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Hill Dickinson LLP
US MLA Fall Meeting

18 October 2018

Panos Pourgourides
Partner
Hill Dickinson LLP

Recent developments in yacht sale and purchase, ownership and financing



Summary

- **Sale and Purchase**
 - Comparison between IYBA and MYBA forms
 - What goes wrong?
 - Deferred consideration and part-exchange
 - Escrow, know-your-client/ CDD
- **Ownership Issues**
- **Finance**
 - Comparison between US and European lending model
 - Demise of the European tax-driven leasing structure
 - Construction Finance
 - Bank work outs and enforcement – including Indian Princess


IYBA v MYBA

- IYBA – Seller bound on signing, Buyer, option only, to accept following survey
- MYBA – Seller bound on signing, Buyer bound but free to withdraw after seatrial, with conditional right to withdraw after survey
- Place of delivery
- Confidentiality
- Change of Name
- Inventory
- Notices

What goes wrong?

- Service of invalid notices
- Buyer missing time limits
- Definition of MYBA “defect”
- Inventory
- Insurance – timing, protocol
- Breakdown – caveat emptor
- Liability claims against seller/ yacht

Deferred Consideration, Part Exchange

- Option 1 – sell now, mortgage back to seller as security for balance of price
 - Option 2 – charter now, with option to purchase, mortgage in favour of buyer for his deposit or part-payment
 - Self help remedy when supply of outside finance is limited, but pros and cons to the different approaches
 - Part Exchange – Again associated with sluggish market, but different for dealers and private buyers and sellers
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Escrow, KYC/ CDD

- Escrow often now a challenge for European brokers and lawyers
- Increased KYC/ CDD requirements, source of funds, sanctions



Ownership Issues

- **Choice of flag** – Paris MOU, REG, MI and others
- **New REG Yacht Code** – 1 January 2019
- **Tax** – VAT, commercial vs pleasure operation, leases, temporary admission/ importation,
- **YET exception** – Marshall Islands and Cayman Islands, but not (yet) fully recognised in Europe

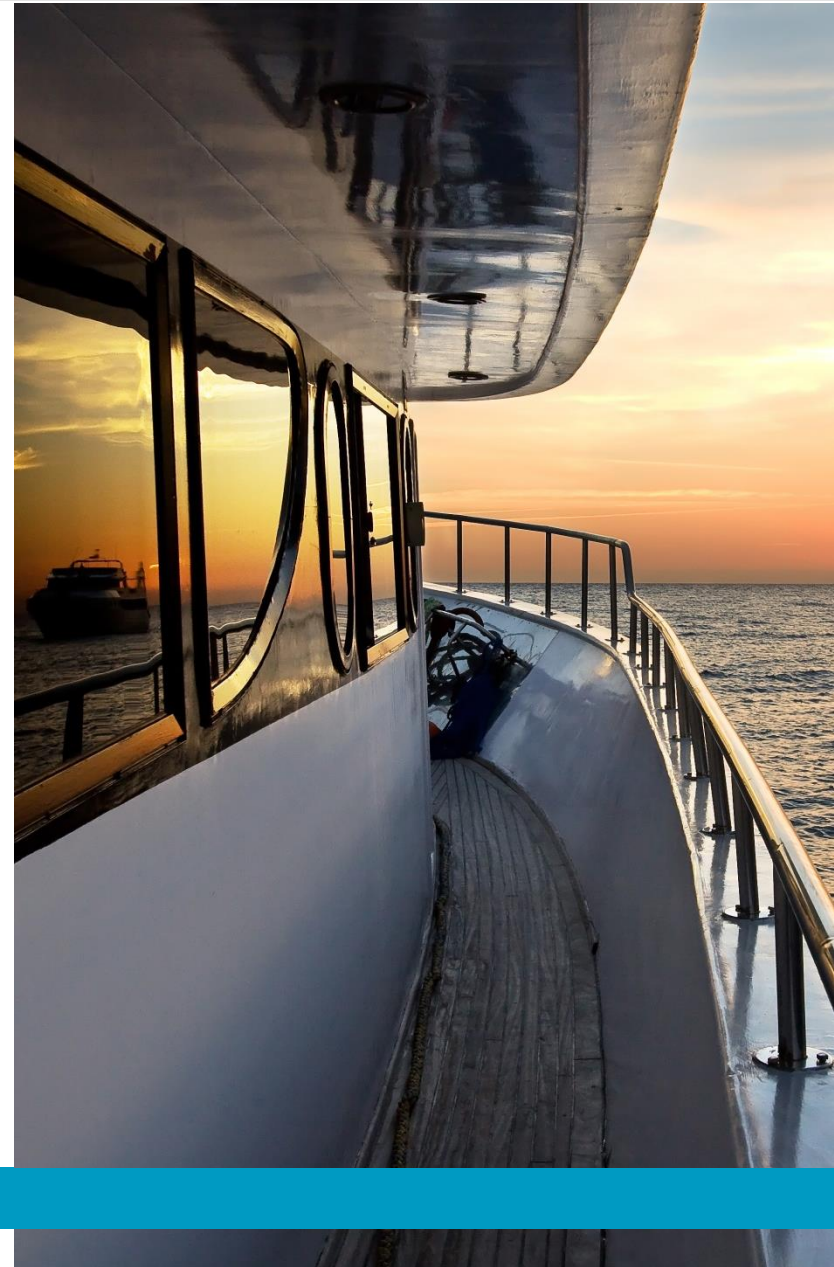


Finance Issues

- US Model - Asset backed, standalone, lead on credit
- European Model – Private banking, relationship driven, expectation of assets under management and additional collateral
- Limited supply
- Debt v lease
- Demise of European tax-driven leasing structures – Malta and Cyprus

Construction finance

- Is the contract bankable? Security, pedigree, assignment and governing law
- Title and mortgage &/ or refund guarantees
- Pros and cons of each approach
- Complexities of having security in the hull vs cost of guarantees



Workouts and enforcement

Typical order of priorities on enforcement:

- Admiralty marshall costs
- Maritime lien claims (except where the lien attached after a possessory lien arose in which case the possessory lien ranks first)
- Possessory lien claims
- Mortgages and statutory liens
- Balance of the fund to the owner or his trustee in bankruptcy or any judgment creditor who has obtained a charging order

Lessons from Indian Princess?

Hill Dickinson – What do the legal directories say about us?

Chambers and Partners HNW Guide 2017:

- ‘The best maritime law team in the superyacht business’
- ‘Absolutely first-class, astute and experienced...’
- ‘Market leaders with a reputation that precedes them’
- ‘Highly specialised...at the top of their game...know what they are talking about 100%’

Legal 500 2017:

- ‘At Hill Dickinson LLP, Panos Pourgourides has an ‘*excellent reputation*’ for advising ultra-high-net-worth individuals and lenders, including BNP Paribas and JP Morgan, on superyacht and corporate jet financings.’

**Panos Pourgourides, Partner, The Yacht Team
Hill Dickinson**



Panos was originally engaged in both contentious and non-contentious work in the commercial shipping sector, but has focused on yacht work for most of his career. He has extensive experience acting for yacht owners and almost all of the major banks involved in the provision of finance for new build projects and second-hand yachts and is an acknowledged leader in this field. He also advises on the negotiation of construction agreements, sale and purchase work and other ship and yacht related regulatory issues. Panos is also admitted in Hong Kong.

A presentation by
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