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THE LEGAL ASPECTS OF A SLOT CHARTER AGREEMENT BIMCO “SLOTHIRE” STANDARD SLOT CHARTER PARTY FORM

INTRODUCTION

“Slot charter parties”, or “space charter agreements”, were first introduced in the very late 60’s of the 20th century by major container operators associated in large consortia. The idea of the first agreements was exchanging slots (a “slot” means the space on board a vessel necessary to accommodate one 20-ft container) on one another’s vessel¹.

The essence of the arrangement was an exchange of free tonnage rather than the sale of slots on board a vessel. Therefore, terms and conditions of the first slot charter parties, reflecting this form of slot chartering, were often provided in what could be referred to as *Cross Charter Party*.

The rapid increase of containerization during the 70’s and 80’s triggered the increase of slot charter parties meaning. However, whilst the initial practice of slot exchange was predominant in the early days of slot chartering, the other form of slot chartering developed whereby the non-vessel owners or individual shipowners enter into an agreement with the container vessel operators to hire slots on their vessels in a given trade. This form of slot chartering could be referred to as *Slot Sale Charter Party*.

From the legal perspective the slot charter party agreement along with a time charter party and a bareboat charter party can be bracketed together as agreements on making use of someone else’s vessel. These agreements from both,

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¹ See: J. Łopuski, *Prawo Morskie*, 1998, vol. II, p. 594.

their commercial goal perspective and their legal context, have some common characteristics.

These are the agreements on the basis of which the party who has a vessel or her loading space at its disposal (mostly the ship operator) allows the other party (the charterer, in case of a slot charter party named the “slot charterer”) to make use of this vessel (or of any part thereof) for running the shipping business which is governed by maritime law. In most cases it’s about the cargo carriage.

The hallmark of privities arising from these agreements is using a vessel for the specific business goals simultaneously by both parties to such an agreement but in a different way.

The Polish maritime code regulates the time charter agreement only. The bare-boat charter is treated as a hire or lease agreement regulated by civil law, adapted for a shipping purpose by using the appropriate standard forms. A slot charter party, which allows one party to use loading space of the vessel belonging to the other party, is a unique agreement in a sense that this is neither a time charter nor a voyage charter (which pertains to the carriage of cargo by sea) but has the common features with both of these agreements.

The current slot charter parties, widely used in the shipping trade, can be treated as a hybrid type of shipping contracts, which have arisen for the needs of the entities operating in the international carriage, who undertake to carry cargoes but who do not operate ships. Unlike in a time charter, where the whole vessel is placed for use, the slot charterer hires only a part of the ship’s loading space and does not act as the ship operator and has no control over the operation of the vessel.

Slot charter parties (agreements) are usually concluded by the charterers with the shipping companies (shipowners or ship operators) operating in the liner trade. The slot charterer is liable for the proper performance of the contracts concluded with the freighter (shipper) or the consignee (cargo receiver). It assumes a role of a contractual carrier, although it neither owns nor operates a vessel.

1. LEGAL ASPECTS OF A SLOT CHARTER AGREEMENT

A slot charter agreement in its legal nature, and according to the law of obligations theory, is a bilateral, binding, payable and mutual contract having a consensual nature. It is a hire contract.

The *essentialia negotii* of a slot hire agreement include: an obligation of the shipowner (or the ship operator) to place at the disposal of the slot charterer a pre-specified number of slots on board of the named vessel for use, the obligation of

the slot charterer to remunerate the shipowner (to pay "hire") for using the agreed space on board the vessel (for his own or third parties cargoes), as well as duration of the agreement and the manner of use of the vessel, showing maximum weight of goods carried out and a trade on which the goods have to be carried.

The usual *accidentalia negotii* of the slot hire agreement include: a place and date (term) when the owner is bound to place a vessel (her loading space) at the disposal of the charterer and the conditions regarding the payment of hire.

