DEHUKAMDER
DEHUKAM DENİZ HUKUKU DERGİSİ
DEHUKAM JOURNAL OF THE SEA AND MARITIME LAW

DEHUKAMDER - Cilt: 7 / Sayı: 2 / Yıl: 2024, ss. 61-99

COMMENTARIES ON BIMCO SHIPSALE 22 STANDARD CONTRACT IN SECOND-HAND SHIP SALE AND PURCHASE*

İKİNCİ EL GEMİ ALIM SATIMLARINDA BIMCO SHIPSALE 22 TİP SÖZLEŞMESİNİN YORUMLANMASI

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ABSTRACT

SHIPSALE 22, the draft ship sale contract published by the Baltic and International Maritime Council (BIMCO) in 2022, is commonly argued to meet most of the changing needs in maritime trade. In the previous forms used, especially to incorporate new developments into the draft contract, many additional clauses are required to be added to reach an agreement. In particular, contracts were almost rewritten in order to respond to many concerns and advancements, such as COVID-19 and the proliferation of electronic closing/signatures. Based on all these needs, BIMCO has introduced a new alternative in smart contract format that can be used in the purchase and sale of second-hand ships. This study aims to interpret the second-hand ship sale process, and the legal considerations in this regard, especially case-by-case analysis of provisions of the SHIPSALE 22 by comparing them with previous similar contract formats.

Keywords: •Second-hand Ship Sale •SHIPSALE 22 •BIMCO

ÖZ

2022 yılında Baltık ve Uluslararası Denizcilik Konseyi BIMCO tarafından yayımlanan gemi satış sözleşmesi taslağının (SHIPSALE 22) deniz ticaretinde değişen ihtiyaçların büyük bir kısmını karşıladığı yönünde yaygın bir kanı hakim olmuştur. Kullanılan önceki

* Research Article, Received: 28.07.2024 / Accepted: 11.12.2024.

Ethical Statement: The author(s) declare that the preparation of this article is in accordance with ethical rules.

Conflict of Interest Declaration: The author(s) have no conflict of interest to declare.

Declaration of Support and Acknowledgement: None.

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formlarda özellikle yeni gelişmelerin sözleşme taslağına dahil edilebilmesi için ek olarak birçok madde eklenerek taraflar mutabakat kurabilmekteydi. Bilhassa COVID-19 gibi olağanüstü durumlar söz konusu olduğunda veya ticari hayatta kullanılan elektronik imza vb. birçok yeniliğe cevap verilebilmesi amacıyla sözleşmeler neredeyse yeniden yazılmaktaydı. Tüm bu ihtiyaçlara binaen BIMCO tarafından ikinci el gemilerin alım satımlarında kullanılabilecek akıllı sözleşme formatında yeni bir alternatif sunulmuştur. Bu çalışmada ikinci el gemi alım satım süreci, bu hususta hukuki açıdan dikkat edilmesi gerekenler, özellikle SHIPSALE 22 hükümlerinin tümünün yorumlanması ve önceki benzer sözleşme formatlarıyla karşılaştırılması amaçlanmıştır.

Anahtar Kelimeler: •İkinci El Gemi Satışı •SHIPSALE 22 •BIMCO

INTRODUCTORY REMARKS (MATERIAL BACKGROUND)

When a shipowner plans to expand his fleet, purchasing second-hand ships would be a faster and cheaper alternative to a shipbuilding project[1]. However, selling these ships as high-valued assets is a process in which both seller and buyer should review the sale contract with a fine-tooth comb. Such a process covers many aspects, including but not limited to the proposal, price negotiation, inspection arrangement, preparing necessary contracts and finally payment (could be subjected to prefinancing or payment in full). More than 90% of goods traded globally are transported by sea (mainly by container ships and bulk carriers); This makes the ship an extremely important asset, without which a modern international commercial environment would be unthinkable. Considering that ships are the most efficient and cost-effective form of transportation, it is an undoubted fact that maritime is indispensable for the economic and social development of the world[2].

Preparing a contract for the sale of a ship is a challenging process. Therefore, for many years standard contract forms (such as the 1996 Norwegian Sale Form, Saleform 12, Nipponsale 99, and Singapore Ship Sale Form 2011) have been put forward. As of 25 April 2022, the Baltic and International Maritime Council (BIMCO) introduced a very comprehensive draft, SHIPSALE 22, furnished with modern facilities such as electronic communication to close and sign. However, one consequence of the newness of SHIPSALE 22 in the market is that case law has not been sufficiently advanced at both national and international levels.

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1 Filippo Lorenzon and Ainhoa Campas Velasco, 'Shipbuilding, Sale, Finance and Registration', Andrew Baker and Hatty Sumption (eds), *Maritime Law* (Informa Law 2014) 66; Stavros Tsolakis, Colin Cridland and Hercules Haralambides, 'Econometric Modelling of Second Hand Ship Prices' (2003) 5 Maritime Economics and Logistics 347-377.

2 Martin Stopford, *Maritime Economics* (Routledge 2009) 89–90; Lief Bleyen, *Judicial Sales of Ships* (Springer 2016) 1.

Existing case law and precedents therefore largely need to be assessed in connection with Saleform 2012. However, apart from changes in contract design, clarification of wording, updates to reflect the latest commercial practices and integration of technological possibilities, there is little difference between the contracts[3]. In particular, for example, there is no significant change in the regulation of defects in which the buyer faces the risk of hidden defects and defects in the ship in aftermarkets. Since the complexity of the ship makes it difficult for the seller to guarantee the condition of the ship, the need for the seller to be able to waive the risk of latent defects in the ship is greater.

A ship sale is a process whereby the ownership of a ship, together with the risk and liability, changes hands between two parties, seller and buyer, in exchange for payment[4]. In a niche sector such as shipping, the sale of ships is considered one of the most competitive shipbroking disciplines. Ship sales can be evaluated under three different headings: ship-building contracts, second-hand ship sale contracts and ship demolition contracts. The sale of a second-hand ship, which is the focus of this study, is based on a contract between the current owner and the prospective owner of the ship. Again, although there are many different types of sales contracts used in the ship sale contract, the SHIPSALE 22 form was taken into clause-by-clause examination in the study, considering both its prevalence and currency[5].

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[3] Andreas Fjærvoll-Larsen, Ina Lutchmiah, Jonathan Page, Øyvind Axe ve Peter Jebsen, 'SHIPSALE 22—a familiar form in a new guise' (Wikborg Rein 2022) <https://www.wr.no/aktuelt/shipsale-22-a-familiar-form-in-a-new-guise.erem>.

[4] For a recently written PhD thesis containing comprehensive information on the sale of ships in Turkish Law, please see: Mustafa Başkara, 'Türk Hukukunda Gemi Satış Sözleşmesi' (Unpunlished PhD Thesis, University of Ankara 2024)

[5] Potential buyers often turn to a ship broker (S&P Broker) to find a ship that suits their needs. Similarly, the seller may appoint a broker for the transaction or advertise the vessel on the market and choose not to depend on a single broker. In some cases, there may be a single broker for both the seller and the buyer. This broker receives a commission for her service, usually as a percentage of the agreed price or freight rate. However, such issues relevant to brokers are excluded from the scope of study. See, Siri Pettersen Strandenes, 'The Shipbroking Function and Market Efficiency' (2000) 2(1) International Journal of Maritime Economics 17-26; Andreas Chatzis, 'The Sale and Purchase Shipbroker and the Hedonic Price Model for Second Hand Ships' (Erasmus Rotterdam University Master Thesis 2010) 3.

