Outline of Presentation

Introduction

Essentials of an S&P contract

Singapore Ship Sale Form (SSF)

Conclusion
I. Introduction

- Buying & Selling of second-hand ships are done using standard form contracts – SALE FORMS

- Only 2 Sale Forms in existence (Norwegian & Nippon Sale Forms)
  - Norwegian (NSF)- 1993 version
  - Nippon (Ni SF)- 1999 version
II. Essentials of an S&P deal

- Parties (Sellers & Buyers)
- Subject matter of sale (Vessel)
- Consideration for the sale (purchase price/payment)
- Conditions of sale

dated & signed CONTRACT
Once the contract is in place;

- Buyers pays deposit (10%)
- Buyers agrees to pay the full purchase price
- Buyers inspects the ship & responds
- Buyers starts processes for ship registration & use (flagging arrangements, crew confirmation)
The Sellers agrees the following;

- Sellers agrees to provide advance notices and notice of readiness (NOR) regarding vessel delivery
- Sellers promises that vessel is free from all encumbrances
- Sellers promises to deliver the vessel “as it was” at the time of inspection and with Class maintained
- Sellers agrees to provide all required documents
Other Terms of Sale Contract

Other Clauses that caters to breach of the provisions in sale contract

1. Default clauses (a) Sellers Default (b) Buyers default
2. Dispute settlement
What can go wrong?

Anything!

Once there’s a disagreement between the parties, even a misplaced comma in the contract can cause millions to the losing party.
MEMORANDUM OF AGREEMENT

Dated: [Redacted] 2010

hereinafter called the Sellers, have agreed to sell, and
or its nominee, to remain responsible and guaranteed the performance of any nominee.
hereinafter called the Buyers, have agreed to buy:

Name: [Redacted]
Classification: Society/Class: [Redacted]
Built: 1986
Flag: [Redacted]
Call Sign: [Redacted]
Register IMO Number: [Redacted]

hereinafter called the Vessel, on the following terms and conditions:

Definitions

"Banking days" are days on which banks are open both in the country of the currency stipulated for the Purchase Price in Clause 1 and in the place of closing stipulated in Clause 9.

"In writing" or "written" means a letter handed over from the Sellers to the Buyers or vice versa, a registered letter, telex or other modern form of written communication.

"Classification Society" or "Class" means the Society referred to in line 4.


2. Deposit

As security for the correct fulfillment of this Agreement the Buyers shall pay a deposit of 10% of 20% (ninety per cent) of the Purchase Price within 3 banking days from the date of this Agreement, i.e. after MOA being signed by the Sellers and the Buyers in facsimile/signed forms. Both parties shall sign the MOA by fax within 24 hours after main terms agreed.

This deposit shall be placed with a bank and held by them in a joint account as Stakeholder for the Sellers and the Buyers, to be released in accordance with joint written instructions of the Sellers and the Buyers’ authorised representatives only or as per final arbitration award. Interest is to be credited to the Buyers. Any fees charged for holding the said deposit shall be borne equally by the Sellers and the Buyers.

3. Payment

The said Purchase Price shall be paid in full free of bank charges on delivery of the Vessel, but not later than 3 banking days after the Vessel is in every respect physically ready for delivery in accordance with the terms and conditions of this Agreement and

The above document is a computer generated SALEMFORM 1993 copyrighted by the Norwegian Shipping’s Association. Any alteration or deletion of this form must be clearly visible. In the event of any inconsistencies between this document and the original approved version of this form, the original approved version shall apply. The Norwegian Shipping’s Association assume no responsibility for any loss, damage or expenses as a result of disputes between the original approved form and the computer generated document.
good by the Sellers at their expense to the satisfaction of the Classification Society without condition or recommendation. In each event the Sellers are to pay also for the cost of the underwater inspection and the Classification Society's attendance.

(iii) If the Vessel is to be drydocked pursuant to Clause 6(a) or (b) above and no suitable drydocking facilities are available at the port of delivery, the Sellers shall take the Vessel to a port where suitable drydocking facilities are available, whether within or outside the delivery range as per Clause 5(b). The Buyers shall be responsible for all costs incurred in connection with the drydocking and the resulting loss of charter hire if any. The period for drydocking shall be extended by the additional time required for drydocking and extra waiting, limited to a maximum of 30 days.

(iv) If the Vessel is drydocked pursuant to Clause 6(a) or (b) above, the Classification Society may require survey of the hull system, as well as the surveys of the machinery and electrical systems. The cost of such surveys shall be borne by the Buyers unless the Classification Society requires such survey to be carried out in a port of the Sellers' choosing, at their own expense.

(v) The Sellers shall not be liable for any defect or damage to the Vessel as a result of drydocking, unless such defect or damage is caused by the Sellers' failure to comply with the drydocking instructions provided by the Classification Society.

(vi) The Buyers shall ensure that all necessary documents, including the Bill of Sale and the Classification Society's approval, are in order prior to the delivery of the Vessel. The Buyers shall be responsible for all costs and expenses incurred in connection with the delivery of the Vessel, including any taxes, duties, or fees associated with the transfer of title.

