MARITIME ARBITRATION

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ARBITRATION

• Process by which a dispute or difference is referred to and determined judicially and with binding effect by the application of law by one or more persons (i.e. arbitrators) instead of a court of law

• Arbitrators derive their power from Parties Contract

• Most cross border and maritime contracts have Arbitration Clauses
OTHER DEFINITION

• Arbitration is a process of dispute resolution outside the court system by parties empowering and independent arbiter to decide the dispute.

• The Arbitrator’s powers are quasi judicial and have further powers derived from the contractual provision as well as the law in the seat of arbitration.
WHY GO TO ARBITRATION - CONFIDENTIALITY

• Perceived inadequacies of using court procedures to resolve disputes. (in favour of arbitration: speed and efficiency, expertise of the arbitrator, flexibility in procedure and confidentiality).

• Real reason: Parties do not want to go to court

• Confidentiality of the Process better preserves future relationship
WHY GO TO ARBITRATION - FINALITY

- There is no appeal process from an Arbitration Award
- Award can only be set aside on limited grounds
- In contrast a Court Judgment can be appeal from to a higher court which can overturn the Judgment on the grounds that the Judge erred on the facts and law
WHY GO TO ARBITRATION - ENFORCEABILITY

• Court Judgments are effective within the jurisdiction of the Court

• If parties are from different jurisdictions / countries, a very real problem is how the judgment can be enforced in the country of the losing party

• The Reciprocal Arrangement between Countries are limited to a small group of countries

• Arbitration Awards are enforceable in Countries adopting the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
ARBITRATION PROVISION

• Statutes may define what is an arbitration agreement, this is however easily discernible in practice

• The Malaysian Arbitration Act, 2005, defines an “arbitration agreement” as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not (Sec: 2)
ARBITRATOR’S POWERS

• The arbitrator’s appointment is a consensual one by the parties.

• The arbitrator shall decide the dispute according to the rules of law chosen by the parties ........ and in all cases he shall take into account trade usages .
LAW VS PRACTICE

• "The Law and practice of shipping law have always been closely entwined. There can surely be no other branch of commerce where the practical people know, and need to know, so much of the law; and where professionals know, and need to know, so much of the practice."

• Lord Mustill
SHIPPING AND THE LAW
TYPES OF MARITIME ARBITRATION

• Choice of ad hoc / institutional arbitration
• Arbitral Institute must be stipulated in the Contract
• Parties are also free to provide for Rules of a Particular Institute without nominating that Institute
MARITIME DISPUTES

- Shipbuilding
- Sale and Purchase
- Charterparty
- Supply Contracts
INSTITUTIONAL ARBITRATION

- London Maritime Arbitrators Association (LMAA)
- Singapore Chamber of Maritime Arbitration (SCMA)
- Singapore International Arbitration Centre (SIAC)
- Hong Kong International Arbitration Centre (HKIAC)
- AIAC – Asian International Arbitration Centre
SHIPPING BUILDING CONTRACTS

• Contract Formation / Terms
  • Which / whose contract / contract terms applies: Issue of Battle of Forms

Parties in Dispute : Shipbuilder and Buyer OR Principal and Sub-Contractor

What is in Dispute : Payment / Quality ?

• Governing law : Choice of express law / Determination of Proper Law

• Availability of Adjudication : Recourse to CIPAA
SALE AND PURCHASE DISPUTES

• What issues arise in the dispute depends on:
  • Structure of Parties Contract:
    • Straight Sale, Sale cum ancillary contracts eg. Combined with Charter
    • Use of Standard Forms – Norwegian Sale Form; Riders
  • Stage of Transaction: Initial Stage - Was there a concluded contract, which forms / terms apply, Deposits, Status of Future Payments / Instalments / Enforceability of Sale

• Governing law: Choice of express law / Determination of Proper Law
OIL & GAS

• Upstream Contracts:
  • Construction of Oil Rig, FPSO, FSO, MOPU
  • Nature of Contract: Turnkey, EPCC, Engineering Procurement Commissioning Contracts

OSVs – Offshore Service Vessels: Charter Disputes, Use of Standard Forms eg Supplytime with Riders

Problem of Contract Chain

• Governing law: Choice of express law / Determination of Proper Law

• Availability of Adjudication: Recourse to CIPAA
ARBITRATOR’S DUTIES

• Section 33 of the English Arbitration Act 1996:
  1) act fairly and impartially as between the parties;
  2) give each party a reasonable opportunity of putting its case;
  3) give each party a reasonable opportunity of dealing with the case of its opponent;
  4) provide a fair means for the resolution of the matters falling to be determined.
COMMON PROBLEMS IN ARBITRATION

• Treatment of evidence
• Ignorance of applicable law / precedents where applicable
• Failure to inform parties of use of own knowledge
• Treatment of technical input
FLEXIBILITY : REAL OR APPARENT ?

- When in court, judge’s decisions are constrained by statutory and case law and the conduct of the trial is governed by established rules of evidence. In contrast, an arbitrator has considerable flexibility to consider any evidence he/she deems relevant and may issue an award based upon perceptions of fairness or equity and not necessarily on the evidence or rules of law.
TREATMENT OF EVIDENCE

• E.g. SIAC Rules - Rule 16.2:
  • The Tribunal shall determine the relevance, materiality and admissibility of all evidence. Evidence need not be admissible in law.