The other provisions such as a range of obligations, duties and responsibilities are not necessary for a contract conclusion, but nevertheless the parties usually try to regulate them, sometimes in a very detailed manner, in order to avoid any unnecessary disputes and responsibility under the signed agreement.

The parties to such an agreement may prepare their own, original charter party, where they describe conditions under which they want to use a part of the ship's loading space. Such agreements (so called *private charterparties*) are nowadays less and less used due to a wide cooperation of the shipowners and the charterers. Their application is limited to those shipping regions where the number of business transactions is minor. The predominant parts of these agreements are concluded on so called *standard forms*, developed and updated from time to time by the maritime organizations, societies and unions of shipowners, charterers and cargo owners as well as brokers and maritime agents.

The above mentioned rapid development of containerization and the increased number of the agreements concluded on selling slots on board the vessels have induced the Baltic and International Maritime Council (BIMCO) to develop a universal (standard) form of such an agreement.

The main goal of such a form was to develop a document accepted by both parties to a contract, the one offering slots for sale and the one buying them, based on the philosophy of equitable risk sharing during the sea carriage of goods packed into containers.

The BIMCO had developed, and introduced in May 1993, the Standard Slot Charter Party named "Slothire". The "Slothire" Charter Party follows the usual pattern that has been used by BIMCO for many years for different charter parties and for various trades. It represents the so called "Box Layout" system with separate two parts marked as: Part I and Part II.

The main idea of such a division was to have the first part (Part I) filled by the parties to the charter party with all necessary amendments and agreed provisions, and to keep the second part (Part II) as it is in a form, that means with a printed text unaltered.

Unfortunately, from the practical perspective, most parties to the charter parties alter Part II in order to adopt the form, as much as possible, to their own needs, ignoring the fact that the standard charter party constitutes an integral

whole (completeness) and any changes to some of the printed clauses may destroy the overall balance of the charter party.

The following part of this article contains a wider explanation of the contents of both Parts to a standard charter party form, as well as the sample copy of the original BIMCO text of the “Slothire” Standard Slot Charter Party.

2. BIMCO “SLOTHIRE” STANDARD SLOT CHARTER PARTY – PART I

In that Part all items to be agreed for the particular fixture and to be filled in by the parties have been arranged in boxes (frames). Twenty four (24) boxes contain a brief description of the particular item (subject) and a reference (in most cases) to the relevant clauses in the printed body of Part II.

The first six boxes contain the self-explanatory items: names of the shipbroker, the name and address of the shipowners and the slot charterers (in the form shortly named as “owners” and “charterers”), the name of the vessel and her call sign. (It has to be clarified that the term “owner” does not mean the registered owner of the vessel and can indicate the ship’s operator as well).

Boxes 7, 8 and 9 define the number of slots (TEUs) allocated to the slot charterers, the maximum weight of containers and the number of refrigerated containers which the charterers plan to carry and connect to the vessel’s refrigerating power supply. More information thereon is contained in Clause 1 of Part II.

Box 10 contains the vessel’s itinerary. Usually, the detailed ship’s itinerary is shown at one of the rider clauses.

Boxes 11, 12, 13 and 14 define the date and place of the commencement of the slot charter, notice of termination of the agreement, the earliest date on which the notice of termination may be given and the name of a port, the date or scheduled period after which the charter is terminated.

Boxes 15 – 19 deal with slot charter hire. The parties have to insert the agreed slot charter rate into Box 15. The additional amount payable for each container requires that a power supply from the vessel has to be laid down in Box 16. Box 17 requires to insert the place of the charter hire payment and the bank account. The payment has to be made within a period (number of days) indicated in Box 18. Late payment entitles the shipowners to an interest rate per annum as agreed in Box 19.

Box 20 indicates the agreed amount of money which the slot charterers are allowed to pay in settlement of a claim arising from their customers for which they

(the charterers) are going to seek recovery from the shipowners in relation to their damaged goods and containers on board the vessel.