I. LEGAL FUNDAMENTALS OF THE SHIP SALE PROCESS

The ship sale process starts with a negotiation between the buyer and the seller, after which the agreed points are gone over and summarised as a 'recap'[6]. At this time, if the characteristics of the vessel meet the buyer's criteria, an inspector appointed by the buyer usually conducts an inspection to understand the general condition of the vessel. A Memorandum of Agreement (MoA) is then drawn up between the parties. Although our study focussed on the provisions of BIMCO SHIPSALE 22, which released in April 2022, which is new and is thought to reach a more dominant level of use than other forms, there are three other types of sales contract formats that are widely used in international markets. The Norwegian Sales Form (NSF) 2012, also adopted by BIMCO, is the most widely used of these forms. Apart from the NSF, the parties may also use the Nippon Sales Form or the Singapore Sales Form (SSF), albeit relatively more common in the Asian market. After signing the MoA, a certain portion of the vessel purchase price (usually set at 10%) is deposited into an escrow account within three banking days after the agreed date. The buyer inspects the vessel before or after signing the MoA.

The purchaser as well as its assessor will perform a material check along with an assessment entailing a review of the vessel's paperwork. The results of the inspections are essential since they could influence the buyer's decision whether to embrace or refuse the ship. If a buyer has a dispute with a finding, the deal to purchase would be failed. Conversely, the prospective purchaser notifies the vendor in writing whether or not he chooses to purchase the ship (typically under 72-hours of the inspections being conducted). The vendor also notifies in writing that the ship is prepared as ready-for-delivery as soon as it reaches the delivery location designated by the pertinent agreement condition.

The vendor has the obligation to terminate the insurance coverage and inform the classification society of the ownership transfer upon the ship's delivery towards the purchaser. The purchaser must make arrangements for the vessel to be registered in his name under either the current or new-flag. The former flag-state authority prepares a Certificate of Deletion and a Continuous Synopsis Record (CSR) in the event that the purchaser decides to alter the vessel's flag. It

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6 When binding correspondence is made at the negotiation stage (pre-sale stage), a justifiable right of action may arise to the seller if the buyer withdraws before the MoA is signed. Recap is also binding. Therefore, in practice; subject to BoD approval ('subject to BoD approval') or subject to execution of MoA ('subject to execution of MoA').

is out of the question to register the vessel with the newly issued flag in the absence of aforesaid paperwork. The procedures for the sale of the ship may differ in case of different understandings adopted in various jurisdictions in accordance with the separate provisions stipulated in the sale contracts. However, in general terms, there will be no significant change in the sequence of procedures followed.

In addition to the basic information about the procedural sale of the vessel, there are also some details of the substantive law that need to be taken into consideration. Therefore, there are issues that the seller should pay attention to. For instance, the current crew will depart the vessel and the new crew will embark, except for the purchaser decides to keep the current crew. Additionally, the vendor needs to promise that there will be no bureaucracy or Port-State checks of the ship. For this reason, every claim filed toward the ship prior to the time of delivery are entirely the seller's liability. Delivering the ship in the same condition as when it was inspected is farther crucial duty of the vendor. The purchasing party pays the sum specified in the purchase agreement, taking into account the remaining bunkers as well as the leftover oil and grease in the storage tanks and other provisions in the storage rooms[7].

When examining the factors that determine the price of a second-hand ship, it shows that the variables taken into account to determine the price of a Panamax or Capesize bulk carrier are dependent on basically the last similar ship sold: The price is tried to be determined by considering the differences between the last sold ship and the ship subject to sale, as well as market trends (such as the availability of a ship of similar tonnage in the market or the cost of spare parts). When there is a 5-year period between the construction years of ships of the same type and there is a difference of 10,000 deadweight, they are also considered similar ships. Another factor affecting the price is the shipyard where the ship is built. Especially ships built in Asian countries such as Japan, South Korea and China are valued more. The more up to date the special survey for the ship's condition, engine condition and maintenance, the easier it will be to determine the price. Time charter inclusion or not, classification society reports, and flag are other factors affecting the price[8].

7 Institute of Chartered Shipbrokers, *Ship Sale and Purchase* (Short Run Press 2020) 66-70.

8 ibid.

When a potential buyer is in the process of negotiating the sale of a ship, he or she expects that every item on board, except fuels and lubricants, will be included in the purchase price. There are three issues that require distinct consideration while collecting bunkers at the port of delivery. Interested parties (purchasers) are inclined to keep the total price of bunkers as low as possible because port charges vary. In order to avoid disputes, brokers should fully explain the price to be paid for the bunkers on board and all the details of this procedure. It should be noted that the seller occasionally attempts to remove specific components from the deal and, in the event that many ships of the identical subclass are involved, might allude to these things as fleet replacements. Potential clients anticipate that everything that was placed on the vessel when it was inspected would be returned aboard when it is delivered. Nonetheless, the entire selling procedure can become more difficult if particular machinery is damaged in the course of the ship's delivery and inspections. Furthermore, the purchasers must get all ship manuals, blueprints, instruction books, and aids for navigation either at the precise moment of delivery or within an adequate period thereafter.

Legally speaking, a deal for selling of a previously owned vessel is fairly comparable to one for a ship-building project since they fall under the same legal frame, i.e. sales of goods. However, the sale and purchase (S&P) contract is in fact far more straightforward. Similar to nearly all commercial contracts, S&P transactions frequently employ an array of predefined templates[9]. Amendments of the digital format can be prescribed during negotiations, with all modifications being merged into a single end version[10]. Brokers for S&P contracts seem to possess a substantial effect on what kind of agreement is finally selected to decrease negotiating time. The widespread acceptance of such agreements is contingent upon comparable reasons that affect the adoption for different common limitations.

The so-called NSF 2012 contract has been the most widely used standard contract for the purchase and sale of ships in the secondary market for the last few years and is still recognised as the industry standard for such purchases[11]. It

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9 *Dalmare SpA v. Union Maritime Ltd (The Union Power)* [2012] EWHC 3537 (Comm).

10 Filippo Lorenzon and Charles Debattista, *Sale of Ships under the Singapore Form* (LexisNexis 2016) 17.

11 Marie-Anne Moussalli and Dan Tindall, 'SHIPSALE 22 – The New Standard Agreement for Ship Sale and Purchase?' (Clyde & Co 2022)

is believed that the first edition of the NSF appeared more than 100 years ago[12]. In 1956 NSF was adopted by BIMCO, which means that they included the form even if it was not produced in-house[13]. BIMCO is an international industry organisation in the field of shipping and maritime trade and is today the largest maritime association in the world. Until 2012, the contract had been revised several times in co-operation between the Norwegian Shipbrokers Association and BIMCO. In 2022, BIMCO published SHIPSALE 22, this time without the Norwegian Shipbrokers Association. SHIPSALE 22 was developed by a group of industry experts and is largely similar in content to the previous edition in 2012. The aim of the new edition is to meet the needs of the times, to bring the contracts closer to the BIMCO style and to smooth out the rough edges in the purchasing process[14].

No precise formats, though, are ideal for every transaction. Conversely, typical agreements ought to be thought of as a "set menu" that consists of well-considered items that aren't quite prepared for usage but are meant to serve the “average deal.” For each contract, the status of the product subject to the contract and the contracting parties are different from each other. Therefore, it is of great importance which type of contract will be preferred[15]. There are, of course, risks in amending standard form contracts, the most obvious of which is that every time a word is added to or removed from a clause, the entire meaning of that clause - and sometimes some other clauses in the contract - may be affected, while earlier decisions interpreting the same clause may be distinguishable because of the new wording, thus leading to a certain degree of unpredictability[16]. The only difference that should be noted is that, after eliminating all considerations, the contract is, by definition, a contract for the sale of existing goods, not a contract for the sale of future goods, and therefore the problem of misrepresentation may arise[17].

<https://www.clydeco.com/en/insights/2022/05/shipsale-22- the-new-standard-agreement-for-ship-sa>.