• Rule 28 of the American Arbitration Association (AAA) :
  • The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary
WEIGHT OF EVIDENCE

• Lay [ non-legally qualified ] Arbitrators may have wrong approaches in evaluating evidence

• IBA Rules on Taking of Evidence in International Arbitration Article 8 states that “the Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of evidence”.

(C) PHILIP TEOH
UNCITRAL RULES

• Article 27(1): Each party has the burden of proving the facts relied upon in support of its claim or defence.

• Article 27(3): The Arbitral Tribunal may require the parties to produce documents and other evidence within such a period of time as the Tribunal determines.

• Article 27(4): The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
BOOKS WRITTEN BY PHILIP TEOH

- Forms and Precedents on Shipping
- Annotated - Merchant Shipping Ordinance
- Merchant Shipping (Oil Pollution ) Act
- Collision Regulations
- Sale of Goods Act
- Bullen & Leake Malaysia – Chap Carriage of Goods

Halsbury’s Laws of Malaysia
- Shipping
- Sale of Goods
- Carriers [ Land, Air and Sea]
- Bailment, Lien and Limitation of Liability
- Conflict of Laws
- Equity
- Shipping
- Sale of Goods
- Carriers [ Land, Air and Sea]
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- Conflict of Laws
- Equity
THANK YOU!

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SHIP SALE AND PURCHASE PROCESS

Presented By
WAN HILWANIE ARIFF
ARIFF & CO.
SHIP SALE AND PURCHASE PROCESS
2 types of sale and purchase of vessel:
• Newly built vessel which is still under construction
• Ready-made or Second hand vessels

Form of Agreements:
• Shipbuilding Contract
• Memorandum of Agreement
Shipbuilding Contract

- Shipbuilders’ Association of Japan (the “SAJ Form”)
- China Form
- Korea Form
- In Europe the Association of Western European Shipbuilders introduced their standard form (the “AWES Form”)
- Standard shipbuilding contract (the “NEWBUILDCON”) in 2007

Key Term:

Builder shall “… design, construct, test and survey, launch, equip, complete, sell and deliver” the Vessel to the Buyer all in accordance with good international shipbuilding and marine engineering practice.
Clauses in the Shipbuilding Contract

- Description of Vessel
- Adjustment of Contract Price and Payments
  - Speed Deficiency
  - Excessive Fuel Consumption
  - Delays and Extension of Time for Delivery
- Approval of Plans, Drawings, Builders Supplies and Inspection during Construction
- Modifications and Changes
- Sea Trials and Acceptance
- Delivery and Documents
- Builder’s Guarantee and Warranty
- Insurances
- Suspension and Termination
Key Delivery Documents (Shipbuilding Contract)

- Protocol of Delivery and Acceptance
- Builder’s Certificate
- Commercial Invoice
- Protocol of Trials
- Protocol of Inventory and Equipment
- Protocol of Spare Parts and Surplus
- Protocol of Fuel, Lubricating Oil and Greases
- General Arrangement Plans, Drawings, Manuals
- Declaration of Warranty
- Provisional Load Line Certificates
- Provisional Tonnage Certificate
- Interim Class Certificates
SALE AND PURCHASE OF SECOND-HAND VESSELS

Memorandum of Agreement
(commonly used for Sale and Purchase of Second-hand Vessels)

- BIMCO Norwegian Sale Form 1993
- BIMCO Norwegian Sale Form 2012
- Nippon Sale Form 1999
- Singapore Sale Form 2011
COMMON CLAUSES IN SALE FORMS

Clauses in the Sale Forms

- Details of the Vessel
- Purchase Price
- Deposit
- Payment
- Inspections
- Condition on Delivery
- Notices and Delivery
- Inspection
- Spares and Bunkers
- Documentation
- Encumbrances
- Buyers Default
- Sellers Default
- Buyers Representatives
- Arbitration and Governing Law
Key Delivery Documents

• Bill of Sale
• Certificate of free encumbrance
• Deletion certificate
• Protocol of delivery and acceptance
• Trading Certificates
  - International Load Line Certificate
  - Safety Construction Certificate
  - Safety Equipment Certificate
  - Radio License
  - Class Certificate
The Process

1. Negotiation on terms
2. Pre-Sale Inspection and valuation
3. Signing of Memorandum of Agreement
4. Payment of deposit
5. Pre-delivery survey and inspection
6. Preparation of delivery documents
7. Opening of accounts
8. Notice of Readiness for Delivery
9. Closing Meeting
   ➢ Physical closing – delivery of vessel, change of crew, calculations of fuel and lub on board
   ➢ Financial closing – exchange of delivery documents, release of payment, signing of protocol of delivery and acceptance
10. Registration of transfer
# BILL OF SALE

## BILL OF SALE (Body Corporate)

<table>
<thead>
<tr>
<th>Name of Ship</th>
<th>No. and Port of Registry</th>
<th>Whether a Sailing, Steamer or Motor Ship</th>
<th>Horse Power of Engines, if any</th>
</tr>
</thead>
</table>

**Length from forecast to stem: In the aft side of the head of the stem post**

- **Depth in hold from bottom to ceiling in any ship**

And described in more detail in the Certificate of the Surveyor and the Register Book.

**We do, having our principal in consideration of the sum of $1,000.00, paid to us by the receipt whereof is hereby acknowledged, and the receipt of which is now in the possession of the same.**

**Transferred, in consideration of the sum of $1,000.00, paid to us by Mr. X, the receipt whereof is hereby acknowledged, and the receipt of which is now in the possession of the same.**

Further, we, the said owners, do mutually agree, that we have power in transfer in manner above stated.

