

Understanding and Using the Singapore Ship Sale Form (SSF)

17 March 2016
The Bank Bar + Bistro



Understanding and Using the Singapore Ship Sale Form (SSF)

Programme

- 2.30 pm Guest Registration
- 3.00 pm Introduction by Mr David Chin, ED SMF
- 3.05 pm Comments and insights on S&P practice using the SSF
by Mr Henry Mytton-Mills, SMF Board Member
- 3.15 pm Overview on SSF clauses
by Mrs Gina Lee-Wan, SMF Board Member
- 3.25 pm Introduction to SCMA
by Ms Teo Hwee Ping, Director (Business Development), SCMA
- 3.35 pm Q & A
- 4.00 pm Networking
- 5.00 pm Ends

Introduction

By

Mr David S.S. Chin
Executive Director
Singapore Maritime Foundation



Why did we draft the SSF?

- In 2009, SMF was asked by the Singapore and Asian maritime communities to have an alternate Sales Form that would better serve their needs for S&P of second-hand vessels.
- We discussed extensively and had close consultation with shipping associations and maritime professionals across various specialisations and decided that we should come up with such an alternate Ship Sale Form.
- This will cement Singapore's reputation as a thought leader for maritime affairs and;

Also

- Encourage the growth of Singapore as a Maritime arbitration centre and the use of SCMA Rules.
- The Singapore Ship Sale Form was launched on 6 January 2011.

Key Milestones

SMF's Documentation Journey

- **January 2011:**

Endorsed by Asian Shipowners' Forum and the Federation of ASEAN Shipowners' Associations (FASA).

- **November 2011:**

Inclusion of the SSF in the Charter Party Editor by SDSD to facilitate amendments due to actual negotiation between sales and purchase participants.

- Meanwhile in **November 2012:**

BIMCO decided to include Singapore in the BIMCO Standard Dispute Resolution Clause in all new and revised BIMCO contracts, in recognition of the growth in the use of Singapore for Maritime Arbitration, in line with the growth of the Maritime Legal Community and the Shipping Growth of Singapore.

Key Milestones

SMF's Documentation Journey

- **March 2013:**

Commencement of a joint effort by ASBA, BIMCO and SMF to revise the NYPE 93, the industry's most widely used standard form of Dry Cargo Charterparty.

- **October 2015**

The successfully completed NYPE 2015 was jointly launched by ASBA, BIMCO and SMF.

- **March 2016:**

Inclusion of the SSF in the widely used BIMCO Charter Party Editor, IDEA●2.

Key Milestones

SMF's Documentation Journey (continued)

- Over 200 known transactions using the SSF to date. Well known shipowners include NOL, IMC, PIL, PCL and PSL have used the SSF for their S&P transactions.

Relevant websites:

www.singforms.com – Information resource for the SSF

www.bimco.org – Information on BIMCO's IDEA●2 charter party editor

www.sdsd.com/charter-party-editor/ - Information on SDSD charter party editor

www.scma.org.sg – Information on the Singapore Chamber of Maritime Arbitration (SCMA)

Comments and insights on S&P practice using the SSF

By

Mr Henry Mytton-Mills
Managing Director
Aries Shipbroking (Asia) Pte Ltd

SMF Board Member



Food for Thought

Contracts are a waste of time unless there is a problem, then it is too late to say what you were trying to mean or whether you agree.

Henry Mytton-Mills (2016)

Key Clauses to be Covered

- **Boxes 1 to 11 (Page 1)**
- **Clause 1: Deposit**
- **Clause 2: Payment**

Why Use the SSF?

1. When you complete the SSF, you have an effective workable contract. However, if you do it even on the latest Saleform, it is only an Option agreement.
2. We have dissected 15 years of legal precedence for the SSF, i.e. we know what we are saying.
3. For chartering deals, most deals are not drawn until after re-delivery. For S&P, there is no such luxury, everything has to be in place before the deal is done. Deals made for S&P has to have a contract, no getting away from it.
4. Nobody starts with a blank Norwegian Form and SSF, unlike charter parties. That is why we made the SSF holistic and clear so that everyone knows what it is saying.

Boxes 1 to 11 (Page 1)

1. The Sellers:	
1(a) Guarantor (optional)*:	
2. The Buyers or Nominee**:	
2 (a) Guarantor (optional)*:	
3. Name of the Vessel:	4. IMO No./Official No./Call Sign:
5. Type, Built Yard, Built Year & GT:	6. (a) Flag/Port of Registry:
7. Classification Society ("Class"):	(b) Bare-boat Registry (if any):
8. Purchase Price:	
(i) Deposit (10 % of Purchase Price):	
(a) Payee Bank:	
(b) Value Date:	
(ii) Balance Purchase Price (Purchase Price less Deposit): + any extras under Clause 7	
(a) Payee Bank:	
(iii) Place of Closing:	(iv) Daily Cost of Delayed Delivery:
9. (i) Physical Inspection (Port and Date):	
(ii) Pre-Delivery Divers Inspection (Port):	
10. Delivery Place (at safe anchorage or berth in):	
Delivery Date (Range):	Cancelling Date:
Declaration: It is hereby mutually agreed that this Agreement shall be performed according to the terms and conditions set out herein. Additional clauses, if any, shall be deemed to be fully incorporated into this Agreement.	
11. Signatures - For and on behalf of:	
The SELLERS: (Name/Title)	The BUYERS: (Name/Title)
GUARANTOR, if any: (Name/Title)	GUARANTOR, if any: (Name/Title)

