

SALE & PURCHASE OF SECOND-HAND VESSELS

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INTRODUCTION

- Sale and purchase of used/second-hand vessels usually involves 3 main stages:
 - 1. The negotiations stage
 - 2. The contract stage
 - 3. The completion stage

1. THE NEGOTIATIONS STAGE

- Carried out by brokers appointed by the parties
- Involves price bargaining and negotiations of terms of the contract
- Once main terms and details agreed, parties enter the contract stage

2. THE CONTRACT STAGE

- Memorandum of Agreement (MOA) – legally binding contract
- Standard form contract like Norwegian Sale Form, Nippon-sale Form and Singapore Ship Sale Form
- Deletions and additions

A. Norwegian Sale Form 1993 (NSF)

- Produced by Norwegian Shipbrokers' Association (NSA)
- Adopted by BIMCO in 1956
- Has undergone 4 revisions, latest in 1993
- Out-of-date?
- Process to update started at the end of 2010 – to bring NSF in line with current commercial practice and legal developments
- NSA and BIMCO have organised a series of consultations in September and October 2011 to discuss the proposed amendments to the NSF

B. Singapore Ship Sale Form 2011 (SSF)

- Centre of Maritime Studies spent 2 years drafting the SSF
- Launched on 6 January 2011
- Used for the first time on 6 January 2011 by Marco Polo Offshore II and Abbeypure Pte Ltd
- Main aims when drafting the SSF?

C. Comparison between the NSF and SSF

Some key differences:

- SSF uses a box system

Clause	SSF	NSF
Guarantor	<i>Boxes 1 & 2</i> <ul style="list-style-type: none">• Provision for option of guarantor	NIL
Nominee	<i>Box 2</i> <ul style="list-style-type: none">• Provision for buyer to have nominee	NIL

C. Comparison between the NSF and SSF

<u>Clause</u>	<u>SSF</u>	<u>NSF</u>
Deposit	<p><i>Clause 1</i></p> <ul style="list-style-type: none"> • Deduction of bank remittance charges from amount of deposit is contractually accepted by seller • Duty imposed on seller to open joint escrow account in nominated bank within a specified time • Deposit must be deposited with a “value date” • Deposit will be released to seller as part of the purchase price • Buyer to arrange bank-to-bank confirmation from remitting bank • Seller and buyer shall comply with anti-money laundering laws and regulations of country in which the nominated bank is located 	<p><i>Clause 2</i></p> <ul style="list-style-type: none"> • SSF requirements not found in NSF

C. Comparison between the NSF and SSF

<u>Clause</u>	<u>SSF</u>	<u>NSF</u>
Payment	<p><i>Clause 2</i></p> <ul style="list-style-type: none">• Purchase price must be paid “for same day value”• Liquidated damages for the seller in certain situations where buyer fails to take delivery of the vessel• Written notice includes modern means of communication like email	<p><i>Clause 3</i></p> <ul style="list-style-type: none">• SSF requirement not found in NSF• SSF requirement not found in NSF • More general definition

C. Comparison between the NSF and SSF

<u>Clause</u>	<u>SSF</u>	<u>NSF</u>
Notices	<p><i>Clause 5</i></p> <ul style="list-style-type: none"> • “Notice of Actual Readiness” (NOAR) • Standardises the number of notices to be given and interval between each • Duty to give written notices not limited to time and place of expected delivery and extends to vessel’s itinerary • Seller under positive duty to take reasonable steps not to hinder delivery by dates given in notices • Clause 5(c) additional wording that “sellers incur no liability under the agreement” 	<p><i>Clause 5</i></p> <ul style="list-style-type: none"> • “Notice of Readiness” (NOR) • SSF requirements not found in NSF

C. Comparison between the NSF and SSF

<u>Clause</u>	<u>SSF</u>	<u>NSF</u>
Documentation	<p><i>Clause 8</i></p> <ul style="list-style-type: none"> • Longer list of seller's documents • List of buyer's documents • Ensures a letter of confirmation from seller to buyer that vessel not blacklisted at time of delivery • Formalises the common practice of exchanging drafts of delivery documents for review and comments • Requires parties to circulate executed versions of their documents in strict conformity to the drafts at least 3 days prior to delivery 	<p><i>Clause 8</i></p> <ul style="list-style-type: none"> • Less comprehensive list of seller's documents • No buyer's documents • SSF requirements not found in NSF

C. Comparison between the NSF and SSF

<u>Clause</u>	<u>SSF</u>	<u>NSF</u>
Encumbrances	<p><i>Clause 9</i></p> <ul style="list-style-type: none"> • It is a condition that vessel must be free from all encumbrances at time of delivery • Wider list of encumbrances • Contains duty on seller to indemnify against all consequences of any claims against the buyer that may arise due to claims against the vessel 	<p><i>Clause 9</i></p> <ul style="list-style-type: none"> • Seller warrants that the vessel, at the time of delivery, is free from all encumbrances • Only 5 items listed • Contains duty on seller to indemnify buyer against all consequences of claims made against the vessel

C. Comparison between the NSF and SSF

Clause	SSF	NSF
Confidentiality	<i>Clause 16</i>	NIL
Entire agreement	<i>Clause 17</i>	NIL

- Buyer's default, Seller's default, Arbitration & Governing Law (Disputes presentation)
- Which Form to use?

3. THE COMPLETION STAGE

- Ship deliveries and closings
- Involves pre-delivery matters, delivery of documents, physical delivery of vessel, payment of balance of contract price and post-delivery matters

A. Standard closing memorandum

- Parties to the transaction
- Definitions
- Document list – Document name, Responsibility, Time frame, Status
- Pre-closing procedure
- Closing procedure in chronology
- Post-closing procedure

B. Closing actions

- a) Parties table and review delivery documents
- b) Representatives of buyer and seller on board vessel confirm vessel is physically ready for delivery
- c) The following takes place simultaneously:
 - release of deposit
 - remission of balance of purchase price
 - existing mortgage discharged
 - Protocol of Delivery and Acceptance executed, delivery documents exchanged
 - title over vessel registered
 - new mortgage registered
 - notice of assignment sent to insurers

C. Payment mechanics

- MT 103 on its own
- MT 103 with MT 202
- Transferring funds to a separate account with seller's bank using MT 199 Conditional Payment Order
- Payment letter

D. Post-delivery matters

- Cancellation of insurance by seller; issue of new insurance policy in buyer's name
- Certificate of permanent deletion from ship's registry
- Issue of new class certificate
- Conversion of preliminary registration to permanent registration



Thank you for your attention!