**In witness whereof we have hereunto affixed our common seal.**

Off, ____________

**A true copy of this instrument was attested to us by Mr. Y, in the presence of (c).**

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**NOTES:**
- Any blank fields in this form must be filled in by the person completing it.
- **Certificate of Surveyor** must be dated and signed by a duly authorized individual.
- **Register Book** must be properly maintained and updated.

**SIGNED: Mr. A. Owner**

**Date:** ____________

**Authorized Officer**

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**Register of Vessels:**

- The Register of Vessels is a governmental record kept by the appropriate authorities to document the ownership, registration, and other relevant details of vessels. It is an official record that includes all important details about the vessel, including its registration number, owner, and other pertinent information. The Register of Vessels is essential for ensuring the legal and financial transactions related to vessels are properly registered and recorded. This helps prevent any unauthorized use or transactions of vessels and ensures that all interested parties have access to accurate and up-to-date information about the vessel.
MERCHAND SHIPPING ORDINANCE 1952

Section 12. Obligation to register Malaysian ships.

(1) Every Malaysian ship unless so exempted shall be registered under this Ordinance.

(2) If a ship required by this Ordinance to be registered is not so registered, she shall not be recognized as a Malaysian ship.

(3) A ship required by this Ordinance to be registered may be detained until the master of the ship, if so required, produces the certificate and of registry of the ship.

(4) The Minister may prescribe the manner in which ships or classes of ships belonging to the Government of Malaysia or any State thereof or any statutory body therein may be registered under this Ordinance.
Section 13. Exemption from registry.

The following ships are exempted from registration under this Part -

(a) any ship not exceeding 15 tons nett used for navigation on the rivers and coastal waters of Malaysia;

(b) any vessel licensed under section 475 of this Ordinance; and

(c) any local fishing vessel not exceeding five hundred tons gross where such vessel is licensed under any written law relating to fisheries
VESSEL REGISTRATION IN MALAYSIA

Ports of Registry

• Traditional Ship Registry-
  Port Klang, Kuching, Kota Kinabalu, Penang

• Malaysian International Ship Registry-
  Labuan
CRITERIA TO BE MALAYSIAN REGISTERED SHIP

Traditional Ship Registry

a) Malaysian citizens; or

b) Malaysian-incorporated corporations where:

(i) the principal office of the corporation is in Malaysia;  
(ii) the management of the corporation is carried out mainly in Malaysia;  
(iii) the majority (51%) of directors are Malaysian citizens;  
(iv) majority (51%) of the shareholding of the corporation (including voting shares) are held by Malaysians free from any trust or obligation in favour of non-Malaysians.

Malaysian International Ship Registry- Labuan

(i) incorporated in Malaysia and have its principal office in Malaysia; 
(ii) have at least one shareholder and director; and 
(iii) the majority (currently 51%) of the shareholding (including voting shares) are held by non-Malaysian citizens.
WHY REGISTER?

Why must ship be registered?

• Establish the identity of the shipowner as well as proof of flag state and the registration state of a ship.

• Allows recording or registering of information related to mortgages where the ship is pledged as security.

• Registered ships can claim privileges and sovereign protection from the flag state where the ship is registered.

• Non-registration will also hinder the transferring of ownership or financing of the sale and purchase of the ship, because a certificate of registration is required for such transaction.
KeY DIffERENCES IN THE SALE FORMS

Differences Between Singapore Sale Form (SSF) form and the Norwegian Sale Form (NSF) form

• Guarantor can be named
• Nominated buyer to be named
• Deposit with a value date
• Deposit to be paid as part of Purchase Price
• Burden of proof on Buyer to show condition of vessel at time of inspection
• Rejection of vessel only if condition of vessel results in “…substantial impact upon the Buyers ability to trade the Vessel”
• Elaborate list of delivery documents
• “Free from encumbrance” is a condition
• Singapore law/ SCMA
MEMORANDUM OF AGREEMENT

Document:

Date:

Name of Seller referred to as the "Sellers", have agreed to sell, and
Name of Buyer referred to as the "Buyers", have agreed to buy

Name of vessel:

IMO Number:

Classification Society:

Class Notation:

Year of Build:

Builder's Name:

Builder's Yard:

Place of Redelivery:

Definitions:

Banking Days are days on which banks are open both in the seller's and the buyer's country as stipulated for
the Purchase Price in Clause 4 (Purchase Price) and in the place where agreement is reached in Clause 8

"Buyers' Nomination Flag State" means (see definition)

"Class" means the class notation referred to above.

"Classification Society" means the Society referred to above.

"Deposits" shall have the meaning given in Clause 4.

"Deposit Holder" means the bank (or another bank or financial institution) to which the Deposit is paid,

"Deposit" shall have the meaning given in Clause 4.

"Purchase Price" means the price for the Vessel as stated in Clause 4 (Purchase Price).

"Sellers' Bank" means (see definition)

"Sellers' Account" means (see definition)

"Sellers' Bank" means (see definition)

Purchase Price:

Deposit:

An amount of the deposit shall be paid to the Sellers in the amount of the Purchase Price plus interest.

The Deposit Holder has the power to accept the Deposit and to require it to be paid to the Vessels' Bank.

The Deposits shall be made to the Deposits together with any interest earned thereon.

The Parties shall be entitled to receive the Deposit and to withdraw the Deposit upon occurrence of the
specified Event of Default.

The Parties shall be entitled to withdraw the Deposit and to require the Deposit to be paid to the Vessels' Bank.

