



Guest Column

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SHIP SALE AND PURCHASE- SELLERS' PERSPECTIVE

The contract for ship sale and purchase and the subsequent delivery of the vessel may not take place immediately on completion of the contract. It may be several days or months before the actual delivery takes place. For the seller the actual delivery is vital as that is when the ownership is passed on to the buyer. At that point the seller ceases to have an insurable interest in the ship. In addition, the seller can then no longer use the ship as collateral security for borrowings. Subject of course to the specific terms of the contract the sellers creditors may no longer be able to look to the vessel as one of the sellers' assets.

Saleform 2012 makes provision for security deposit that the buyers may lodge within 3 banking days of the signing of the agreement. Clause 2 deals with the Deposit as agreed between the seller and buyer or more typically 10% of the purchase price. This amount is to be lodged in an escrow account within 3 banking days from the day the MOA is signed between the parties. The seller needs to exercise caution in a volatile market as 10% may be too low. In most demolition sales due to the lower price and higher risk factor, 20% may be more of the norm. The Deposit amount is released to the seller at the time of closing.

Clause 3 of the NSF 2012 deals with all payments at the time of closing which includes the sale price, the deposit amount as also any additional monies due on account of bunkers, lubes, oils etc. The seller has to take care that all payables are mutually accounted for and priced in advance of the sale. This has to be paid free of bank charges to the seller.

Sellers cannot be rest assured on the presumption that the sale is affected whilst the vessel is afloat or after just a superficial inspection by the buyers. Under Clause 6, the buyers have the right to conduct an underwater inspection of the vessel and her hull with a representative of the classification society present. In normal circumstances, the cost of this inspection is borne by the buyers unless there is a fault which effects the seaworthiness of the vessel and that which has to be addressed before the delivery of the vessel wherein the cost will be upon the seller. In addition, the onus is upon the seller to compensate monetarily to the buyers for rectification or in the alternative rectify the fault and deliver the vessel without class condition. Under Clause 6, the buyers also have the right to pull out the tail shaft and inspect at their expense unless

repairs are required wherein the sellers have to pay. Clause 6 is significant in the sense that there may be considerable discussion regarding the significance of the damage, costs for repairs, loss of hire amongst others. As these discussions commence after the main terms are agreed upon, it could well lead to a fallout of the deal.

The sellers should take care that the pricing for all items onboard the vessel is incorporated into the price of the vessel as at delivery they become the property of the buyer except for the list of items to be excluded and as stipulated under the addendum. Under Clause 8 the burden is upon the seller to provide all proper documentation to enable the buyer to register the vessel under their chosen registry. "Condition on Delivery" talks about the vessels seaworthiness and that it requires to be addressed before delivery and is a debatable point. Again as in Clause 6 various factors may pose a debatable point which could cover the nature of defect, the cost, liabilities and so on. The subjective nature of the interpretations may lead to conflict and disputes.

In case of the vessel M. V. Michail Arhangelos, an MOA was entered into by the seller and the buyer on 2nd April 2010, at a price of 1.1 million. The vessel was to be demolished and it was agreed that after clearing outstanding wages and dues, the balance amount was to be kept in a joint account and this amount to be released to the seller upon the vessel being dismantled by 50% or maximum as per the days of beaching at the yard. Disputes in connection with interpretations of terms of the contract was to be vide arbitration in London. The seller had the right to repudiate the contract and claim the amount deposited. The seller issued the buyer with a receipt of full payment, possession of the vessel handed over to buyer and bill of sale drawn up for the full payment although payment in full was not received. There was no response from buyers for payment of the balance amount. The seller therein sent a notice of cancellation of the MOA and the bill of sale and called upon the buyer to deliver the vessel. The seller rested on the premise that the buyer had breached the terms of the MOA and consequently, the title and ownership had not passed in the buyers favour. In addition, the Seller informed the ship registry to desist from issuing any kind of ship certificate to the buyer.