Comments for Boxes 1 to 11

Objectives:

1. Provides a consolidated view of the transaction and allows parties to refer to essential details without having to go through the entire agreement.
2. Reduces the risks of mistakes, omissions and inconsistencies with the agreement.
3. Increases the clarity and flow of the substantive clauses and minimises alterations needed.

Highlights:

1. Optional guarantor(s) clause (Box 1)
2. Expanded nominee clause (Box 2)

Clause 1: Deposit

The Buyers shall pay a deposit of 10 per cent of the Purchase Price specified in Box 8 (i) as security for the fulfillment of this Agreement to the bank nominated by the Sellers in Box 8 (i) (a), with a value date no later than that specified upon in Box 8 (i) (b) of this Agreement. Notwithstanding that the amount received may be lesser due to bank remittance charges imposed during the normal course of transfer, such amount shall stand as due fulfillment of the Buyers obligation to pay the deposit and be held in a joint escrow account of both the Sellers and the Buyers, which shall be released to the Sellers as part of the Purchase Price in accordance with joint written instructions of the Sellers and the Buyers. The Sellers are to arrange the opening of the joint escrow account latest by 2 banking days prior to the Value Date. The Buyers, latest together with their remittance of the Deposit, are to arrange bank-to-bank confirmation from the remitting bank to the bank specified in Box 8 (i) (a) that the Buyers, and the remitting party if different, are a known customer of the bank and should it be required by the bank in Box 8 (i) (a), the Buyers will also arrange for the bank-to-bank confirmation to include the confirmation by the remitting bank that they know the source of funds. Both Sellers and Buyers shall comply with the anti-money laundering laws and regulations of the country in which the bank(s) specified in Box 8 are located.

Any interest earned on the deposit shall accrue to the Buyers whereas any closing fee/fees charged for holding the deposit shall be borne equally by the Sellers and the Buyers.

Clause 2: Payment

(a) The Buyers shall pay the Balance Purchase Price specified in Box 8 (ii) in full including any extras under Clause 7 free of bank/transfer charges to Sellers' nominated bank account at Sellers' bank stated in Box 8 (ii) (a) upon delivery of the Vessel. The agreed Purchase Price shall be paid for same day value within 3 full banking days, (being banking days in the place of closing and in the country of the Purchase Price currency) after the Sellers tender the written notice* of actual readiness of the Vessel for delivery in accordance with Clause 5 (b).

(b) The Buyers may delay to take delivery of the Vessel for up to a maximum of further seven (7) consecutive days paying to the Sellers the sum specified in Box 8 (iv) per day, or part thereof, as compensation for such delay provided that the Buyers have declared their intention to take late delivery prior to the expiry of the specified 3 full banking days. Any such amount due shall be paid at the time and place and in the same currency as the Purchase Price and any additional amounts due under Clause 7. If such delay exceeds seven (7) consecutive days then the Sellers shall have the right to cancel this Agreement and claim damages for their losses incurred.

**Throughout this Agreement, a written notice is to mean a registered letter, telex, tele-fax, e-mail or other modern form of written communication between the Sellers and the Buyers.*

Comments for Clauses 1 & 2

Objectives:

1. Certainty of payment of the deposit and the balance purchase price.
2. Clarity on the ancillary duties of sellers and buyers.

Highlights:

1. Addresses the issues arising from *The Aktor*.
2. Prevents technical breach (bank charges causing shortfall in deposit) resulting in contract being terminated.
3. Avoids issues that arise when sellers insist that the whole purchase price be paid to the bank nominated by them in the payment clause (*The Aktor*).
4. Update to anti money laundering laws and KYC requirements.
5. Option for late delivery of vessel.

Note: The NSF requires cooperation between both parties to open a joint bank account. Should any party have any second thoughts on the deal, this is where the first problem starts.

Overview of the Singapore Ship Sale Form (“SSF”)

Gina Lee-Wan

Partner, Co-Head of Maritime and
Aviation,

Allen & Gledhill LLP

17 March 2016

Allen & Gledhill



Introduction

- The Singapore Ship Sale form (“**SSF**”) was launched by the Singapore Maritime Foundation on 6 January 2011 in response to Singapore and Asian maritime communities’ call for an alternative sale form that would better serve their needs.
- *Objectives and aims* were to: a) provide a more balanced starting point for both Sellers and Buyers, b) to improve and update the existing forms and c) to resolve and more adequately deal with issues and legalities that had previously arisen over the course of the years with the existing sale forms.

