even without property in the goods the buyer may have substantial powers to deal with the cargo. In international trade, it is not unusual for property title still to remain with the seller after the cargo has already arrived, while the buyer acts as importer and clears the goods,

because in many countries the declarant does not have to be the owner of the cargo and may, for example, be a customs broker, commission agent or agent.¹⁷

In the European Union, for example, the declarant will usually have to be a person established in the EU who is entitled to dispose of the goods or who acts as the importer's representative. In the United Arab Emirates, the import declaration is usually filed through a local importer holding the relevant customs code.¹⁸

The seller should remember that the retention of title does not automatically block the documentary channel through which the cargo may be released, unless the contract and the accompanying notices are properly structured. In a maritime sale, control over the goods often operates through the bill of lading, delivery instruction and the practical readiness of the carrier or terminal to release the cargo to the person who appears to them to be entitled. Ownership and possession may therefore follow different paths. The seller remains the owner, but the holder of the goods may continue to follow the buyer's documentary route.

Where the cargo is already in the hands of the person responsible for release, retention of title by the seller does not require that person to comply with the seller's new instructions. The holder of the goods will usually look at the documents and the instructions previously received. Accordingly, the seller should establish in advance a procedure under which, after default, it can give prompt notice to the holder of the goods and require release to be suspended. If no such procedure exists, the cargo may be released along the buyer's route, even though the seller formally remains the owner.¹⁹

¹⁴ *The Nounou* CA [2021] 2 Lloyd's Rep 591; BP Oil International Ltd, "General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products" (2015 Edition, version 1.2).

¹⁵ The Sale of Goods Act 1979, sections 13–15A; *Benjamin's Sale of Goods* (Michael Bridge (Gen Ed), 12th Edition, Sweet & Maxwell 2023, 2nd cumulative supplement 2025) chs 11–12.

¹⁶ *Sharp Corp Ltd v Viterro BV* [2024] UKSC 14, [2024] 1 Lloyd's Rep 568; *Bunge SA v Nidera BV* [2015] UKSC 43, [2015] 2 Lloyd's Rep 469.

¹⁷ Regulation (EU) No 952/2013 laying down the Union Customs Code [2013] OJ L269/1, article 170; Common Customs Law of the GCC States, articles 46–50.

¹⁸ Dubai Customs, "Request for Client Registration" (Client Registration service page, 2026); GCC Unified Guide for Customs Procedures at First Points of Entry (2025 Edition).

¹⁹ Carriage of Goods by Sea Act 1992, sections 2–3; *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] 2 Lloyd's Rep 114, *Motis Exports Ltd v Dampskibsselskabet AF 1912 Aktieselskab* [2000] 1 Lloyd's Rep 211.

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This caution is well illustrated by BP General Terms. Clause 13.4 proceeds on the basis that release outside the ordinary documentary framework requires express written instruction and indemnity. For example, delivery without bills should not take place merely because the buyer needs to obtain the cargo more quickly. The risk of such an instruction should be allocated in advance to the party giving it.²⁰

Delivery against a letter of indemnity has the same significance. It is convenient for trade, but for a seller with retained title it creates a separate risk: the cargo may be released without the ordinary document of title. The contract should therefore state expressly who is entitled to give the written instructions, whose risk such release is at, and what consequences follow in the event of misdelivery. If the contract does not regulate this, after default the dispute will already concern the basis on which the cargo was released and whether the seller can in fact recover it.

The result is that the title clause should be linked to the release channel in advance. It should make clear not only the moment at which property title passes, but also the seller's actions after default. Otherwise, the seller may retain ownership but lose the real ability to resell, because the cargo has already moved along the buyer's documentary route.

(5) Ownership and post-default logistics

A further layer of the issues concerns post-default logistics. Even where title remains with the seller, the cargo may be physically held by third parties, and access to it will depend on the documents, terminal procedures and payment of accrued charges.²¹ In that situation, the seller is often forced to fund release under a reservation of rights simply to regain control over the cargo at all. It must do so in a legal environment which may be unfamiliar, at a time when some costs have already accrued, and through counterparties which it did not choose.