12 Paul Herring and Malcolm Strong, *Sale of Ships* (Sweet and Maxwell 2016) 102.

13 Barış Soyer and Andrew Tettenborn, *Ship Building and Finance* (Informa Law 2016) 102.

14 Moussalli ve Tindall (n 10).

15 Malcolm Strong and Paul Herring, *Sale of Ships: The Norwegian Saleform* (Sweet & Maxwell 2014) 36.

16 Lorenzon ve Velasco (n 1) 74.

17 Hugh Beale, *Chitty on Contracts* (Sweet & Maxwell 2013) 616-668.

Every form, without exception, demands that the vendor guarantee that the vessel will be delivered without any liens; nonetheless, there is considerable debate over whether this clause is a condition, a guarantee, or an unidentified condition. In business contracts, ambiguity is often undesirable as it necessitates meticulous bargaining or might result in challenging disagreements. Another oddity is the SSF-2011, which makes it extremely evident that this paragraph is a requirement of the agreement and that breaking it gives the purchaser the right to refuse the vessel and demand payment[18]. The increased list of requirements for which the vessel must be ceded free of charge during talks will be closely examined, as it becomes much more significant for both sides, given the harsh implications of a breach of Article 9 of the SSF-2011. Against the NSF's list of only five items, the SSF stipulates that the vessel must be surrendered free of 'all encumbrances, charters, liens, maritime liens, mortgages (except where security is provided), port State and other administrative proceedings, detentions, evasions, commercial commitments and other debts of every kind'[19]. Therefore, in accordance with SSF 2011, a ship may be refused if it is delivered with stowaways on board (at the time of issuing the actual notice of readiness, at the time of delivery or at any time in between), arrested on any grounds or detained at Port State Control[20]. With regard to the words 'any other debts whatsoever', it was emphasised by the English Court of Appeal that these should be interpreted as all debts affecting the ownership or use of the ship at the time of delivery[21].

In principle, in the sale of a ship, the seller has the obligation to sell the ship to the buyer free of debts (without any encumbrances such as mortgages, liens, etc.). However, the buyer should also carry out preliminary research. Since the ship, which usually belongs to an offshore company, does not have any other assets and the buyer will be left with an empty company after the sale. Therefore, there is a trend to buy Warranties and Representations insurance policies[22].

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18 *B S & N Ltd (BVI) v. Micado Shipping Ltd (Malta) (The Seaflower) (No 1)* [2001] 1 Lloyd's Rep 341.

19 SSF 2011, Clause 9(a).

20 *Athens Cape Naviera SA v. Deutsche Dampfschiffartsgesellshaft "Hansa" Aktiengesellshaft (The Baren- bels)* [1985] 1 Lloyd's Rep 528.

21 Lorenzo and Velasco (n 1) 77.

22 Fatih Buğra Erdem, *Anonim Ortaklık Pay Satış Sözleşmeleri Özelinde Beyan ve Tekeffül Sigortası* (Yetkin 2023); Fatih Buğra Erdem and Meva Özturk, 'Utilising Warranty and Indemnity Insurance to Address Asymmetric Information' (2023) 3(2) International Journal of Insurance and Finance 1-16.

Under Turkish maritime law, all ships, regardless of whether they are registered in the ship registry or not, are considered as movable property (TCC Art 936). In this context, since the bona fide owner of a ship that is not registered in the registry shall be deemed to be the owner of that ship, the parties must have agreed in writing, the signatures must be notarized, and the transfer of possession must have taken place to transfer the ownership of the ship. The sale of the ship is not subject to any form requirement in the law, and it is preferred to be made in writing in practice for proof. In Article 1320 an onwards of the Turkish Commercial Code (TCC), for example, seafarers' receivables follow the ship. In other words, even if the ship owner changes, the seaman may arrest the ship. The reason for this is that the seaman's claim is a claim that is referred to as a ship creditor's claim and is secured by a pledge right arising from the law. While the seaman's claim gives the right to request a precautionary attachment as a maritime claim in the nature of a ship's creditor, it can be stated that the fuel claim is not in the nature of a ship's claim, but is a maritime claim. Although the fuel claim is a maritime claim, this alone does not give the right of precautionary attachment, and the conditions stipulated in Article 1369 of the TCC must also be present. Since the law of the port of call of the ship will apply to this, it is necessary to look at the law of that country. For example, fuel receivables do not give the right to arrest the ship in Turkey[23]. In other words, after the transfer, the ship cannot be banned from voyage in accordance with TCC 1369 for this reason. However, this may be a reason for arrest in other countries. For this reason, the port records of the ship's trade history should be examined during the sale of the ship[24].

II. THE ANALYSIS OF THE SHIPSALE 22 FORMAT

SHIPSALE 22 is an electronic and smart contract that provides a highly original framework to the established basic approaches to ship sale. In line with the new norms of the maritime industry, SHIPSALE 22 offers a more streamlined sale

[23] Nuray Ekşi, 'Montreux Anlaşması Uyarınca Boğazlardan Geçen Yabancı Gemilerin Haczi ve Bu Gemilere El Koyulması' (2017) 37(1) Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 137-138.

[24] Pursuant to the International Convention on the Arrest of Ships 1999, most claims will not pursue the ship once the ownership of the ship has changed hands. Turkey is subject to the 1999 Convention on the Arrest of Ships and so are many European countries. It should be noted that the law of the countries that are not subject to this Convention (such as North African countries). See also, Mehmet Ali Aksoy, 'Gemilerin İhtiyati Haczi' (2016)

process compared to NSF 2012[25]. Indeed, issues such as confidentiality, guarantees and anti-corruption, which are defined as additional clauses to existing sales forms, make the form more effective than it seems[26]. Even more flexible rules and more technological innovations have been integrated into the sales process, including distance selling in the ship sale process[27].

The order of preparation of the form items shows the chronological process to be followed in the ship sale process. SHIPSALE 22 printed ship sale form is basically shaped under four main headings. While the special and general conditions of the contract constitute the first two sections of the contract in BIMCO's standardised box format, the list of delivery documents (Annex A) and the list of exempted items (Annex B) are foreseen as annexes to the contract. In practice, when concluding ship sale contracts, the parties do not submit all the documents specified in the standard contracts, i.e. the list of attachments specified in the printed form is not fully implemented. The relevant list is negotiated later. SHIPSALE 22 also allows such changes in its digital format. For example, instead of Annex A, it is possible to make a new arrangement in the form of Addendum 1, which can also be revised in the PART 2 definitions section. Changes to the contract also appear to be modified by Track-change.

1. Remarks on Specific Boxes of Part I

BIMCO preferred its usual box format to make clarify the agreed commercial terms in Part I of SHIPSALE 22. By filling these boxes in digital forms, the Part II of the MoA for Ship Sale and Purchase would automatically be revised and ready to sign as a consequence of a smart contract. In this section, the paper only examines quite new developments of SHIPSALE 22, which have not been addressed hitherto.

One of the ground-breaking novelties of SHIPSALE 22 is the possibility to indicate both sellers' and buyers' respective guarantors (in boxes 5 and 6). Likewise, a separate place is reserved for guarantors in the signature sections.

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25 Betül Pınarbaşı, 'BIMCO SHIPSALE 22 ve NSF 2012 Gemi Satış Formu Karşılaştırması: Gemi Satışında Yeni Bir Ufuk Mu, Yoksa Sadece Bir Yan Ürün Mü?' (2023) 66(7) Deniz Deniz Ticareti Dergisi 36.

26 ibid, 34.

27 Grant Eldred and Ellis van der Vos, 'BIMCO SHIPSALE 22 – A Revolution in Ship Sale and Purchase?' (Penningtons Manches Cooper 2022) <https://www.penningtonslaw.com/news-publications/latest-news/2022/bimco-shipsale-22-a-revolution-in-ship-sale-and-purchase>; Pınarbaşı (n 24) 34.

Providing this opportunity in the relevant boxes instead of making any additional warranty agreements or adding warranty clauses to the MoA can be regarded as very instrumental and facilitating. In terms of Civil law, it is important to specify the type of guarantee given by the guarantors in Boxes 5 and 6 since previous guarantees were offered through a separate contract[28]. Therefore, here too, it would be appropriate to interpret the guarantee of fulfilment of warranty obligations as an on-demand guarantee. It is also worth noting that the guarantor is bound by the law chosen in the Agreement.