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specified Event of Default.
2. Payment

On delivery of the Vessel, but not later than three (3) Banking Days after the date that Notice of Readiness has been given in accordance with Clause 5 (Time and place of delivery and notices)

(b) the Buyer shall be released to the Seller, and

(a) the balance of the Purchase Price and all other sums payable on delivery by the Buyer to the Seller under this Agreement shall be paid in full free of Bank charges to the Seller’s Account

4. Inspection

(a) The Buyers have inspected and accepted the Vessel’s classification records. The Buyers have also inspected the Vessel at the time of delivery and have accepted the Vessel following this inspection and the sale is subject to the terms and conditions of this Agreement.

(b) The Buyers shall have the right to inspect the Vessel’s classification records and declare whether or not the same are accepted or not within ten (10) days of delivery.

(c) The Sellers shall make the Vessel available for inspection by the Buyers during the inspection period.

(d) The Buyers shall give the Sellers a written Notice of Readiness for delivery.

(e) The Sellers shall inform the Buyers of the Vessel’s change or cost within three (3) days of notice of the date the Vessel shall be ready for delivery as per the Notice of Readiness.

(f) The Buyers have not declared their option within thirty (30) days of receipt of the Sellers’ notification or if the Buyers accept the new line, the line proposed in the Seller’s notification shall be accepted by the new Cancellation Date and shall be submitted for the Cancellation Date stipulated in the Agreement.

(g) This Agreement is maintained with the new Cancellation Date of all other terms and conditions in force including those contained in Clause 5 (Time and place of delivery and notices) shall remain unchanged and in full.

NORWEGIAN SALES FORM

2012
NORWEGIAN SALES FORM
2012
Sellers’ cost and expense to the satisfaction of the Classification Society without condition or acceptance. In each event the Seller is also to pay for the costs and expenses in connection with putting the Vessel in and taking her out of drydock, including the drydock dues and the Classification Society’s fees. The Sellers shall also pay for those costs and expenses of parts of the shipbuilding system that are considered to be defective or broken or to affect the Vessel’s class. In all other cases, the Buyers shall pay the aforementioned costs and expenses, dues and fees.

3. If the Vessel is drydocked pursuant to Clause 7(b) of this Agreement:

(i) The Classification Society may require survey of the hull and system, the extent of the survey being at the option of the Classification Surveyor. If such survey is not required by the Classification Society, the Buyers shall have the option to require the survey to be done by and surveyor approved by the Classification Society, the extent of the survey being in accordance with the Classification Society’s rules for hull survey and in connection with the current stage of the Vessel’s survey cycle. The Buyers shall also be responsible for the completion of the inspection by the Classification Society. The showing and definition of the hull shall be made by the Seller, and any part of the vessel not considered to be defective or broken or to affect the Vessel’s class, those parts shall be interest in the same good condition as prior to the Vessel’s being drydocked, and such parts shall be interest in the same good condition as prior to the Vessel’s being drydocked.

(ii) The costs and expenses relating to the survey of the hull and system shall be borne by the Buyers unless the Classification Society requires such survey to be done in part or if parts of the system are considered to be defective or broken or to affect the Vessel’s class, in which case the Seller shall pay such costs and expenses.

(iii) The Buyers’ representation(s) shall have the right to be present in the drydock, by observing only without interfering with the work of the Classification Surveyor.

(iv) The Buyers shall have the right to have a representative present in the Vessel’s drydock and to inspect all parts of the Vessel that is to be drydocked, and pay at their own cost and expense without interfering with the Seller or the Classification Society’s survey work. If any, work and materials of the Vessel’s return delivery. If however, the Buyers’ work is decided by the Classification Surveyor, the Buyers shall pay the cost of the work which the Classification Surveyor is required to do, the additional work may be paid to the Buyers’ work shall be for the Buyers’ account only and not considered to be defective or broken or to affect the Vessel’s class. In all other cases, the Buyers shall be responsible for the completion of the inspection by the Classification Society.

Spares, testing and other items

The Seller shall deliver the Vessel to the Buyers with everything belonging to her on board and show the spare parts and spare equipment including spare tail-end and shell(s) and spare spares and spares parts which do not belong to the Vessel at the time of inspection or assuming, whether or not she shall become the Buyers’ property, but spare parts or spares are excluded. Pumping, chutes, if any, shall be for the Buyers’ account. The Sellers are not required to replace spare parts and spares including spare tail-end and shell(s) and spare spares (propeller brackets) which are taken out of service or used as replacement prior to delivery, but the replaced items shall be the property of the Buyers. Unused spares and provisions shall be included in the sale and be taken over by the Buyers without extra payments, where exclusively for use in the Seller’s vessels(s) and kept in a manner, services and conditions.

3. Library and personal belongings, including the ship’s chest are excluded from the sale without compensation, as well as the following additional items:

(a) items on board which are unit or owned by others, items related to matters, duties and personnel (include list)

(b) items on board at the time of inspection which are not unit or owned by others, items related to matters, duties and personnel (include list)

Buyers must report completed by the Seller prior to delivery (include other items).
This Agreement and

(a) The Sellers’ letter of confirmation that to the best of their knowledge, the Vessel is not

(b) At the time of delivery, the Buyers shall provide the Sellers with

(c) Evidence that all necessary consents, shareholders and other action has been taken by the Buyers to enforce the execution, delivery, and performance of this Agreement and

(d) Powers of Attorney of the Buyers appointing one or more representatives to act on behalf of the Buyers in the performance of this Agreement, duly notarized and authenticated (as appropriate).