Box 21 requires to show the place where the adjustment of General Average will take place.

Box 22 indicates the rate of a broker's commission and the name of a party to whom it is payable. The item "brokerage commission" or "commission" is included in most of the charter party forms (time and voyage charterparties) and indicates the broker's remuneration. Sometimes it is indicated as lumpsum money but in most cases as a percentage of hire payable to the owners. The commission used to be paid by the shipowner to the charterers' broker who negotiated the slot hire contract.

Box 23 allows parties to choose law and arbitration indicating one of the three options (marked as: a, b, or c) from Clause 23 of Part II. If option (c) has been chosen the parties have to state the place of arbitration.

Box 24 is used for indicating the number of additional clauses (so call *riders*) covering special detailed provisions attached to the charter party.

Part I of the slot charter party contains also two more boxes, which do not bear any numbers. They are self-explanatory and serve as space for placing signatures of the shipowners and the slot charterers.

The standard BIMCO form of the Part I is shown below.

BIMCO "SLOTHIRE" CHARTER PARTY FORM

1. Shipbroker	THE BALTIC AND INTERNATIONAL MARITIME COUNCIL (BIMCO) STANDARD SLOT CHARTER PARTY CODE NAME: „SLOTHIRE” PART I
	2. Place and date
3. Owners/Address	4. Charterers/Address
5. Vessel	6. Call Sign
7. Slot Allocation (state no. of TEUs) (Cl. 1)	8. Weight Allocation (state maximum total weight of Containers) (Cl. 1)

9. State no. of Containers to be connected to Vessel's refrigerating machinery/power supply (Cl. 1)	10. Vessel's Itinerary (Cl. 6)
11. Commencement Date and Place (Cl. 2)	
12. Termination (state period of notice of termination) (Cl. 2)	
13. Notice (state earliest date on which notice of termination may be given) (Cl. 2)	
14. State port and date, or scheduled period (Cl. 2)	
15. Slot Charter Hire (FIOS) per voyage (Cl. 5)	16. Additional amount (per day) payable for each Container receiving a supply of power from the Vessel (Cl. 5)
	17. Place of payment; also state beneficiary and bank account (Cl. 5)
18. Latest payment date (Cl. 5)	19. Interest rate per annum (Cl. 5)
20. Charterers' maximum claim settlement authority (Cl. 15(d))	
21. General Average to be adjusted at (Cl. 19)	22. Brokerage commission and to whom payable
23. Law and Arbitration state (a), (b) or (c) of Cl. 23; if (c) agreed also state Place of Arbitration) (Cl. 23)	24. Number of additional clauses covering special provisions

It is mutually agreed that this Contract shall be performed in accordance with the conditions in PART I including additional clauses, if any agreed and stated in Box 23, and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further.

Signature (Owners)	Signature (Charterers)
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2. BIMCO "SLOTHIRE" STANDARD SLOT CHARTER PARTY – PART II

This part contains 23 standard clauses. It begins with a couple of definitions such as "TEU", "Slot", "Container", "Goods" and "Subcontractor". Three of them are crucial. "TEU" stands for Twenty Foot Equivalent Unit and means the standard 20 foot ISO Standard container used for the carriage of goods. "Slot" means the space on board a vessel necessary to accommodate one 20 foot container (TEU). The term "Goods" means, in general, the cargo delivered on board the

vessel by the slot charterers. It includes containers which are not owned or hired by the charterers.

Clause 1. Slot and Weight Allocation

This clause clarifies that the number of slots allocated for the charterers' containers agreed in Box 7 of Part I can be loaded on board the vessel only when the total weight of goods and containers does not exceed the weight shown in Box 8 of the same Part. It means that it is the weight allocation and not the number of slots hired that determines the ultimate limit of the number of containers which may be shipped on board the vessel if some of the containers are heavy. Therefore, if the total weight allocation has been reached without full use of number of slots, such slots have to remain unused by the charterers; and the slot charterers have to pay for that. The final part of this clause (Sub-clause (c)) permits the shipowners to make free use of any slot unused by the slot charterers. It provides an opportunity to the shipowners to hire unused slots to other customers or the owners who can carry their own goods – provided that those slots are ready for the charterers at the next port.