One thing to note for Box 7 is the year of construction of the ship. The build date can be confirmed through the ship register or the ship's port register, but these are only accepted as *prima facie* evidence. In *Belgravia Navigation Co. S.A. v. Cannor Shipping Ltd., The Troll Park,* a ship sale contract stated that the ship was built in 1971. However, it was stated in the relevant registry that the ship was built on 31 December 1970 but the engines were installed in January 1971. In the case concluded through arbitration, it was decided that the error in such information should be ignored in accordance with the *de minimis* principle[29].

In Box 20, the validity of Class Certificates is particularly important for older vessels. Because the buyer may want to use the ship without a class certificate for a certain period of time after delivery and this is an important bargaining element for the contract. Therefore, it is very important to open a separate box for this issue[30]. One of the requirements is that the classification certificates issued to the ship must remain valid for a minimum of three or six months after delivery[31].

The last but not least important point is that the number of new boxes to be added can be written in box 26. In this way, BIMCO has again prevented the departure from the box contract format and raised awareness about the additional clauses of the contract.

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28 Matt Hannaford, Paul Turner and Iain Goldrein, *Ship Sale and Purchase* (Routledge 2023) 9-10.

29 *Belgravia Navigation Co. S.A. v. Cannor Shipping Ltd., The Troll Park* [1988] 1 Lloyd's Rep. 55; Also see, *Arcos Ltd. v. E.A. Ronaasen & Son* [1933] AC 470, 478-480.

30 Pınarbaşı (n 24) 35.

31 Hannaford, Turner and Goldrein (n 27) 18.

2. Remarks on All Clauses of Part II

The second part of SHIPSALE 22 detailing the terms of the contract is an important part in terms of interpreting the contract as in NSF 2012. The first four articles reaffirm the basic information on the sale of ships and aim to inform the contracting parties on the essential issues related to the sale.

A. Definitions and Interpretation

Clause 1 provides clarification for technical terms used in the contract. One of the important definitions here is delivery, which is defined as the 'delivery of Vessel by the Sellers to the Buyers in accordance with this Agreement'[32]. The most important moment for the purchase and sale of a ship is the moment of payment of the price and delivery of the ship. With the signing of the MoU, delivery would be subjected to agreed conditions and therefore, the passing of possession, title and risk in the vessel will depend on these conditions. In terms of deposit holding agreement, defined in Clause 1(a) as "the agreement made between the Parties and the Deposit Holder in relation to the Deposit." In practice, the depositor could be law firms, ship brokers or banks as third parties to hold agreed price till "*joint written instructions from the seller and the buyer*" or "*a final and unappealable court judgment or arbitral award"*[33]. In case of a conflict regarding the authentic BIMCO template between PART 1 and Annex-A/Annex-B and PART 2, PART 1 and Annex-A/Annex-B shall take precedence. Another reference for this could also be found in PART 2 Article 1, paragraph.

B. Sale and Purchase

Clause 2 sets out what is included in the sale (the Vessel, included items[34] and Bunkers, Oils and Greases) and what is excluded. Although spare parts are also included in the sale, it can be said that the court reached a decision by making a case-based examination. In *Sealace Shipping Co. Ltd. v. Ocean Voie Ltd., The Alecos M*, a 14-year-old vessel was sold and delivered without its propeller. The buyer sought compensation of $200,000 for the re-substitution and re-installation of this part. In the dispute that went to arbitration, a similar spare part was not

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32 See, Clause 1(a).

33 Hannaford and Turner (n 27) 27.

34 Included items are defined in Clause 1(a) as "(i) everything on board the Vessel at the time of Inspection except for the Excluded Items; (ii) spare parts and spare equipment belonging to the Vessel at the time of Inspection; and (iii) the stores and provisions on board at the time of delivery."

available in the market, this was not a situation that would affect the resale price of the ship much, the buyer should have been aware of this when taking delivery of the ship and therefore only a maintenance cost compensation of 1100 USD was awarded. Finally, the court of appeal similarly ruled that a 14-year-old ship should be delivered with 14 year old parts and therefore, if a new propeller value is to be awarded, this should not be more than the scrap value[35]. Goods existed on board at the time of inspection or, if there is no inspection, goods found on the date of the contract are considered to be included in the sale unless they are expressly excluded from the scope of the contract. For excluded goods, it is stipulated that they must be written in Annex B (most of the time videotel and acetylene gas canisters are excluded). In short, the list of goods written in Annex B will not be delivered by the seller at the time of sale.

C. Subjects

The parties would like not to be bound by the sales contract if one or more conditions are not fulfilled. In this context, Clause 3 of the Part II titled 'subjects' regulates the aftermath of the matters written in Box 25. As a very common subject, 'the buyer company to take a resolution of the Board of Directors by a certain date' can be given as an example. When the lifting of subjects, the contract becomes binding. In other words, the contract ceases to be binding on both parties if subjects are not lifted.

In English law, the agreement becomes binding if (i) the parties wish to create a binding relationship, (ii) agree on the essential elements of the transaction to be made and (iii) the agreement is supported by consideration[36]. Therefore, one must note that if a subject is not foreseen and these three conditions are fulfilled, the contract becomes binding[37]. SHIPSALE 22 can be defined as the importance it gives to the "subjects" clause. This clause regulates that the contract will not be valid unless the special conditions agreed upon by the parties are met. If the relevant conditions are not met by the specified dates, the contract will automatically be deemed invalid. In practice, many buyers and sellers may

35 *Sealace Shipping Co. Ltd. v. Ocean Voie Ltd., The Alecos M* [1991] 1 Lloyd's Rep. 120 (CA).

36 Hugh Beale, *Chitty on Contracts* (Sweet and Maxwell 2022); *Edwards v. Skyways Ltd* [1964] 1 WLR 349, 55; *Orion Insurance Co plc v. Sphere Drake Insurance plc* [1990] 1 Llyod's Rep. 465; *Courtney & Fairbairn v. Tolaini Bros (Hotels) Ltd* [1975] 1 All ER 716 (CA).

37 Hannaford, Turner and Goldrein (n 27) 39-41.

choose to address such terms before incurring the cost and time involved in negotiating and signing the deal[38].

Box 25 is important in terms of demonstrating which subjects are considered to be legally bounded. If the parties do not want to specify a subject, they can write phrases such as 'none, N/A, not applicable' in this box. If a subject is not specified, the contract becomes legally binding when the formal requirements specified in the contract are fulfilled. This is usually the moment when the parties sign the contract together, although otherwise is provided. If the subjects are not satisfied within the specified deadline, the contract will be 'null and void'. Here, it is useful to remind an important recent judgement. In *DHL Project and Chartering Ltd v. Gemini Ocean Shipping Co Ltd*, the relevant subject had not been lifted and therefore the contract became null and void. However, does the law and arbitration clause already specified in the contract for the determination of jurisdiction for the claim arising out of the contract also become null and void? The decision emphasised that the confidentiality and dispute resolution clauses in the contract were legally binding, even though the subjects could not be lifted[39].

D. Purchase Price

Purchase price, specified in Clause 4, is the amount and currency which are given in Box 9, where the parties spend the most time during the negotiation phase. In addition, the items included/excluded in the sales price will also be determined. In this context, it is important to be familiar with the whole contract. For example, Clause 4(b) stipulates that the fuel, oil and grease mentioned in Box 13 are not included in the sales price and that payment should be made for these items at a later date. (In our opinion, it may be more meaningful to include this directly in Annex B instead of writing it as a separate clause). If the S&P process is carried out with a broker, the determination of commissions also depends on the sales price[40].

E. Deposit

Clause 5 is an important development in that the amount of the deposit (in practice it is usually 10 per cent of the sale price) and the person to whom this

38 Eldred and van der Vos (n 26).

39 *DHL Project and Chartering Ltd v. Gemini Ocean Shipping Co Ltd* [2022] EWCA Civ. 1555; Hannaford, Turner and Goldrein (n 27) 44-45.

40 *Darius* [2011] 1 Lloyd's Rep. 419.

deposit is to be transferred have been agreed upon in a clear form. The 'deposit holding agreement' regulated by paragraph 5-c introduces a new institution. For example, as a consequence of this, when calculating the amount to be paid, the deposit must be returned with interest.