(e) Any of the documents listed in sub-clauses (a) and (b) above are not in the English language they shall be accompanied by an English translation by an authorized translator or certified by a lawyer qualified to practice in the country of the translated language.

(f) The Parties shall in the event of a dispute or exchange copies of documents annexed thereto.

(g) If any of the documents listed in sub-clauses (a) and (b) above are not in the English language they shall be accompanied by an English translation by an authorized translator or certified by a lawyer qualified to practice in the country of the translated language.

(h) The Parties shall also hold to the Buyers the classification certificate of the vessel, including drawings and manuals, (excluding locations of all vessels classified). If any of the vessels on board the Vessel at the time of delivery is under the same owners, the Sellers are required to retain same, in which case the Buyers have the right to take copies.

(i) Other technical documentation which may be in the Sellers’ possession shall promptly after delivery be forwarded to the Buyers at their expense, if they so request. The Sellers may keep the Vessel’s log books but the Buyers have the right to take copies of the same.

(j) The Parties shall sign and deliver to each other a Certificate of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.

9. Documentation

The Sellers warrant that the Vessel, at the time of delivery, is free from all charges, encumbrances, mortgages and liens, and has been cleared for delivery, and is not subject to prior charter or other restrictions or detentions. The Buyers hereto undertake to indemnify the Sellers against all consequences of claims made against the vessels, which have been incurred prior to the time of delivery.

10. Taxes, fees, and expenses

Any taxes, fees, and expenses in connection with the purchase and registration in the Buyers’ name, whatsoever, and in connection with the closing of the Sellers’ register shall be for the Buyers’ account.

11. Condition of delivery

The Vessel with everything belonging to her shall be as the Seller’s risk and expense until she is delivered to the Buyers. But subject to the terms and conditions of this Agreement the Seller shall be delivered and taken over as she was in the time of inspection, free from and clear of any liens or charges.

However, the Sellers shall deliver the vessel in perfect condition and free of any claims by the Vessel, including, but not limited to, the classification certificate and all national and international certificates, as well as all other certificates the Vessel had at the time of inspection, valid and unamended, without condition or reservation made by the Classification Society of the relevant authorities at the time of delivery.

12. Name markings

Upon delivery, the Buyers undertake to change the name of the Vessel and all its marks.
Should the Deposit not be paid in accordance with Clause 2 (Deposit), the Seller/s have the right to cancel this Agreement, and they shall be entitled to claim compensation for their losses and all expenses incurred together with interest.

Should the Purchase Price not be paid in accordance with Clause 3 (Payment), the Seller/s have the right to cancel this Agreement, in which case the Deposit together with interest earned, if any, shall be refunded to the Seller/s. If the Buyer/s does not cancel this Agreement, the Seller/s shall be entitled to claim further compensation for their losses and all expenses incurred together with interest.

1. Seller/s default

Should the Seller/s fail to give Notice of Readiness in accordance with Clause 7 (Notice of Readiness) or fail to be ready to validly complete a legal transfer by the Cancellation Date the Buyer/s shall have the option of canceling this Agreement. If, after Notice of Readiness has been given but before the Buyer/s have taken delivery, the Vessel cannot be physically ready for delivery and to that extent made ready again by the Cancellation Date, the Buyer/s shall have the option of canceling. In the event that the Buyer/s elect to cancel this Agreement, the Deposit together with interest earned, if any, shall be refunded to the Buyer/s immediately.

Should the Seller/s fail to give Notice of Readiness by the Cancellation Date or fail to be ready to validly complete a legal transfer as demanded they shall make due compensation to the Buyer/s for their losses and all expenses together with interest if their failure is due to reasons not attributable to either or not the Buyer/s cancel this Agreement.

2. Buyer/s representation

After this Agreement has been signed by the Parties and the Buyer/s have paid the deposit the Buyer/s have the right to place two (2) representatives on board to visit the ship and inspect the same.

These representatives are on board for the purpose of familiarization and in the capacity of observers only, and they shall not interfere in any respect with the operation of the Vessel. The Buyer/s and the Buyer/s representatives accept the Owners' P&I Club's standard letter of indemnity prior to their embarkation.

3. Law and Arbitration

(a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be submitted to arbitration in London in accordance with the Arbitration Rules of the London Maritime Arbitration Association (LMAA) Terms of Reference at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of receipt of notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) calendar days. If the other party does not appoint its own arbitrator and gives notice that it has done so within the fourteen (14) calendar days, the party referring the dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both Parties as if the sole arbitrator had been appointed by agreement.

In cases where neither the claim nor any constitution exceeds the sum of US$100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time the arbitration proceedings are commenced.

(b) This Agreement shall be governed by and construed in accordance with the laws of the United States and the substantive law of the State of New York and any dispute arising out of or in connection with this Agreement shall be referred to and decided by the courts of the State of New York, and/or the courts of each of the parties’ chosen, and the parties hereto to the two as above their discretion or that of any of them as their desire, and for the purposes of enforcing any award, judgment may be entered into and enforcement thereof, as if made in an action or a court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any constitution exceeds the sum of US$100,000 the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the
17. Notices

All notices to be provided under this Agreement shall be in writing.

Certain details for notices of advice are as follows:

For the Buyers: 398

For the Sellers: 399

18. Entire Agreement

The entire terms of this Agreement constitute the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Vessel and supersede all prior agreements whether oral or written between the Parties in relation thereto.