Clause 2. Period

Parties to the slot charter party may agree that the period of the charter party shall run for an indefinite period of time until terminated by either party upon giving notice of termination. That notice has to be shown in Box 12 of Part I. The parties have to indicate the earliest day for such a notice and show it in Box 13. However, parties to the slot charter may agree that slots shall be hired on a voyage-related basis or on a time charter-related basis, so the alternative provisions provide that termination of the slot charter party shall be effected upon discharge at a port and on a scheduled date or within a scheduled period as agreed by the parties and shown in Box 14.

Clause 3. Trading Limits

The employment of the vessel under the slot charter is restricted to lawful trades and within the limits of the IWL. The first condition means that the vessel cannot be engaged i.e. in smuggling or trading with the enemy. The second one – she must trade within the limits defined by the Institute of London Underwriters, the limits imposed on vessels for hull insurance purposes.

Clause 4. Permitted Cargoes

The first part of this clause makes the general notice on use of slots on board the vessel. It says that slots shall be used exclusively for the carriage of containerized cargo and containers have to comply with the requirements of the ICSC

convention². The second part thereof allows carriage of uncontainerised cargoes on the vessel upon the prior approval of the shipowners.

Clause 5. Slot Charter Hire

Slot charter hire, which is agreed and shown in Box 15 of Part I, may be expressed either as a daily rate per slot, a daily rate per all slots or as a Lump Sum rate per slot (e.g. between two ports). The clause provides also for an additional rate for the use of power for generators of refrigerating containers and it is expressly stated that slot charter hire shall be deemed earned upon the commencement of the voyage and shall be non-returnable.

Clause 6. Itinerary

This clause imposes the obligation on the shipowners to inform the slot charterers about the schedule of the vessel. It has to be done as early as possible in order to plan the shipment of containers or other goods the charterers plan to ship on board the vessel. On the other hand, the clause entitles the owners to exercise the liberty to deviate, as provided in the Hague-Visby Rules, and to indemnify the charterers in case of deviation in other circumstances, which are not permitted by a bill of lading covering goods for which the charterers have used slots.

Clause 7. Opening Containers

For the operational reasons (e.g. drugs, stowaways, illegal weapon) the shipowners are entitled to open any container shipped by the slot charterers and inspect its contents. The slot charterer has to be informed about it and the opened container must be re-sealed.

Clause 8. Stowaways

In general, costs incurred in respect of stowaways found on board the vessel are for the shipowners' account. Considering that the slot charterers are responsible for packing and sealing the containers, it is also their responsibility to ensure that there are no stowaways in these containers and in other goods delivered for shipment. In case stowaways gain access to the vessel via the slot charterers' goods and containers the charterers are responsible for the costs incurred.

Clause 9. Drugs

This clause is in some way related to the two previous ones. As smuggling of drugs is a huge problem all around the world the slot charterers have to assume liability incurred in the event that unmanifested narcotics are found to have been shipped as part of the slot charterers' goods or in their containers.

² International Convention for Safe Containers, 1972.

Clause 10. Repairs

Similar to other charter parties (the time and bareboat ones) the shipowners are entitled to take a vessel out of service for maintenance and repairs purpose, provided they give reasonable notice to the slot charterers.