According to Clause 5(e) of SHIPSALE 22, the safety net is a clause introduced to protect the consignees. For example, if the consignee is unable to make payment due to a problem caused by the bank, it is not to penalise the consignee under Clause 18. An anti-technicality Clause 5(e)(iv) defines a 'disruptive banking event' as a situation where the monies that should be in the deposit account are not in this account for reasons that are not due to the fault of the buyer. This is intended to provide the buyer with a safeguard in the event of an unforeseeable problem with a bank or informant bank - a payment delay that is beyond the buyer's control[41]. Whereas Saleform 2012 allows the seller to cancel the contract and claim compensation from the buyer in the event of such a delay, SHIPSALE 22 allows the buyer an additional 2 days in addition to the 3-day grace period during which the buyer is not responsible for the delay. Since the term 'review' in this article is left to the discretion of the buyer or a correspondent bank, it is criticised in terms of the possibility of biased decisions and ambiguous results[42].

In the event of default of the buyer in payment of the sale price, the seller shall be entitled to receive the deposit in the minimum amount stipulated for the compensation of liquidated damages and any interest thereon. It may also be possible for the seller to sue for damages for more than the amount of the measure determined according to the rules of the chosen legal order[43]. In addition, in the event that the buyer fails to pay the deposit or fails to provide a bank-to-bank confirmation, the seller has the right to cancel the contract and claim compensation for damages and expenses[44]. The deposit is normally paid into a joint escrow account and is usually left with the seller as part of the purchase price. Here, for example, the SSF 2011 imposes on the seller the duty to open a joint escrow account with a bank within a certain period of time and on the buyer the duty to organise a bank-to-bank confirmation from the

41 The anti-technicality provision applies only to the deposit and not to the sale price. The reason for such a prediction may be that by the end of the sales process, KYC has already been done and preventing additional burdens to be imposed on the seller.

42 Pınarbaşı (n 24) 35.

43 Lorenzon and Velasco (n 1) 74.

44 ibid, 75.

transferring bank to the seller's nominated bank. It should be noted, however, that in practice buyers and sellers occasionally engage a lawyer or brokerage firm to act as escrow agent and an escrow agreement is entered into detailing the mechanism necessary for closing[45].

In *Griffon Shipping Ltd v. Firodi Shipping Ltd (Griffon),* an important judgment was rendered that buyers who sign a standard MoA with modifications may be liable for the amount of the deposit, even if it has not yet been paid, in the event that the MoA is terminated, i.e. if the MoA is terminated for reasons that are not attributable to them. The obligation to pay the deposit arises upon signing the MoA, i.e. it accrues before the contract is terminated[46]. Accordingly, if the deposit is not paid, the Sellers shall be entitled to cancel the contract and claim damages for breach of contract. If the amount of the deposit does not cover their damages, the Sellers shall be entitled to claim additional compensation for their damages and all costs incurred together with interest. However, in case of non-payment of the purchase price, the Sellers are entitled to cancel the contract, in which case the amount set for the deposit shall be given to the Sellers together with interest. In the Griffon case, the Court made an interpretation based on business common sense when assessing the purpose of the deposit given to provide security to the seller. In other words, by paying the deposit, the buyer cannot put himself in a better position than the interests outlined in the contract; nor should not paying the deposit put himself in a better position[47].

The MoA is a synallagmatic and complex contract. Printed contracts are usually used here. A basic inspection is carried out before the MoA is signed and the deposit is deposited, and a detailed inspection is carried out after signature. In the basic inspection, the encumbrances on the ship should be checked and the seller/ship owners should be examined for financial problems such as the Office of Foreign Assets Control (OFAC) problems, if any. Usually, the deposit is paid three days after the MoA is signed. It is important to carry out the inspection before the MoA and then pay the deposit. Because after the deposit is paid, it becomes much more difficult to withdraw from the agreement. Because there

45 Lorenzon ve Velasco (n 1) 75.

46 *Griffon Shipping Ltd v. Firodi Shipping Ltd (The Griffon)* [2013] EWCA 593

47 ibid; *The Anna Spiratou* [1998] 2 SLR 536; *The Blankenstein* [1985] 1 WLR 435; *Rainy Sky SA v. Kookmin Bank* [2011] 1 WLR 2900; *Hinton v. Sparkes* [1868] 3 LR 3 CP 161; *Dewar v. Mintoft* [1912] 1 KB 373.

may be defenses such as the report has already been read or the ship has already been sold 'as is where is'[48].

F. Inspection

Clause 6 titled "inspection" includes the inspection of the ship on the specified date and the examination of the ship's class records. Since the examination of the class records reveals the points to be considered in the inspection to be carried out, it is very important to indicate the points where the inspection will be concentrated[49]. Whereas Saleform 12 provides two alternatives for the inspection of purchasers, SHIPSALE 22 provides, in addition to these two options, a further option whereby the purchaser waives the right of inspection in advance. Considering the practical benefits and why a buyer would buy without inspection, it is conceivable to emphasise one aspect of an inspection-free sale process that considerably simplifies and accelerates the process. It is a method that can be applied in case of urgency of the parties (fast market applications) and in this case, it is seen that the buyer already has a preliminary inspection of the vessel (such as the purchase of a chartered vessel).

SHIPSALE 22 allows the recipient a period of 5 days for notification of acceptance after inspection. This period is limited to 72 hours in Saleform 2012. The subsea inspection provision in the SHIPSALE 22 contract has been updated with a stricter timetable for consignees. Unlike Saleform 2012, SHIPSALE 22 does not mandate a nine-day notice period. According to SHIPSALE 22, consignees must commence the subsea inspection no later than two days after the vessel is made available for inspection; otherwise, they are deemed to have waived this right. If, after the commencement of the inspection, it cannot be completed within two days, the time for completion will be extended to carry forward the date of cancellation. In this case, the commencement of the examination stops the time limit and there is no specific time limit for completion. This arrangement creates certain uncertainties and carries some risks. SHIPSALE 22 removes the requirement to give prior notice for subsea inspection in most cases, which was done on the assumption that the consignees

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48 It is the statement indicating that the current physical condition of the ship is accepted and binding after the buyer's acceptance that the ship has been inspected and the class records have been examined; *Ashington Piggeries Ltd v. Christopher Hill Ltd* [1972] AC 441; *Michael Hirtenstein, Il Sole Limited v. Hill Dickinson LLP* [2012] EWHC 3537 (Comm).

49 *Varverakis v. Compagnia de Navegacion Artico S.A.* [1976] 2 Lloyd's Rep. 250 (CA); *Mariola Marine Corp v. Lloyd's Register of Shipping* [1990] 1 Lloyd's Rep. 547.

would usually carry out this procedure before delivery[50]. Furthermore, this provision allows the parties to choose between two different inspection methods: a subsea inspection at the place of delivery or a skid inspection based on the findings, or a skid inspection prior to delivery. If the parties do not make a choice, the subsea inspection option is deemed to apply. SHIPSALE 22 has removed the right granted to buyers in Saleform 2012 to request tail shaft drawings during the slipway. When dry-docking at the port of delivery is not possible, SHIPSALE 22 extends the maximum cancellation date up to 21 days, taking into account the additional time required for dry-docking at an alternative location[51].

a. Duty to Disclosure

The seller has a duty to disclosure under SHIPSALE 22, i.e. the seller is liable for knowingly withholding information, even if the MoA provides otherwise. Furthermore, it should be ensured that the buyer is also well-informed about the condition of the vessel (‘outright and define’).

Buying a used ship involves many risks. Wear and tear can be very different on different vessels, as can maintenance. The risks that the buyer must take into account include the degree of maintenance, the operating costs of the vessel and the costs that may arise in class renewal. It is therefore highly recommended that the buyer inspects the vessel before entering into a binding agreement. However, practice shows that for both practical and financial reasons, the buyer is rarely given a real opportunity to carry out a comprehensive inspection of the vessel[52]. Moreover, the inspection will not necessarily reveal all hidden defects on board. Usually, one day is allocated for the buyer's ship inspection. Superficial inspections do not reveal all hidden defects due to the complexity of the vessel. This includes damage to pipework, steel quality and, where availability is limited, rust.