Each of the Parties acknowledges that in entering into this Agreement it has not relied and shall have no right to remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as expressly set out in this Agreement.

Any terms implied into this Agreement by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall be taken to exclude any liability for fraud.

For and on behalf of the Sellers

For and on behalf of the Buyers

Name: ______________________________

Title: ______________________________
MEMORANDUM OF AGREEMENT

<table>
<thead>
<tr>
<th>Date of Agreement:</th>
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</thead>
</table>

1. **The Parties:**
   - (a) **Sellar:**
   - (b) **Purchaser:**

2. **Details of Property:***
   - (a) **Location:**
   - (b) **Est. Valuation:**

3. **Terms of Sale:**
   - (a) **Purchase Price:**
   - (b) **Deposit:**
   - (c) **Closing:**
   - (d) **Possession:**

4. **Liabilities and Expenses:**
   - (a) **Sellar:**
   - (b) **Purchaser:**

5. **Legal Security:**
   - (a) **Deed:**
   - (b) **Registration:**

6. **Additional:***
   - (a) **Insurance:**
   - (b) **Maintenance:**

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*This is an optional clause applicable to transactions where either or both parties require to have a guarantee to guarantee the performance of the contract. The guarantee to be given by the non-performing party to the performing party. The guarantee to be in the form and manner as may be mutually agreed upon. The guarantee to be in the form and manner as may be mutually agreed upon. The guarantee to be in the form and manner as may be mutually agreed upon.

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*** The Request shall have written notice of cancellation provided that the request is received by the Sellar not less than six (6) months prior to the agreed date of delivery.
SINGAPORE SALES FORM 2011

Whereas it is hereby agreed on this day that the Sellers identified in Box 1 have agreed to sell and the Buyers identified in Box 2 have agreed to buy, the Vessel with specifications stated in Box 3, 4, 5, 6, 7, for the Purchase Price stated in:

Box 8, subject to the following terms and conditions:

1. **General**

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 of Singapore in Box 8 (ii), with a value date not later than that specified in Box 8 (III) of this Agreement, notwithstanding that the amount received may be less due to bank and insurance expenses incurred during the normal course of transfer. Such amount shall be used for the fulfillment of this Agreement to the Bank of Singapore in Box 8 (ii), with a value date not later than that specified in Box 8 (III) of this Agreement, notwithstanding that the amount received may be less due to bank and insurance expenses incurred during the normal course of transfer. Such amount shall then be held as a joint escrow account of both the Seller and the Buyers, which shall be released to the Seller upon delivery of the Vessel and to the Buyer at the Bank of Singapore in Box 8 (III) of this Agreement.

2. **Vessel**

The Seller agrees to deliver the Vessel in accordance with the specifications and condition specified in Box 3 (a) in the bill of lading, delivered to the Buyer at the Bank of Singapore in Box 8 (III) of this Agreement.

3. **Liability**

Any interest earned on the deposit shall accrue to the Seller. The Seller has a claim over the interest paid on the deposit, if any, after the release of the deposit to the Seller.

4. **Insurance**

The insurance shall not be less than the value of the Vessel, and shall be arranged by the Seller at the expense of the Buyer. The insurance shall cover the risk of the Vessel from the time of delivery to the Buyer.

5. **Transportation**

The Seller shall cover all costs of transportation to the Buyer's nominated place of delivery, including insurance against loss or damage during transport.

6. **Payment**

The Payment shall be made by the Buyer to the Seller at the Bank of Singapore in Box 8 (III) of this Agreement.

7. **Escrow Account**

The Escrow Account shall be held in a joint account of the Seller and the Buyer, with a joint account number specified in Box 8 (III) of this Agreement. The Escrow Account shall be used for the fulfillment of this Agreement.

8. **Delivery**

The Seller shall deliver the Vessel to the Buyer at the Bank of Singapore in Box 8 (III) of this Agreement.

9. **Fees**

The Seller shall pay all fees associated with the sale of the Vessel, including any governmental fees.

10. **Warranty**

The Seller warrants to the Buyer that the Vessel is in good condition and ready for use.

11. **Legal**

All legal and jurisdictional issues shall be resolved according to the laws of Singapore.

12. **Dispute Resolution**

Any disputes arising from this Agreement shall be resolved through arbitration in Singapore.

13. **Validity**

This Agreement shall be valid for a period of 1 year from the date of its execution.

14. **Amendment**

This Agreement may be amended by mutual consent of the Seller and the Buyer.

15. **Termination**

This Agreement may be terminated by mutual consent of the Seller and the Buyer.

16. **Security**

The Seller hereby provides security for the purchase price and any additional amounts due under this Agreement.

17. **Additional Terms**

The Seller agrees to provide additional terms and conditions as specified in Box 8 (III) of this Agreement.

18. **Confirmation**

The Buyer confirms its acceptance of the terms and conditions specified in Box 8 (III) of this Agreement.

19. **Physical Inspection**

The Buyer shall conduct a physical inspection of the Vessel at the time and place specified in Box 9 (a) of this Agreement.

20. **Documentation**

The Seller shall provide all necessary documentation to facilitate the transfer of ownership of the Vessel.

21. **Security Agreement**

The Seller and the Buyer shall enter into a Security Agreement to secure the purchase price and any additional amounts due under this Agreement.

22. **Guarantee**

The Seller shall provide a guarantee to secure the purchase price and any additional amounts due under this Agreement.

23. **Registration**

The Seller shall provide the Buyer with all necessary documentation to register the Vessel in the Buyer's name.