Salient Features

- **User-friendly**
 - tabular layout with boxes + substantive clauses.
- **Improved Deposit and Payment Clause**
 - deals with the issues arising from the English case of *PT Berlian Laju Tanker TBK & Another v. Nuse Shipping Ltd* (2008) EWHC 1330 Comm (*The Aktor*).
- **New concept of Notice of Actual Readiness**
 - physical readiness + legal readiness.

Salient Features (continued)

- **Comprehensive Documentation Clause**
 - includes a comprehensive documentation clause – much easier to delete than to add!
- **Encumbrances**
 - includes a list of broad, unambiguous encumbrances which is clear and provides certainty to all parties.
- **Buyers Default**
 - adds certainty and clarifies remedies in two scenarios: a) where the deposit has been paid and b) where the deposit has not been paid; balances competing interests of buyers and sellers.

Salient Features (continued)

- **Pro-Asian Arbitration Clause**
 - provides for Singapore or English law and allows for Singapore arbitration – an effective cost-saving and quality option.
- **Confidentiality and Entire Agreement**
 - provides for a confidentiality clause, and the addition of an entire agreement clause ensures that prior negotiations and agreements are superseded.
 - **Tip:** may wish to also include exclusion of any applicable statutes or laws (as an example: the Sale of Goods Act).

Objectives

- What are the aims and objectives of the SSF?
 - *concise, simple and unambiguous;*
 - *ensures that the transaction proceeds as smoothly as possible;*
 - *user-friendly;*
 - *takes into account market practice and resolves issues and case law that have arisen over the years;*
 - *time and cost effective; and*
 - *minimises disputes and litigation.*

Usage

- Certain (but not all) provisions of the SSF have been adopted by the NSF 2012.
- Also available on the BIMCO IDEA•2 platform.

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Conclusion: the SSF is a well-balanced document which is user-friendly, concise and clear, which we hope will be utilised by the shipping community.

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Thank You

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AN INTRODUCTION



**HWEE PING TEO
DIRECTOR(BUSINESS DEVELOPMENT)**

**17TH MARCH 2016
THE BANK BAR & BISTRO**



HISTORY

- 2004- Entity within SIAC – Administered model.
- 2009- Reconstituted.
- WAS: A framework for maritime arbitration responsive to the needs of the maritime community.
- NOW: Choice seat of maritime arbitration in Asia.



WHO? – THE USERS OF SCMA CLAUSES

- Ship sales and purchases
- Vessel and terminal operations
- Cargo sales and purchases
- Brokerage
- Management agreements
- Charter Parties
- Ship construction and repairs
- Liner agreements
- Offshore drilling
- Maritime insurance
- Stevedoring
- Surveying
- International Trade



WHY SCMA?

- Neutrality
- Expertise
- Finality
- Speed
- Reasonable Costs



SCMA CASE SUMMARY

2009	2010	2011	2012	2013	2014	2015	2016	Local 50%	Local 100%	Intl 100%	Total
6								3	2	1	
	14							5	3	6	
		16						9	1	6	
			20					10	6	4	
				20				15	3	2	
					25			12	3	10	
						37		24	4	9	
							20	3	0	17	
								81	22	55	158
							Updated :		4th	Mar	2016



DEVELOPMENTS – REMAINING RELEVANT

- Small Claims Procedure
- Singapore Bunker Claims Procedure
- SCMA Expedited Arbitral Determination of Collision Claims
- Arb-Med-Arb
- Small Claims limit has been increased to USD150,000.00
- SBC Terms developed with MPA and SSA
- SEADOCC – timely and cost effective means of determining liability for a collision
- Mediation settlement can be recorded as a consent award which is enforceable



OUR PANEL OF INTERNATIONAL ARBITRATORS

- Experienced maritime lawyers
- Experienced industry professionals
- International
- Stringent qualification criteria
- Highest Quality



Maxwell Chambers

Secretariat of SCMA:

- Lee Wai Pong
- Hwee Ping Teo
- Tammy Tan





MEMBERSHIP & BENEFITS

SYMBIOTIC RELATIONSHIP

- Voice
- Consultations
- Dialogue
- Engagement –Direction
- Showcase Expertise
- Networking

EVENTS

- Annual Conference
- Distinguished Speakers Series
- Tea-talks
- Members' Evening



WHERE ARE WE IN THE NEXT 5,10,20 YEARS?

- SSF JANUARY 2011

SCMA as the default venue of arbitration.

- BIMCO November 2012

Adoption of Singapore SCMA as the 3rd seat of arbitration in BIMCO's standard dispute resolution clause in all new and revised BIMCO contracts.

- NYPE 2015

Latest revision of the New York Produce Exchange Time Charter in October 2015 – Singapore is one of the 3 named seats under clause 54.



WITH YOUR SUPPORT...SCMA WILL BE

THE CHOICE SEAT OF MARITIME ARBITRATION IN ASIA

- NEUTRALITY
- EXPERTISE
- FINALITY
- SPEED
- REASONABLE COSTS



THANK YOU!

Q & A

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