Inspection has a less prominent role in the exercise and the buyer will base the purchase decision largely on the information provided by the seller and the ship's class certificates[53]. Class inspection of ships is carried out every five years and is necessary and mandatory to ensure the safety of the ship and compliance with

50 Pınarbaşı (n 24) 35.

51 ibid, 35-36.

52 Ships are always on the move. This forces the buyer to inspect the vessel quickly at port calls for loading, unloading or repairs. The seller is also pressurised for a quick sale given the volatility of the vessel's prices.

53 Turner, Hannaford and Goldrein (n 27) 48.

the regulations. The details of the inspection may vary but include assessments of construction, machinery and safety equipment. Class certificates give the buyer a good idea of the condition of the ship at the time of classification. The buyer of a used ship depends on being able to rely on the information provided by the seller. The seller declares that it belongs to the seller and that the class documents contain up-to-date and relevant information about the characteristics and qualities of the ship.

b. As-is sale and purchase of ships

According to Shipsale 22, the legal starting point is the sale of the ship ‘as is’. ‘at the time of inspection. Taken at face value, the reservation means that the vessel must have the characteristics it actually has. After a general deficiency assessment, in which the question is asked whether there are any deviations from the agreement, there are therefore no deficiencies. In addition, the standard agreement contains an integration clause, which, according to its text, prevents the agreement from being supplemented by background law. One can imagine situations where such a solution seems illogical. To illustrate, two examples should be pointed out.

The first example concerns the ship's ballast tanks. A ballast tank is a tank of water on a ship used to control the stability, draught, and trim of the ship. The purpose of ballast tanks is to adjust the weight distribution of the ship. In the hypothetical example, it is assumed that the ship passed the class inspection one and a half years before the sale. The inspection showed that the ballast tanks were in good condition. During the period between classification and sale, one of the ballast tanks suffered extensive corrosion damage. During the inspection, it is common for the buyer or the buyer's representative to inspect some of the ballast tanks and then assume that the other tanks are in similar condition. It is the buyer's responsibility if one of the tanks is in much worse condition than those inspected. The problem is what happens if the seller is aware that one tank is in significantly worse condition than the others but fails to inform the buyer. Alternatively, it is conceivable that the seller could state that the tanks are in ‘approximately’ the same condition as the tanks inspected. The seller then explains that he either forgot to mention the relationship or assumed that the information was not important for the buyer's purchasing decision[54].

[54] ibid, 4.

Another example can be considered in relation to the hull. The hull refers to the outer structure or shell of the ship. The hull is the most important structural part of the ship, providing its shape, strength and buoyancy. As in the previous example, it is assumed that the ship has passed the class inspection one and a half years before the sale and the class has not made any comments on the characteristics and condition of the ship. A few months before the sale, the ship goes aground. Grounding refers to a situation where a vessel comes into contact with the seabed. The incident is reported to the cargo company, but no action is taken as there is no evidence of water ingress. In connection with the sale and inspection, the seller does not inform the buyer about the incident. Sometime after the sale, damage to the hull is noticed and the class orders the replacement of 6-7 tonnes of steel. Until the repair is completed, the ship is not seaworthy. For the buyer, this means significant costs, including repair costs and loss of operating income. The shipyard is sometimes able to carry out repairs at distant shipyards. This may entail different repair costs depending on the location and type of damage to the vessel. In addition to these costs and loss of revenue, damage affecting the seaworthiness of the ship may also give rise to liability to the shipping company's customers[55].

Two different types of examination are foreseen in Articles 8 and 9. In practice, underwater survey is mostly used. Here, in Box 17, the decision is made as to whether Article 8 or Article 9 will be applied. Of course, since one of them has been chosen, there is no need to delete the other alternative in the contract. There is even a problem in deleting it. Because Article 9(a)(i) directly refers to Clause 8.

G. Buyers' On-board Representatives

The parameters controlling the representatives' appearance on board are outlined in Clause 7, which also defines the buyer's entitlement to send representatives on board the ship prior to delivery. The buyer's master and crew shall take immediate control of the ship upon delivery of the ship by the seller, and the buyer will bear all liabilities and hazards associated with the ship's operation[56]. To allow them to familiarize themselves with the ship and its equipment, it is typical for the buyer to deploy one or two senior members of its crewing team on board the ship prior to delivery. The expenses incurred by the buyer's

[55] ibid.

[56] Hannaford, Turner and Goldrein (n 27) 84.

representatives while they are on board the ship are the buyer's responsibility, according to subclause 7(b)(i)[57].

H. Underwater Inspection

As per Clause 8(a), the buyer does not have the right to decide whether to perform an underwater inspection or not. Because it is the obligation of the sellers to prepare the ship for this inspection. The buyer, as a prudent businessman, would like to conduct this during the negotiation phase or before the MoA is signed. Although it is the buyer's responsibility to carry out the underwater inspection, it may not be carried out due to certain reasons, even though the ship is ready on the specified day. For example, if the weather conditions are unfavourable, the classification company may request that the ship be taken to another port. Alternatively, it may subsequently be desirable to place the ship in a dry dock for examination of the underwater parts. Because there is a physical impossibility here due to weather conditions. However, for example, if there is no diver available on the specified day, the seller should not be responsible for the lack of planning. In fact, in the context of 8(c), the buyer is expected to make this adjustment much earlier. The Clause 8(d) clearly states that the inspection will be carried out at the place of delivery with the exception of the Clause 8(f), which specifies that the classification company decides to take it to another location and finds the relevant delivery location unsuitable. The contract text states "the nearest suitable alternative place". This might be interpreted as the last port of call before delivery.

In the previous forms, there was no clarity on when the seller would make a preparation notification (before or after the underwater inspection). During this time, it became accepted in the market that sellers officially make the readiness notification after successfully completing the underwater inspection. However, previous forms ignore the fact that the seller cannot inspect the ship for any reason at the time specified for inspection (even though the ship was ready at the specified time). This put the seller in a very difficult situation and caused him to delay the preparation notification. So, in this scenario, the seller was mistreated. For this reason, a very appropriate regulation of the Clause 8(g) has been added[58].

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[57] ibid, 87.

[58] Clause 8(g): "If, within two (2) days following the Vessel being made available for the Underwater Inspection, the Buyers: (i) fail to commence the Underwater Inspection, the Buyers shall be deemed to have waived their right to an Underwater Inspection; or (ii) do commence the Underwater Inspection but fail to complete it within the aforesaid two (2) days,

If the Classification company detects damage during the underwater inspection, it is not mandatory to repair this damage until the next dry docking. This is important so that the delivery date is not delayed. Instead, the parties may revise the sales price. If an agreement cannot be reached between the parties for the discount amount here, an offer for the relevant repair can be received from the nearest port. The parties are given 3 banking days for this. For this reason, repair facilities are also foreseen in the contract along with the shipyard. Because there may not be a repair opportunity at every delivery port[59].

I. Drydock Inspection

The conditions under which the seller must put the ship into dry dock for examination prior to transfer, the parameters of the dry dock inspection, and the parties' rights and responsibilities for the dry docking are all outlined in Clause 9[60]. The parties may be subject to a dry dock inspection by the classification society surveyor in one of two ways: either by selecting drydock inspection in box-17, or by selecting underwater inspection in box-17, in which case they will be subject to another drydock inspection in accordance with subclause 8(h)(i). But according to Clause 9(d), the cancellation date has been extended, and in situations where the vessel has to locate a drydock other than the port of delivery, an additional 21 days have been granted[61]. Clause 9(i), which prohibits the consignee from being "tail-shaft-drawn" to them before to delivery, is another significant restriction. The sole exception to this rule is if the Classification Society determines that it is required in the same subclause[62].