Clause 11. Owners' Obligations

This clause contains the shipowners' obligations regarding the slot charterers' cargo on board the vessel, such as loading, securing and discharging. It means that the slot hire charter party is based on FIOS (Free In and Out Stowed) terms. The costs of loading and discharging as well as stowing, lashing and securing are payable by the slot charterer (or the shipper or the receiver as the case may be). However, the shipowners are to contract with the stevedores and lashing gangs in order to arrange all of those activities, but the payment goes for the account of the charterers. Taking care of the cargo during the voyage lies with the ship's master and the chief engineer.

Clause 12. Charterers' Obligations

This clause contains the slot charterers' obligations regarding providing the shipowners with complete, accurate and on time the documentation regarding the goods and containers to be loaded on the vessel. In order to secure the prompt loading of the charterers' cargo the clause requires that the charterers must ensure that it must be delivered at least 24 hours before the arrival of the vessel.

Clause 13. Indemnity and Agency

As there is no contractual relationship between the owners and any third parties such as the slot charterers' customers (e.g. the owners of the goods and containers) Sub-clause (a) of this clause protects the shipowners against any claim or allegation which could be made against them in connection with goods or containers, or their carriage, and requires slot charterers to indemnify the shipowners against all consequences thereof whatsoever.

Due to the fact that bills of lading for the cargo shipped under the slot charter party are prepared and signed by the slot charterers, the shipowners, in order to protect themselves, require that the charterers' bills contain the usual protective clauses. The examples of such clauses are shown at the end of Sub-clause (a).

Sub-clause (c) of this clause makes the slot charterers the owners' agents, so that the slot charterers stipulate for the shipowners to have the benefits from any immunities, exceptions or liabilities in the slot charterers' bill of lading terms and conditions. This is to give the shipowners the benefit of the Himalaya Clause (or the Circular Indemnity Clause) in the charterers' bill of lading.

Sub-clause (d) of this clause clearly states that the shipowners have the full right to claim for a General Average contribution irrespective of any other arrangements made in this clause.

Clause 14. Owners' Responsibilities and Liabilities Clause 14 points out several tasks the shipowners are responsible for, such as: seaworthiness of the vessel, the proper and careful carriage of goods, custody and care of the charterers' cargo on board the vessel, the provision of electrical power to refrigerated containers. The clause determines the general rule that the liability of the shipowners shall be subject to Article III Rule 6 (including 6bis) of the Hague-Visby Rules. In respect of loss of or damage to charterers' containers as well as goods the quantum of liability is determined in a detailed way. Sub-clause (g) of the clause obliges the shipowners to indemnify slot charterers against any claims for personal injury on the vessel, unless caused by the negligence of the slot charterers or their servants.

Clause 15. Charterers' Responsibilities and Liabilities.

This clause consists of six sub-clauses which carefully determine the key slot charterers' responsibilities and liabilities. The first two ones are making charterers responsible for costs incurred prior to loading and during loading of their goods and containers, as well as for damage caused to other goods or containers or to the vessel as a result of improper stowage or lashing of goods inside the charterers' containers. The clause imposes on slot charterers the obligation to indemnify the shipowners in case the charterers' goods or containers or any documentation relating to such goods result in any fines or costs to the shipowners. Furthermore, this clause sets down the 15-month time bar for any claim the shipowners may have against the slot charterers.

Clause 16. Mutual Exemption Clause

Clause 16, divided into two sub-clauses, contains the usual provisions as regards mutual exemptions in carriage such as Act of God, war, civil commotion etc. and includes the usual provisions relating to indirect or consequential loss, including damage or decline in the market value of the vessel or goods.

Clause 17. Lien

The lien clause gives the shipowners the right to keep the cargo which belongs to the slot charterers until all sums due to the owners from the charterers and their servants or agents in respect of services provided by the owners to the charterers under the term of the slot charter party are paid.

Clause 18. Dues, Charges and Taxes

This clause provides for a reasonable and mutually agreed sharing of dues, charges and taxes customarily levied on the vessel, as well as goods on board.

Clause 19. General Average

The main issue of this clause is an agreement that slot charter hire does not contribute to General Average. This option is similar to those applied in time and bareboat charter parties.

