

Ship Sale and Purchase: A Practical Approach

Introduction

Ships are not like any other movables because of their high economic value. Proceedings with regards to sale and purchase of a ship might be complicated as there are many factors to be considered by the parties. Neither Turkish Code of Obligations (TCO) nor the Turkish Commercial Code (TCC) contains provisions especially designed for the sale and purchase of ships. In the absence of a contract drawn up by the parties, provisions of sales contract found in articles 207 to 281 in the TCO apply to ship sale contracts.

Parties to the contract are free to determine the content of the contract and to draft the clauses and terms. However, in international practice, standard form contracts are used for sale and purchase transactions of ships. The most common forms of standard contracts in the market are the Norwegian Sale Form, the Japan Shipping Exchange Form (Nippon Sale Form) and the Singapore Ship Sale Form. With regards to yacht sale and purchase, the most common standard form is the Mediterranean Yacht Brokers Association Memorandum of Agreement.

The TCC, on the other hand, provides the principles for the acquisition of ownership of vessels registered to Turkish Ship Registry. Pursuant to article 1001 of the TCC, there are two requirements for the transfer of ownership of a registered vessel. Firstly, parties should agree on transfer of ownership and secondly, actual possession of the vessel should be transferred from the seller

to the buyer. The agreement must be concluded in written form and signatures of the parties must be notarized. Registration to Turkish Ship Registry is not required for the transfer of the ownership, however it is in the buyer's interest to register the ship.

This article aims to provide a brief overview on the stages of the ship sale and purchase under international practice.

First Stage: Negotiations and Recap

Prospective buyers usually approach a ship broker (S&P Broker) to find a ship for their needs. Similarly, a seller may appoint a broker for the transaction or may advertise the ship on the market and choose not to depend on an exclusive broker. Alternatively, parties may decide to handle the whole transaction by themselves.

Ship brokers act as intermediary between the buyer and the seller. Once a suitable ship is found, buyer through the broker receives technical information about the vessel. If the particulars of the vessel meet the criteria of the buyer, an inspector appointed by the buyer usually makes an inspection to understand the general condition of the vessel. If the buyer is satisfied with the results, negotiations between the brokers start. At this stage, offers and counter offers are exchanged where the brokers usually focus on main issues such as price, required deposits, particulars of the ship, inspections etc.

Both brokers have a duty of care to their principals and will be liable in case of a misrepresentation. Therefore, they should stay within the limits of their authority. In some cases, there may be only one broker for both the seller and the buyer. In such circumstances, the broker should avoid in engaging conflicts of interest. Brokers will have a right to a commission based on the sale price of the vessel.

Once there is an agreement on the basic terms of the deal, a recap, drawn up by the brokers, will be exchanged via email between the parties for confirmation.

Second Stage: Memorandum of Agreement

The recap includes the basic terms of the deal; however, details of the agreement should be worked out. Therefore, the next step is signing the Memorandum of Agreement (MoA).

As mentioned above, there are three types of commonly used sales forms in the international market. Norwegian Sale Form (NSF), adopted by the Baltic and International Maritime Council (BIMCO) in 1956, is the most commonly used among these forms. NSF has been revised many times and the latest version came out in February 2012 to replace NSF 1993. Apart from the NSF, Nippon Sale Form or Singapore Sale Form, albeit relatively more common in the Asian market, are used by the parties.

The terms of the sale will be based on the agreed MoA once it is signed. As the NSF is the most common form in ship sale and purchase practice, it is worth noting the following steps under the terms of NSF 2012.

3 After signing of the MoA, a deposit of 10% or any other agreed percentage of the ship purchase price is deposited to an escrow account within three banking days after the agreed date. If the deposit is not lodged, the seller has a right to cancel the contract and is entitled to claim compensation for the losses and all expenses incurred together with interest pursuant to NSF 2012.

NSF 2012 further gives the buyer the flexibility to inspect the vessel before or after signing the MoA. Inspection covers not just a physical inspection but also the inspection of the documents of the ship including ship's class records, insurance policies, certificates of compliance etc. Buyer or his surveyor will make a physical inspection on diverse components of the vessel such as the machinery, tools, equipment and the general shape of the vessel.

Inspections are of vital importance as the buyer may choose to accept or reject the vessel depending on the results of these inspections. If the buyer is not pleased with the outcome of the inspections, the sale may fail. On the other hand, if the buyer decides to accept the vessel, a written notice must be issued to the sellers within seventy-two hours after completion of the inspections.

Underwater inspections may be conducted by diving professionals. Alternatively, the vessel may be placed for drydock for the inspection of its underwater parts.

Third Stage: Closing

When the vessel is at the place of delivery which is determined under the relevant clause of the NSF 2012, a written notice of readiness for delivery is given by the seller to the buyer. Further, the parties designate the time and venue for the closing meeting.

On the day of closing, the buyer, the seller, their legal representatives, brokers (if any), and the bank representatives (if the purchase is financed by a bank loan) attend the meeting. In the meeting, the relevant documents that are mentioned in the NSF 2012 are exchanged by the parties. The number of documents that must be delivered by the seller is much higher than those to be delivered by the buyer.

The vessel is physically delivered to the buyer and the payment is made by the buyer either through an escrow agent or the buyer's bank directly at the same day.

Unless the buyer prefers to continue with the existing crew, the new crew will board while the existing crew will leave the vessel. It is the seller's duty to arrange the repatriation of the seamen who left the vessel.

The vessel must be delivered in the same condition as it was at the time of inspection. Not only remaining bunkers but also remaining oils and greases in storage tanks and other provisions in the store rooms (Remaining on Board or "ROB") are calculated and the amount is paid by the buyer in accordance with the NSF. A protocol of delivery and acceptance which confirms the date and time of the delivery is signed and exchanged between the buyer and the seller.

If the purchase price is not paid, the seller will have a right to cancel the MoA and the deposit will be released to the seller. On the other hand, if the seller cannot make the vessel physically ready for delivery, the buyer may choose to cancel the MoA and in such case the deposit must be released to the buyer.

Seller is under the obligation of delivering the vessel free from all charters, encumbrances, mortgages and maritime liens or any other debts and further has to warrant that the vessel is not subject to Port States or other administrative detentions. Therefore, the seller bears full responsibility for claims made against the vessel that have been incurred prior to the time of delivery.

Fourth Stage: Post-Closing

Once the ship is delivered to the buyer, the seller should cancel its insurance policy and inform the classification society about the change in ownership.

Buyer, on the other hand, will arrange the registration of the ship under the existing flag or the new flag under its name. In case the buyer chooses to change the vessel's flag, a Certificate of Deletion and a Continuous Synopsis Record (CSR) are prepared by the previous flag state authority. Without these documents, it is not possible to register the vessel under the new flag.

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If the buyer has used a bank loan for the purchase, the bank's mortgage will also be registered on the vessel. Furthermore, a new insurance policy will be issued on behalf of the buyer and the buyer will also notify the classification society about the date and time of the purchase.

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