24. **Transfer of Title**

The Seller shall transfer the title of the Vessel to the Buyer, subject to the terms and conditions of this Agreement.

25. **Remedies**

In the event of a breach of this Agreement, the non-breaching party shall have the right to terminate this Agreement and seek damages for any losses incurred.

26. **Force Majeure**

In the event of force majeure, the Seller and the Buyer shall cooperate to minimize the impact of the event on the fulfillment of this Agreement.

27. **Entire Agreement**

This Agreement contains the entire agreement between the Seller and the Buyer and supersedes all prior negotiations.

28. **Governing Law**

This Agreement shall be governed by the laws of Singapore.

29. **Entire Agreement**

This Agreement contains the entire agreement between the Seller and the Buyer and supersedes all prior negotiations.

30. **Counterparts**

This Agreement may be executed in counterparts, each of which shall be considered an original.

31. **Modification**

Any modification of this Agreement shall be in writing and signed by both parties.

32. **Waiver**

No waiver of any provision of this Agreement shall be effective unless in writing and signed by the waiving party.

33. **Notices**

Notices shall be given in writing and delivered by registered mail, return receipt requested.

34. **Attorneys’ Fees**

The non-breaching party shall be entitled to recover all attorneys’ fees and costs incurred in the enforcement of this Agreement.

35. **Conclusion**

This Agreement shall be effective upon execution by both parties and shall remain in effect until terminated.

36. **Signatures**

This Agreement is signed by the Seller and the Buyer, each of whom represents that it has the authority to execute this Agreement.

37. **Effective Date**

This Agreement shall become effective on the date it is signed by both parties.

38. **Expiration**

This Agreement shall expire upon the fulfillment of all terms and conditions.

39. **Termination**

This Agreement may be terminated by mutual consent of the Seller and the Buyer.

40. **Default**

In the event of default by either party, the non-breaching party shall have the right to terminate this Agreement and seek damages for any losses incurred.

41. **Liability**

The Seller and the Buyer shall be liable for their respective obligations under this Agreement.

42. **Indemnification**

The Seller and the Buyer shall indemnify each other for any losses or damages incurred as a result of the default.

43. **Arbitration**

Any disputes arising from this Agreement shall be resolved through arbitration in Singapore.

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SINGAPORE SALES FORM 2011

substantially the same condition as the Vessel was at the time of inspection, with the exception of this wear and tear, with present Class maintainance fees plus any outstanding Class condition and/or recommendations. In the event of any damage affecting Vessel's Class, which Class and maintainance certificates (both national and international) are current and valid at the time of delivery, all repairs shall be made by the Buyer within a reasonable time after notification of the damage. All repairs shall be made free of charge, and the Buyer shall be liable only for reasonable costs of labor. If the vessel is not in the same condition as the Vessel was at the time of inspection, the Seller may require the Buyer to make the necessary repairs. However, if the Buyer is unable to make the necessary repairs at the Seller's expense, the Buyer may be responsible for the Seller's expenses in making the necessary repairs.

The Buyer of Vessel as the condition of the Vessel at the time of inspection shall be the Seller and Buyer.

6. * Inspections shall not be necessary. Inspections are not necessary if the Vessel is taken over without inspection. However, any deviation from the agreed condition and/or recommendations shall be set forth in a separate written agreement.

5. Notice and Notice of Actual Damage

1. Prior to the delivery of the Vessel, the Seller shall provide the Buyer with the 24, 15, and 3 days advance notice of the expected delivery and receipt of the Vessel's condition. The Seller shall be liable for any damages to the Vessel caused by the delivery. The Seller shall set it in the notice.

3. Upon the delivery of the Vessel, the Seller shall provide the Buyer with all the Seller's documents required by Clause 8 for the Certificate of Ownership or equivalent, Class Certificate, and all other documents necessary for the receipt of the Vessel. The Seller shall provide the Buyer with a written Notice of Actual Damage to the Vessel in the Seller's condition.

5. The Seller shall provide the Buyer with all the Seller's documents required by Clause 8 for the Certificate of Ownership or equivalent, Class Certificate, and all other documents necessary for the receipt of the Vessel. The Seller shall provide the Buyer with a written Notice of Actual Damage to the Vessel in the Seller's condition.

6. The Seller shall provide the Buyer with all the Seller's documents required by Clause 8 for the Certificate of Ownership or equivalent, Class Certificate, and all other documents necessary for the receipt of the Vessel. The Seller shall provide the Buyer with a written Notice of Actual Damage to the Vessel in the Seller's condition.

Prior to delivery, the Seller shall provide the Buyer with the actual condition of the Vessel. The Seller shall make the Buyer aware of any defects in the Vessel at the time of delivery. The Seller shall provide the Buyer with a written Notice of Actual Damage to the Vessel in the Seller's condition.
appropriate authority as required by the Sellers. The seller shall confirm the identity, his/her authority to bind the Buyers and the authenticity of the signature.

212. As soon as possible but not later than 14 days prior to the Vessel’s expected readiness for delivery, the Sellers and the Buyers shall exchange fax or email copies to the email addresses sent of documents listed in sub clause C.4 of this clause for the Buyer’s review and comments. Copies of such and versions which are to be included in the draft or to be circulated to the Buyers prior to delivery.

213. At the time of delivery ordered the Vessel, the Sellers shall hand over to the Buyers all classifications certificates, owners insurance, marine insurance, declaration of interest, vessel registration, document of title, and merchant bills of lading and all other documents specific only to the Vessel to the Buyers. All other certificates and documents which are not specific to the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case photocopies are to be left at the Vessel.