Clause 20. Salvage

This clause addresses the situation when the vessel requires salvage services from professional salvors. The shipowners can be required to give any undertaking to salvors and the slot charterers shall guarantee to the owners that the requirement will be met (in respect of their goods), provided that it is duly notified.

Clause 21. Deck Carriage

As the cargo loaded into slots are mostly containers (but it can be also trucks, yachts, carriages) the parties to the slot charter party agree that it can be stowed on deck and that in case of General Average it will contribute in it.

Clause 22. Sub-letting

The “Slothire” standard charter party unlike time and voyage charter parties forbids the slot charterer to sub-let the slots on the vessel without the prior approval of the shipowners.

Clause 23. Law and Arbitration

This clause provides for optional legal systems and venues of arbitration by leaving to the parties to make their own choice in each individual case. The clause contains four sub-clauses, marked with (a)-(d) letters, giving the parties a choice for their charter party to be governed by English or American law (letters a or b) or to refer any dispute arising out of the charter party to arbitration at the place they mutually agree and governed by laws indicated by them in Box 23 of Part I. In case the parties do not fill in Box 23, Sub-clause (a) of this clause (i.e. English law and arbitration in London) will automatically apply.

The standard BIMCO form of the Part II is shown below.

PART II
 “SLOTHIRE” Standard Slot Charter Party

levied on the Goods and/or Containers, howsoever the amount thereof may be assessed.	302 303
19. General Average	304
General Average shall be adjusted at the place as indicated in Box 21 according to the York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof. Slot Charter Hire shall not contribute to General Average. The Owners authorise and empower the Charterers to act as the agents of the Owners in the collection of General Average security. The Charterers shall guarantee the contributions properly due to the Owners in respect of:	305 306 307 308 309 310 311 312
(a) Goods for which the Charterers are the contracting carrier unless such Goods are delivered to the Charterers prior to notice being given by the Owners to the Charterers that General Average security is required; and	313 314 315 316
(b) Containers shipped by the Charterers under this Slot Charter Party.	317
20. Salvage	318
In the event of the Vessel needing to engage salvage services and in order to secure the release of Goods and/or Containers for on-carrriage, the Owners shall be required to give any undertaking to salvors to assist in the collection of security and not to release Goods and/or Containers until acceptable salvage security has been provided. The Charterers shall guarantee to the Owners that the requirements of such undertaking will be met in respect of Goods, for which the Charterers are the contracting carrier and Containers shipped by the Charterers under this Slot Charter Party, provided that these requirements are notified to the Charterers prior to the delivery of the Goods and/or Containers to the Charterers.	319 320 321 322 323 324 325 326 327 328 329 330
21. Deck Carriage	331
Goods and Containers may be carried on deck and shall contribute in General Average whether carried on or under deck.	332 333 334
22. Sub-letting	335
The Charterers shall not assign this Slot Charter Party and shall not sub-let the Slots without the prior approval of the Owners.	336 337 338
23. Law and Arbitration	339
*) (a) This Slot Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Slot Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force, one arbitrator being appointed by each party. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single Arbitrator appointed shall apply. If two Arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final. The Arbitrators shall be commercial men engaged in shipping.	340 341 342 343 344 345 346 347 348 349 350
*) (b) This Slot Charter Party 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 should any dispute arise out of this Slot Charter Party, the matter in dispute 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 purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men engaged in shipping.	351 352 353 354 355 356 357 358 359
*) (c) Any dispute arising out of this Slot Charter Party shall be referred to arbitration at the place indicated in Box 23, subject to the procedures applicable there. The laws of the place indicated in Box 23 shall govern this Slot Charter Party.	360 361
(d) If Box 23 in PART I is not filled in, sub-clause (a) of this Clause shall apply.	
*) (a), (b) and (c) are alternatives; indicate alternative agreed in Box 23.	

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