3. Documentation

The place of closing: Singapore

In exchange for payment of the Purchase Price, at the time of delivery the Sellers shall furnish the Buyers with delivery documentation that is reasonably required for the legal transfer of title and registration under the Buyers' flag. A list of such delivery documents shall be mutually agreed upon by the Buyers and the Sellers and listed in an Addendum to the MoA. The issuance and signing of the aforementioned Addendum to the MoA shall not in any way delay the signing of the MoA by both parties and the payment of the 25% deposit as per Clause 2 herein.

(a) Legal Bill of Sale in a form acceptable to the court in which the Buyers are registered, certifying that the Vessel is free of encumbrances, mortgages, liens, and any other claims whatsoever and that it has been duly transferred and legalized by the consent of such country or country's competent authority.

(b) Current Certificate of Ownership issued by the competent authorities of the flag state of the Vessel.

(c) Confirmation of Class issued within 30 days prior to delivery.

(d) Current Certificate issued by the competent authorities stating that the Vessel is free from registered encumbrances.

(e) Certificate of Deletion of the Vessel from the Vessel's registry or other evidence of deletion of the Vessel's registry at the time of delivery. In the event that the matter is not registered at the time of delivery, the Sellers are required to provide the Buyers with necessary documentation to effect deletion from the Vessel's registry and furnish a Certificate of Deletion or other evidence of deletion to the Buyers promptly and at the Buyers' expense.

(f) Any other additional documents as may reasonably be required by the competent authorities for the purpose of registering the Vessel with the flag state of the Vessel.

At the time of delivery the Buyers and the Sellers shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.

At the time of delivery the Sellers shall hand to the Buyers the classification certificate(s) as well as all related documents, which are on board the Vessel. Other certificates which are on board the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case the Buyers shall be entitled to take copies of same. Other certificates which are not to be in the Sellers' possession shall be promptly forwarded to the Buyers at their expense, if they so request. The Buyers may keep the Vessel's logs only but the Buyers have the right to take copies of same.

9. Encumbrances

The Sellers warrant that the Vessel, at the time of delivery, is free from all charges, encumbrances, liens, and other claims. This warranty is conditioned upon no lien or encumbrance having been recorded against the Vessel prior to delivery.

This document is a computer-generated SAL Form issued by authority of the Kowloon Shipyards' Association. Any execution or alteration of the form must be clearly marked. The form is not open to the public and is only available to registered users of the Kowloon Shipyards' Association. The form is not intended for general use and should only be used for the purpose for which it is intended.
4. Inspections
   a) The Buyers have inspected and accepted the Vessel’s classification records on 16th October 2009. The Buyers’ right to physically inspect the Vessel have also inspected the Vessel’s after inspection and have accepted the Vessel that the inspection and the survey is not yet definitive.

   b) The Sellers shall have the right to inspect the Vessel’s classification records and do notify the Buyer within 3 days.

5. Notices, time and place of delivery
   a) The Sellers shall keep the Buyers well informed of the Vessel’s intended place of delivery and time and day. The Buyers shall have 20/47, and 3 days approx notice of ready for delivery and 1 day’s notice of the estimated time of arrival at the expected readiness for delivery.

   b) The Vessel shall be delivered and taken over safely at the nearest port to the Buyers. The Vessel shall be delivered and taken over safely at the nearest port to the Buyers.

6. Dry-docking/Divers Inspection
   a) The Buyers shall inspect the Vessel in drydock at the port of delivery for inspection by the Classification Society of the Vessel’s underwater parts and welding. The Buyers shall inspect the Vessel at least once a month and if the Vessel is not cleaned by the Classification Society, it shall be inspected by the Classification Society.

   b) The Vessel shall be made available to the Buyers for inspection without delay.

   c) The Sellers shall have the right to inspect the Classification Society and the Vessel shall be made available to the Buyers for inspection without delay.

   d) Should the Vessel become an actual, constructive or uncompromised total loss before delivery, the deposit together with interest earned shall be released immediately to the Buyers. Should the Vessel become a constructive or uncompromised total loss before delivery, the deposit together with interest earned shall be released immediately to the Buyers. Should the Vessel become a constructive or uncompromised total loss before delivery, the deposit together with interest earned shall be released immediately to the Buyers. Should the Vessel become a constructive or uncompromised total loss before delivery, the deposit together with interest earned shall be released immediately to the Buyers. Should the Vessel become a constructive or uncompromised total loss before delivery, the deposit together with interest earned shall be released immediately to the Buyers.
Response to a growing and recognized need to have an alternative, updated and simple ship sale form.

Coming from Asia, it ensures that the needs of the Asian shipping community is well addressed.
SSF (Dual structured & updated sale form)

**Boxes**
- Front page
- All essential details on 1 page
- Easy to use
- Result in valid contract

**Descriptive Clauses**
- 17 Clauses
- In line with S&P practices
- Cater to Asian shipping community
One-ship Seller “S” intends to sell his trading Vessel “V” to a Buyer “B” in exchange for payment of price “P” subject to the terms of a ship sale form.