J. Condition of Vessel at Delivery

Clause 10 brings together the physical and legal obligations of the seller in the delivery of the ship. Pursuant to this clause, ‘delivery of the ship free from

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the Cancelling Date shall be extended by the additional time taken for the Underwater Inspection to be completed.”

59 See, Clauses 8(i) and 8(j).

60 Hannaford, Turner and Goldrein (n 27) 101.

61 Clause 9(d): “If the Drydock Inspection takes place at the alternative Drydocking Location, following completion of the Drydock Inspection the Sellers shall act at their expense deliver the Vessel at a place within the range stated in Box 16 which shall, for the purposes of this Agreement, be the new place of Delivery. In such event the Cancelling Date shall be extended by the additional time required for the Drydock Inspection, the dry docking and the additional sailing time, but not limited to a maximum of twenty-one days.”

62 Hannaford, Turner and Goldrein (n 27) 106.

economic liabilities and unencumbered' is required[63]. The vessel shall be delivered as it was at the time of inspection. However, parties are expected to know common applications by considering the beyond textual meaning of the rule. There are some exceptional situations with regard to "as-is" rule; the ship shall be delivered "(i) with its class maintained free of any class conditions or recommendations; (ii) free from average damage affecting the ship's class; (iii) with the ship's class/national/other certificates valid and unextended and free from any conditions or recommendations; (iv) free of cargo; and (v) free of stowaways."[64].

According to Article 10(c), the starting point is the sale of the ship 'as is' during the inspection. 'As is' is an expression frequently used in the sale of second-hand assets and can be interpreted as meaning that there can be no defect in terms of the law of purchase. However, here it means deviation from what was agreed upon. As such, this article implies that the ship must have the characteristics that it actually has. After a general assessment of the defects, the question arises as to whether there is a deviation from what was agreed upon, and therefore it is assumed that there is no defect. In legal practice, it is assumed that the purchase of things sold 'as is' means that the buyer basically assumes the defect. The risk will normally be included in the purchase price and calculated according to the age, characteristics and condition of the vessel. 'As is' delivery has a long tradition in buying and selling ships. In such sales it may become obvious that the seller should stipulate an 'as is' booking in order to transfer the risk as to the condition of the vessel to the buyer. Used vessels often have a history of wear and tear, in addition to the complexity of the vessel, which makes it almost impossible for the seller to have an overview of all possible faults. The seller normally wants to avoid liability for such conditions by making it clear that the vessel is being sold in its present condition and thus reduce the risk of the buyer asserting defect claims. A disclaimer may also encourage the buyer to make more thorough inspections before purchasing, as the disclaimer signals that the seller cannot necessarily take into account all possible errors and defects. From a societal perspective, a reservation can help to avoid disputes by establishing a clear framework as to the scope of the agreement and the obligations of the

63 David Osborne, *The Law of Ship Mortgages* (Informa 2024) Ch. 10.

64 Hannaford, Turner and Goldrein (n 27) 113. See also, *The Buena Trader* [1978] 2 Lloyd's Rep. 325; *Smith v. Brown* [1871] 40 LJQB 214; *Polestar Maritime v. YHM Shipping Co Ltd and Another* [2012] EWCA Civ 153; *Athens Cape Naviera S.A. v. Deutsche Dampfschiffahrtsgesellschaft "Hansa" Aktiengesellschaft and Another, The Barenbels* [1984] 2 Lloyd's Rep. 388.

parties. The traditional need for an ‘as is’ clause is primarily concerned with the seller's willingness to waive liability for the condition of the vessel and not with the seller's ability to waive its own disclosure obligation.

Therefore, the starting point under Article 10(c) is that the ship is sold with defects and faults which may be obvious, but also with defects and faults which are latent. When examining whether clauses 10(c)(i) and 10(c)(ii) prevent an ‘as is’ reservation in cases where the seller has given or withheld misleading information about the ship, Clause 10(c)(i) first states that the ship must be delivered ‘with its class maintained without condition/recommendation’. The wording alone implies that there will be a deficiency if there are defects on the ship that will affect the ship's class or lead to a class order. In such an understanding, the seller's information is not taken into account, because if the class is affected by the defect, there will be a deficiency in any case. However, the reservation does not depend on the actual class of the ship but refers to a documentation requirement referring to the status of the relevant classification society's records[65].

Therefore, it is a formal requirement that no order (condition/recommendation) is given. Furthermore, it is understood from Article 10(c)(ii) that the ship must be delivered ‘free of average damage affecting the Vessel's class’. According to the wording, a reservation implies that the ship is deficient if there are defects on the ship that will affect the ship's class. However, since the time of deduction is the time of inspection, the wording cannot be taken literally. This means that if, after the time of inspection, there is damage to the ship beyond ‘normal wear and tear’ which affects the ship's class, then the ship has a defect. A considerable period of time may elapse from the time of inspection to the time of delivery and the reservation means that the risk is allocated between the buyer and the seller for this period. The buyer bears the risk of normal wear and tear (‘normal wear and tear’), while the seller is responsible for ‘average damage affecting the class of the ship’. In sum, neither Article 10(c)(i) nor (ii) prevents the seller from withholding information about the ship or providing misleading information. The first requirement is that immediately prior to delivery, the parties should make a joint survey to determine the amount available and how much is to be paid. – that could be regarded as one of the unique points of SHIPSALE 22.

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[65] Matt Hannaford, Paul Turner and Iain Goldrein, *Ship Sale and Purchase* (CRC Press 2023) 114.

K. Delivery Notices

Regarding Clause 11 with regard to delivery notes, one of the most important principled innovations introduced by SHIPSALE 22 is the acceptance of all notifications made up to three days before the notice of readiness as estimated notifications. We agree with the opinion that the distinction between estimated and final notices in the previous ship sale contract formats is not in line with the variable/unpredictable nature of maritime trade. When the ship is ready for delivery, the seller will give the expected notice of readiness and - upon arrival at the port of delivery - will finally give a notice that the vessel is 'physically ready in all respects for delivery'[66]. Sellers must provide a series of consecutive written advance notices specifying the estimated time and port of delivery and, according to the type of contract, the route of the vessel. From the moment any notice of the estimated time and port of delivery is given, the seller has an obligation to take reasonable steps not to impede delivery by the date specified in the notice and thus to avoid deliberate over-delivery.

However, the consequences of breach of this obligation (such as failure to give any of the notices of expected delivery) are unclear and may be interpreted as falling within the scope of the right to cancel the contract for failure to give notice of actual readiness by the cancellation date[67]. The Notice of Readiness is a document familiar to the seller and the buyer, which is referred to in all types of ship sale contracts. The Notice of Readiness, if validly given, has the function of creating the buyer's obligation to pay the contract price and take delivery of the vessel[68].

A notice of readiness under the Saleform 2012 will be validly given if two conditions are met: (i) the vessel is at the place of delivery; and (ii) it is physically ready for delivery in accordance with the contract. However, it does not refer here to any readiness that is not purely physical. This is where the SSF 2011 breaks new ground with the introduction of a substantially different notice: Notice of Actual Readiness. The function of this notice is exactly the same as the NOR under NSF or Nipponsale 1999, but the requirements for its validity are radically different. For the notice of actual readiness to be valid, three conditions must be fulfilled: (i) the vessel must have arrived at the Place of Delivery agreed in the contract or notified pursuant to Clause 5(a); (ii) the vessel must be

66 This SSF was amended in 2011 as 'notice of actual readiness'.

67 Lorenzo and Velasco (n 1) 75-76.

68 NSF, Clause 3; Nipponsale 1999, Clause 2(b).

physically ready for delivery; and (iii) the Seller must make available all of the seller's documents required by Clause 8, except the Certificate of Ownership, the Class Protected Certificate, the Fuel and Lubricants Invoice and the Protocol. By all manner of means, the buyer has the option to cancel the contract if a valid notice of actual readiness is not given by the cancellation date.