214. If the said certificates and documents are to be shipped separately, it shall be understood that the Buyers shall make arrangements to have the Vessel cleared for delivery.

215. Bidding, Forwarding charges, if any, to be borne by the Buyers. The Sellers may bear the Vessel’s long books but the Buyers are to be advised and have the right and opportunity to take copies of same.

9. Transfer

216. If a condition of this Agreement, any breach of which shall entitle the Buyers to reject the Vessel, that the Vessel, in the time of delivery, is free from all encumbrances, liens, mortgages, maritime taxes, or other debts where such debt or interest has been established in good faith and other administrative assessments, overpayments, levies, commissions or any other debts which may exist.

217. The Buyers hereby undertake to indemnify fully the Sellers against all consequences of any claim against the Buyers that may arise due to claims against the Vessel originating prior to or at the time of delivery of the Vessel to the Buyers.

218. Expenses

219. The Buyers shall bear all expenses including taxes and fees in connection with the purchase and registration of the Vessel under the Buyers’ flag and similarly the Sellers shall bear all expenses in connection with closing of the Sellers’ Registry.


220. The Buyers, upon delivery of the Vessel, shall change the name of the Vessel and start its formal

221. Register.

222. (a) In the event of failure by the Buyers to pay the agreed Deposit or to provide the bank-to-bank confirmation set out in Clause 9 for the Vessel Data, the Seller may at its sole discretion cancel this Agreement and reserve compensation for their losses and expenses (together with any customary rate of compensation in the amount of the Deposit).

223. (b) The failure to pay the agreed Purchase Price, and any additional amounts due under Clause 7 and Clause 9(b), within the time provided by Clause 9(c) or, if applicable, Clause 20(c), shall entitle the Sellers with the right to cancel this Agreement and the Deposit paid by the Buyers no matter whether the Sellers’ actual losses and expenses (together with any customary rate of compensation in the amount of the Deposit) have been capitalized or otherwise.

224. (c) The parties agree that no losses and expenses shall be paid to the Sellers.

12. Sellers’ Defects

225. (a) In the event of failure by the Sellers to give Notice of Actual Readiness in accordance with Clause 5(b) and failure to meet the minimum requirements set out in Clause 10 for the Actual Readiness, the Buyers may cancel the Agreement and reserve compensation for their losses and expenses (together with any customary rate of compensation in the amount of the Deposit).

226. (b) The failure to pay the agreed Purchase Price, and any additional amounts due under Clause 7 and Clause 9(b), within the time provided by Clause 9(c) or, if applicable, Clause 20(c), shall entitle the Buyers with the right to cancel this Agreement and the Deposit paid by the Buyers no matter whether the Sellers’ actual losses and expenses (together with any customary rate of compensation in the amount of the Deposit) have been capitalized or otherwise.

227. (c) The parties agree that no losses and expenses shall be paid to the Buyers.

13. Notice of Actual Readiness

228. (a) In the event of failure by the Buyers to give Notice of Actual Readiness in accordance with Clause 5(b) and failure to meet the minimum requirements set out in Clause 10 for the Vessel, the Buyers may cancel the Agreement and reserve compensation for their losses and expenses (together with any customary rate of compensation in the amount of the Deposit).

229. (b) The failure to pay the agreed Purchase Price, and any additional amounts due under Clause 7 and Clause 9(b), within the time provided by Clause 9(c) or, if applicable, Clause 20(c), shall entitle the Buyers with the right to cancel this Agreement and the Deposit paid by the Buyers no matter whether the Sellers’ actual losses and expenses (together with any customary rate of compensation in the amount of the Deposit) have been capitalized or otherwise.

230. (c) The parties agree that no losses and expenses shall be paid to the Buyers.

231. The Buyers, upon delivery of the Vessel, shall change the name of the Vessel and start its formal
In the event the Buyers choose to cancel this Agreement, the Deposits together with Interest earned shall be released to them immediately.

In addition, in the event the Seller is unable to deliver the Vessel or is unable to provide the documents required by Clause 9 and fails to deliver the Vessel as provided in Clause 9, the Buyers shall have the right to withdraw from the Sale and be entitled to receive all the amounts paid to the Seller under this Agreement.

The Buyers shall indemnify and hold harmless the Seller from and against any and all losses, costs, expenses, damages, and claims that may be suffered by the Seller as a result of the Seller’s inability to deliver the Vessel to Buyer or to provide the documents required by this Agreement.

In the event the Seller is unable to deliver the Vessel, the Buyers shall have the right to withdraw from the Sale and be entitled to receive all the amounts paid to the Seller under this Agreement.

The Buyers shall indemnify and hold harmless the Seller from and against any and all losses, costs, expenses, damages, and claims that may be suffered by the Seller as a result of the Buyer’s inability to make the payments required by this Agreement.

In the event the Buyer is unable to make the payments required by this Agreement, the Seller shall have the right to cancel this Agreement and retain the Deposits and any other amounts paid by the Buyer under this Agreement.

This Agreement is subject to the laws of Singapore and any disputes arising out of or in connection with this Agreement shall be settled by arbitration under the rules of the Singapore International Arbitration Centre, and the judgment rendered thereunder shall be final and binding on the parties.

Arbitration: Any dispute arising out of or in connection with this Agreement shall be settled by arbitration under the rules of the Singapore International Arbitration Centre, and the judgment rendered thereunder shall be final and binding on the parties.

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Presented By
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