Scenario (1): Ideal – all goes well, ships is transacted
(2) B lodges 10% deposit with a Sing bank (S), signs the NSF contract and before the vessel is ready for delivery, agrees to pay the balance 90% to a bank in Vienna (V). S takes the view that B has breached a contractual condition by not paying the “full” purchase price (deposit + bal. P) in one bank.

NSF: Payment of “full” price- judgment will favour Seller

Aktor (2008)

SSF: Judgment will favour Buyer
# SSF Provision

## Deposit (Clause 1)

10% of the purchase price, to be held in a joint escrow account of both parties and to be released as part payment of the purchase price to the Sellers

## The notable features in the SSF are:

(i) Clarification on the effect of bank remittance charges imposed on the deposit

(ii) Explicit stipulation that the deposit shall be released as part payment of the purchase price and,

(iii) Ensuring that the opening of joint account is facilitated by imposing shared obligations on both parties, taking into account the changed banking rules
(3) S tenders a NOR but is not ready with documents needed for sale. Is the NOR valid? What are the documents required under NSF?

NSF: Valid NOR= Physical readiness of Vessel; Docs required:
  From Sellers - 4; From Buyers- Nil

SSF: Valid NOAR= physical readiness + legal readiness of Vessel;
Docs required: From Sellers - 14; From Buyers- 4
SSF Notice of Actual Readiness (Clause 5 (b))

- Marked deviation from the existing NOR concept in existing Sale Forms
- Sellers shall tender NOAR only if both physical and legal readiness is achieved
Identification of all essential documents required to form a valid contract (from both the Sellers and the Buyers):

1. **After deposit is lodged**, Sellers required to forward scanned or photocopies of all requested Plans, Registry, Class, Safety/Trading certificates and other docs required for Buyers registration and management documentation.
2. **14 days prior to NOAR**, Parties required to exchange by fax or email, documents listed in the clause for review & comments.
3. **3 days prior to delivery**, copies of executed versions in strict conformity with drafts are to be circulated.
4. **At the time of delivery**, Class certificates, Plans, drawings, record books and instruction manuals to be delivered to the Buyers.
(4) After sale, B finds that the cargo space of the vessel is unclean

NSF: Favour Seller as NSF is silent

SSF: Favour Buyer as SSF provides for this situation
Condition on Delivery (Clause 4)
SSF reflects current market practice

The Sellers obligations are to deliver the vessel:

(a) substantially in the same condition as the Vessel was at the time of inspection (except fair wear and tear)

(b) with present Class maintained free from any outstanding Class conditions and/or recommendations

(c) with clean and valid national and international trading certificates

(d) with cargo spaces clean and free of any cargo

(e) free from damage affecting Class
(5) After sale, when the vessel reaches a port in London, it is detained for previous violations of port state environmental laws

NSF: No remedy for Buyer under NSF

SSF: Remedy to Buyer under SSF
Encumbrances (Clause 9)
Another discernible Clause of the SSF

The SSF explicitly makes the encumbrance’s clause a condition of the Agreement

The SSF Clause 9 also clarifies the scope of the encumbrances by including writs, port state detentions, stowaways, trading commitments and other debts along with commercial claims (encumbrances, charters, mortgages, debts, maritime liens)
(6) B finds a stowaway in the ship

NSF: No remedy to the Buyer
SSF: Remedy to Buyer, included in Encumbrances clauses which is made a condition of the contract

(7) Dispute - arbitration- where? which law?

NSF: London/New York; English law
SSF: Singapore
Arbitration (Clause 15)
Asian-centric provision in the SSF

2 alternative clauses

(1) Default

Singapore & SCMA Rules

(2) Open

English law

Choice of the Parties as to the venue, applicable rules & governing law
(8) Buyer succeeds in arbitration, but unable to recover the awarded damages as S is a one-ship shell company.

NSF: No remedy to Buyer as Seller disposed off his only available asset.

SSF: Buyer can go after the Sellers’ guarantor.
Recap of the SSF Highlights

- Structural Difference
- Improved Deposit & Payment Clauses
- Clarifies the scope of physical inspection, encumbrances clauses
- New and practically relevant NOAR concept
- Detailed & effective documentation clause
- Distinctive pro-Asian arbitration clause
- New clauses on confidentiality & implied terms
Relevance of the SSF

• The SSF is discernibly simple, unambiguous, easy to use
• The SSF is up-to-date with changes in maritime & banking regulations
• The SSF is a balanced, alternative sale form drafted in line with the latest S&P practices
• The SSF caters to the needs of the Asian shipping community by providing an Asian venue for arbitration
IV. Conclusion

SSF or any other standard form contract is only meant to provide a general and fast track means to conclude an S&P agreement.

The terms in these standard forms have to be carefully and thoughtfully changed with changes in the parties, vessel and other factors (market fluctuations).

Otherwise, ANYTHING in the signed contract can result in costly disputes.
Questions & Thoughts

Thank you