Thus, for example, in *Sharp Corp Ltd v Viterra BV*,²² because the buyer refused to pay for and take delivery of the cargo after its arrival in India, the seller had to bear

the costs of storing the cargo at the port and deal with the fate of the cargo locally. But this is not the most difficult situation that may arise. There are many cases around the world where companies have had to apply to court in order to re-export cargo, often accompanied by the payment of substantial sums to public authorities in the country where the cargo was located, as in *ED&F Man Commodities India Pvt Ltd v Union of India*.²³ In some cases, the cargo may be destroyed by a public authority because customs clearance has not been completed within the required time.²⁴

Each such case is a sad story of a seller who entered into a contract with a buyer which, for one reason or another, failed to perform. As a result, the cargo becomes "stuck" in another country. The seller has to hire lawyers and logistics specialists who, with the cargo under customs control, try to agree with the terminal where the cargo is stored. They also have to negotiate with customs and other authorities, and with the least possible loss, either on release of the goods for free circulation in the country where they are physically located, if the seller has managed to find a buyer there, or on their re-export to another country where they can be sold. At the same time, the seller cannot simply refuse to pay fees and penalties, because it is the owner and therefore the person who can be held liable. The instrument which was supposed to operate as "leverage against the buyer" turns into a burden on the seller, and it is fortunate if all the costs incurred do not exceed the value of the goods.

As a contractual protection, the contract may include a separate operational regime for the statement of charges, release conditions, payment under protest, evidence trail and subsequent reimbursement of reasonable costs.²⁵

Here, another risk should be kept in mind, one which is often missed in practice. Unless the contract provides otherwise, in the event of default and termination of the contract, the buyer is not required to assist the seller in enforcing its rights, at least not to the extent which the seller may need, unless this is expressly reflected in the contract. Thus, *RTI Ltd v MUR Shipping BV* confirms that general reasonable endeavours wording does not require a party to undertake non-contractual performance without

²⁰ BP Oil International Ltd, "General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products" *ibid*; International Group of P&I Clubs, "Updated Suite of IG-Recommended Letters of Indemnity Wordings" (12 September 2023).

²¹ *Sharp Corp Ltd v Viterra BV* SC [2024] 1 Lloyd's Rep 568; Stephenson Harwood, "Commodities in Focus: *Sharp v Viterra*" (29 May 2024).

²² *Sharp Corp Ltd v Viterra BV* SC [2024] 1 Lloyd's Rep 568.

²³ *ED and F Man Commodities India Pvt Ltd v Union of India*, R/Special Civil Application No 20727 of 2018, High Court of Gujarat, 5 January 2022; *Czarnikow Group Ltd v Commissioner of Customs (Preventive)*, Writ Petition No 13173 of 2023, Madras High Court, 26 June 2023.

²⁴ Düsseldorf Higher Regional Court, I-18 U 37/17, 23 May 2018, discussed in Arnecke Sibeth Dabelstein, "Destruction of Consignment by Customs – Question of Liability" (International Law Office/Lexology, 22 May 2019).

²⁵ *Sharp Corp Ltd v Viterra BV* SC [2024] 1 Lloyd's Rep 568; *RTI Ltd v MUR Shipping BV* [2024] UKSC 18, [2024] 1 Lloyd's Rep 621.

express provision to that effect.²⁶ If, after payment default, the seller needs alternative discharge, replacement documents, a substitute route, re-export or some other operational workaround, it cannot assume that the counterparty will be required to cooperate simply because this seems commercially reasonable to the seller and was expected by it.

The obvious advice is to discuss the post-default channels of cooperation in advance, at the negotiation stage of the transaction. Otherwise, any necessary workaround will depend on the other party's actual goodwill at the moment when the conflict has already become acute and that party is under no duty to show such goodwill. Accordingly, the contract should state expressly who is entitled to choose between return, storage, treatment, resale or disposal, and on what basis, which documents must be preserved, and how the statement of costs and proceeds is to be prepared.

Another sound logistical solution for the seller, where there are doubts as to the buyer's solvency and the seller wishes to preserve control over the cargo, is to route the cargo from the outset not to the buyer, but to a temporary storage warehouse located close to the buyer, from which the buyer can collect the goods once it has paid for them in full. This option will be slower and more expensive. However, that is offset by the fact that the seller will retain full control over the cargo and the costs connected with its storage, on terms which are clear to the seller, rather than on terms effectively imposed on it by the buyer through the buyer's choice of terminal, broker and carrier.

²⁶ *RTI Ltd v MUR Shipping BV* SC [2024] 1 Lloyd's Rep 621.

