

Time Charter Contracts under Turkish Law

Introduction

Carriage of goods by sea is the most common method of transportation since the carrying capacity of the ships are high and it is cheaper compared to other types of transportation. Contracts used in sea carriage depends on the needs of the trader. One of the commonly used type of contract is the time charter contract.

1

The time charter contract (also known as time charter party) is defined in article 1131 of the Turkish Commercial Code (“TCC”) as a contract where the assignor (owner) assigns the commercial management of an equipped ship to the assignee (charterer) for a specific period in return for the payment of hire. Under the time charter contract, owner has the technical management and the possession of the ship.

This article briefly explains the time charter contracts under Turkish law.

Main Elements of a Time Charter Contract

Under a time charter party, the owner undertakes to cover the general expenses of the ship such as the depreciation of the ship, insurance, operating costs, seamen’s wages etc. unless agreed otherwise by the contract. On the other hand, the charterer undertakes to cover the expenses arising out of the ship’s commercial operation, such as fuel, port and canal dues etc. The charter period is determined by the agreement of the parties.

In brief, under a time charter contract;

- commercial management of equipped ship is left to the time charterer for a certain period,
- owner provides the technical management of ship, and
- charterer pays a hire to the owner

Form of the Time Charter Contract

Time charter contracts are concluded by the mutual and consentaneous intent and expression of the parties. There is no required form for time charter party contracts under TCC. However, in practice time charter contracts are usually concluded through very detailed standard forms which are prepared by international organizations such as BIMCO, INTERTANKO etc. NYPE, SHELLTIME or BALTIME are some of the examples of commonly used standard forms in shipping practice.

Parties of the Contract

2

The time charter contract is regulated in the articles between 1131 and 1137 of TCC. Assignor (owners) and assignee (charterer) are the terms used in the relevant provisions of TCC to define the parties of the time charter contract. According to article 1131 of the TCC, the assignor is the person who undertakes to leave the commercial management of an equipped ship for a certain time in exchange of a hire and the assignee is the person who undertakes the commercial management of the ship.

Using the terms “assignor” and “assignee” has been highly criticized in Turkish doctrine on the grounds that these terms are not used in the shipping practice. As a matter of fact, instead of those terms, “owner” and “charterer” are the terms widely used in legal and shipping practice.

The owner may be the registered owner of the ship or the disponent owner. The charterer, on the other hand, is the person who undertakes to pay the hire and is the authority for commercial management of the vessel within the trade limits mentioned in the charter party. In order to realize the commercial benefit that the ship is assigned for, the time charterer undertakes to pay several costs

such as, fuel oil costs, port fees, canal and passage charges, loading and discharging costs etc.

Rights and Obligations of the Owner

The owner is obliged to deliver the designated ship ready on the determined date and in the nominated place. The ship should be seaworthy and cargo worthy at the time of delivery. Otherwise, the time charterer has an option to cancel the contract under the relevant terms of the charter party. Further, the owner is also under the obligation to maintain the vessel seaworthy and cargo worthy throughout the charter period.

During the charter period, the owner has the right to change the vessel's classification society, flag, ownership and P&I insurers of the vessel only with the prior consent of the charterer. Similarly, the amount of the hull and machinery insurance of the vessel can only be changed with the prior consent of the charterer.

Technical management of the vessel includes the navigation of the vessel, covering the general costs of ship including the P&I insurance and hull & machinery insurance and operational costs such as communication costs, wages and other expenses of seamen.

Under TCC, if the hire is not paid, the owner has a right to exercise retention on the moveable properties and commercial papers which belong to the charterer. However, no provision is found in TCC regarding the right of the owner to terminate the contract, if the charterer fails to make the payment. Hence, if the charterer does not fulfill the obligation to pay the hire, the owner may terminate the contract and claim his compensation for damages under the article 125 of the Turkish Code of Obligations. On the other hand, other remedies such as withdrawing the vessel from the services of the charterers is an option found in some types of standard form of charter parties such as NYPE 93.

The owner also has the right to claim damages arising from the commercial management of the ship.

Rights and Obligations of the Time Charterer

The main right of the charterer is to undertake the commercial management of the ship. In accordance with the commercial management right, the charterer shall have the right to employ the vessel for carriage of lawful cargo. The charterer decides the voyages, nominates the ports, and for this purpose, gives instructions to the master. The master is under the obligation to obey all instructions of the charterer that are within the limits of the commercial management of ship.

Another right of the time charterer is concluding sub-contracts of affreightment with third parties in accordance with the scope of the authorization granted under charter party. Therefore, unless otherwise agreed in the contract, the charterer has a right to sublet the vessel during the charter period. In the shipping practice, concluding sub-contracts of affreightment is an efficient way to obtain economic benefit from time charter parties.

The main obligation of the time charterer is to pay the agreed hire. According to TCC, hire must be paid in advance and on a monthly basis.

4

Time charter parties often include an “off-hire” clause. However, content of these clauses differ depending on the specific type of charter party. An off-hire provision is also found in Article 1136/2 of TCC: If the vessel is unable to trade at least for twenty-four hours, no hire is payable during the period while the ship is not under commercial operation.

All expenses arising from the commercial management of the ship, especially the costs of bunkers in order to ensure regular operation of the machines, must be covered by the time charterer. The time charterer also undertakes to pay port fees, canal and passage charges, pilotages, towages, agencies, commissions and all other usual expenses as well as all cargo handling costs.

Furthermore, the charterer is liable for damages which are suffered by owner arising out of the commercial management of the ship.

When the chartering period is over, charterer is obliged to redeliver the ship in the determined place and time. In the event of a breach

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of this obligation, unless more damage is proven by the owner, the charterer must pay twice the amount of the hire for the delayed days.

Time for Suit

All claims arising from the time charter contract shall be brought within one year after the concerning debt becomes due.

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