(6) Retention of title and sanctions

Retention of title also operates where, during the transaction, the buyer is added to a sanctions list and for that reason cannot make payment. Since property title to the goods has not passed, the seller retains the ability to redirect the cargo and sell it to another buyer, provided that the sanctions listing gives the seller a basis for terminating the contract. It should be noted here that the sanctions clause must be drafted carefully, because the mere fact that the buyer is placed on a sanctions list of a particular country may not create a situation in which performance of the contract by the seller is unlawful and therefore falls within force majeure. However, in practice it is clear that performance of such a transaction will create many problems for the seller and should be avoided.

A more problematic situation arises where the shipowner or the particular vessel is added to a sanctions list after the cargo has already been loaded on board and the vessel is underway. Most ports will refuse to service such a vessel; tugs, agents, terminals, insurers and banks may refuse to participate in the operation, and, as a result, the cargo may in practical terms become "locked" on board.

It is clear that the listing of a vessel or shipowner may lead to a default by one party or another under the contract, because such an event inevitably affects the timing of cargo delivery and the very possibility of arranging such delivery within any reasonable time. In that situation, the shipowner will usually try to arrange discharge or tranship the cargo to another vessel. It will then be necessary to determine whether the cargo can lawfully move, be released, be returned, be re-exported or be resold without

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creating a new compliance breach. The seller may have to obtain a licence, because the relevant authority has not permitted discharge to take place.

An example of such blocking of a vessel is *Young Yong*,²⁷ where OFAC authorised only operations necessary for safe anchorage, repairs and crew safety, but did not authorise discharge of the vessel. Permission to discharge would probably have required the seller to provide detailed evidence that the cargo itself was not sanctioned. The same conclusion follows from the clarification to Article 3s of Council Regulation 833/2014, frequently asked questions – as of 22 May 2026: a call at European ports is possible only for the urgent prevention or mitigation of the consequences of an event likely to have a serious and significant impact on human health and safety or on the environment. Such a port call is possible following an assessment by the competent authorities and only as a single emergency port call for the purpose of discharging dangerous or polluting cargo.²⁸

It is clear that, to prevent such a situation, both the vessel and the shipowner must first be checked carefully, all the more so because compliance expectations are constantly increasing. Companies are expected to carry out enhanced vessel screening; it is not enough to check only the vessel's name. The IMO number must be verified, because the name or flag may have changed, together with ownership control, the operator, charter arrangements, AIS history, route, flag and any connection with the shadow fleet. As a practical recommendation for the seller, the contract should address this situation in the sanctions clause, with the seller's liability to the buyer in that situation minimised, if the seller is responsible for the vessel.²⁹

Conclusion

Retention of title gives the seller a strong starting position, and this instrument works well where the contract provides for additional elements:

- The cargo must remain identifiable;
- The seller can prove that the cargo meets contractual requirements;
- The release channel remains under the seller's control;
- The seller understands what costs it will have to incur if the buyer is unable to pay for the cargo, understands whether it will be able to re-export the cargo to another country or itself import the cargo into the country where the goods are located, and at what cost, and considers that the margin under the contract compensates for the possible risks;
- The seller carefully checks the shipowner and the vessel, and the contract contains provisions which enable the seller to exit the transaction without significant losses if the vessel or the shipowner is added sanctions lists during performance of the contract.

If the contract does not regulate these matters properly, then the seller may not only fail to achieve the intended effect of this simple and effective tool but they may also face unexpected adverse consequences.

²⁷ Office of Foreign Assets Control, Iran General License R, "Authorizing Limited Safety and Environmental Transactions and the Offloading of Cargo Involving Certain Persons or Vessels Blocked on July 30, 2025" (30 July 2025); European Commission, FAQs on Council Regulation (EU) No 833/2014, Article 3s, "Targeted Vessels" (22 May 2026).

²⁸ European Commission, FAQs on Council Regulation (EU) No 833/2014, *ibid*; West P&I, "Russia Sanctions: New EU FAQs on Targeted Vessels and Tanker Sales" (27 May 2026).

²⁹ Office of Foreign Assets Control, Sanctions Advisory: "Guidance for Shipping and Maritime Stakeholders on Detecting and Mitigating Iranian Oil Sanctions Evasion" (16 April 2025); BIMCO, "Sanctions Clause for Time Charter Parties 2020"; BIMCO, Sanctions Clause for Voyage Charter Parties 2020.

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