L. Vessel Delay

As per Clause 12(a), "if the sellers anticipate, notwithstanding the exercise of due diligence by them, that they will not be ready to tender Notice of Readiness on or before the Cancelling Date they may notify the Buyers in writing proposing a new Cancelling Date with reference to this clause 12 (Vessel Delay). Upon receipt of such notification the Buyers shall have the option of etiher terminating this Agreement within three Banking Days of receipt of the notice or of accepting the new date as the Cancelling date. If the Buyers have not declared their option within three Banking Days of receipt of the Sellers' notification or if the Buyers accept the new date, the date proposed in the Sellers' notification shall be deemed to be the Cancelling Date."

The first point to be mentioned here is whether this right is given to the seller for one time. As long as as the buyer accepts, on each occasion this right might be renewed. However, if the buyer wishes to terminate the contract instead of accepting the new cancelling date, the buyer is going to be entitled to have the deposit and all accrued interest as well as as compensation for it's direct losses and expences stemming from seller's negligence[69]. The deadline for the seller to make the vessel ready and give notice of readiness is also referred to as the 'cancelling date' of the contract. Therefore, if the seller fails to give notice, the buyer will be entitled to terminate the contract. Here, an approach similar but not exactly identical to NSF 2012 subclause 5(c) has been taken[70].

M. Bunkers, Oils and Greases

Regarding Clause 13, bunkers, oil and grease are generally included under the heading of 'spares and other items' in other types of ship sale contracts, SHIPSALE 22 has created a separate heading for these items. Here, a joint survey is made on these items, taking into account quality and quantity. Subclause 13(c)(i) or 13(c)(ii) can be chosen as pricing. Accordingly, the buyer

69 Hannaford, Turner and Goldrein (n 27) 143.

70 ibid, 140.

may pay the 'actual net price in the same currency' paid by the seller or may agree to pay the 'net current market price'.

N. Payments

The buyer must have made payment in accordance with Clause 14 upon delivery of the vessel and no later than 3 banking days after the NoR. Payment must be made by midnight of the day of delivery. Moreover, if English law is chosen as the applicable law, it should be remembered that even if the date on which the debt arises falls on a holiday, it must be paid on that day. Generally, there is a wrong assumption that the next working day will be the date of payment[71]. Regarding the payment, the parties must mutually agree. Payment types such as MT 103 or MT 199 must be agreed upon by the parties. These are conditional payment types used by the bank. However, payment can also be made with bank payment letters[72]. In this context, it is important that both the buyer and the seller talk to their banks in advance and get approval. Because if there is a mortgage on the ship or on the account of the seller's bank, these are important.

O. Delivery Documents

Clause 15 specifies delivery documents – already, as per Subclause 1(a), delivery documents refer documents listed in Annex A. Documents are prepared in English. However, if a different language is chosen, it is translated into English with the help of a certified translator to avoid from ambiguities. In terms of chosen law, notarisation and apostille shall be required as well as other documents, such as power of attorney, certificate of registry, class certificate, no grounding letter, certificate of good standing, continuous synopsis record and certificate of deletion (if the vessel is going to be registered another flag registry).

P. Delivery

In terms of delivery, stipulated in Clause 16, one of the most important issues is to determine in advance who will bear the costs related to the delivery of the Vessel. This is regulated in Clause 16 entitled 'delivery'. Instead of the phrase 'delivered and taken over' used in Saleform 2012 Subclause 5(a), Clause 16 of

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71 Hannaford, Turner and Goldrein (n 27) 150; *Afovos Shipping Co SA v. R Pagnan & Fratelli* [1983] 1 Lloyd's Rep. 335; *Mardorf Peach & Co Ltd v. Attica Sea Carriers Corp of Liberia (The Laconia)* [1977] AC 850.

72 *Ateni Maritime Corporation v. Great Marine Ltd.* [1990] 2 Lloyd's Rep. 245; Hannaford, Turner and Goldrein (n 27) 160.

SHIPSALE 22 states that 'after NoR has been given by the Sellers, the Parties' representatives shall meet for documentary closing either remotely ... or at the location stated in Box 19. The seller shall deliver the Vessel including delivery documents in exchange for payment of the purchase price.' Although the obligation to deliver arises upon the conclusion of these transactions, physical handover of the ship is necessary after documentary and financial closings. Delivery is defined in section 61(1) of the Sale of Goods Act as the 'voluntary transfer' of one person to another person. Delivery of the ship consists of (i) the seller presenting the ship in a ready state and (ii) the buyer receiving and physically inspecting the ship.

Q. Post-delivery Obligations

Both buyer and seller could be obliged to conduct further actions (post-delivery obligations) in terms of Clause 17**.** Upon delivery of the vessel (when the buyer's master and crew take over physical control), title and risks are passed to the buyer. From this time onwards the buyer's right to change the name of the ship and engrave it on the deck arises and the seller's obligation to 'deactivate the satellite communications system' as set out in Part I of Annex A likewise NSF 2012 Clause 8(a)(x) and SSF 2011 Clause 8(b)(xiv). Since the seller no longer has an insurable interest in the ship, the buyer will have to take out insurance again. There is no special limitation period for hidden defects that may arise after the sale. It is necessary to follow the general limitation period and this period is 6 years for English law.

R. Sellers' and Buyers' Termination Rights

Based on Clause 18 (Sellers' Termination Rights), if the deposit outlined in Clause 5 is not paid, the deposit must be refunded, and if the buyer incurs additional damages beyond the deposit, these must also be compensated. In the event of non-payment of the purchase price as stipulated in Clause 14, the deposit, along with any accrued interest, should be immediately released to the sellers, who may also claim further compensation for direct losses and expenses plus interest. Regarding Clause 19 (Buyers' Termination Rights), if the buyer does not provide a Notice of Readiness (NoR) before the cancelling date as per Clause 11, or if legal and physical conditions prevent the sellers from transferring the ship before the cancelling date as required by Clause 12(a), the deposit along with accrued interest should be immediately released to the buyers. Furthermore, if the failure of the sellers is due to negligence, they must compensate the buyer's direct losses and expenses plus interest.

It would also be useful to mention the factors that buyers should pay attention to in the sale of a ship. The first thing that buyers who want to buy a ship pay attention to is the condition and general characteristics of the ship. At this point, the ship's plans (General Arrangement and Capacity Plans) are usually requested from the ship owner. Subsequently, the records kept by the ship classification society are requested. Every five years, the hull and machinery of the ship are subjected to a detailed survey (special survey) by a surveyor of the Classification Society in which the ship is registered. Potential buyers therefore scrutinise the ship's last special survey to see which class conditions have been recorded in the list of special causes and which defects have been rectified. The importance of such a record was emphasised in *Varverakis v. Compagnia de Navegacion Artico S.A., The Merak*. In the relevant decision, it was emphasised that the classification records provide information about the general condition of the ship, and if potential purchasers examine these records, they can shape their purchase decision without incurring the expense of even a cursory inspection. On the other hand, it is also possible that the relevant records may contain a recent survey, in which case, if the surveyor does not consider that any action is required for repairs, it would be more reasonable to proceed with the sale of the ship and to initiate the inspection contemplated by the contract of sale[73]. The class records will show the visits of the surveyors from the Classification Society, defects discovered, major breakdowns and repairs, class conditions (recommendations/class qualifications) recorded in the list of special causes and requiring correction by the Classification Society, and class notes/memoranda which the Classification Society has left to be met within a certain period of time and which relate to minor defects and which the shipowner is left to correct as he sees fit[74].

S. Total Loss

Clause 20 of SHIPSALE 22 demonstrates the terms and consequences of total loss. If the ship does not arrive at the port on the delivery date (total loss) or arrives late; the contract can be terminated on the date specified as cancellation date. On this date, the buyer may either refuse to take the ship and claim the costs and damages incurred or may renegotiate with the seller to deduct the costs from

[73] *Varverakis v. Compagnia de Navegacion Artico S.A., The Merak* [1976] 2 Lloyd's Rep. 250 at 256 (C.A.).

[74] Hannaford, Turner and Goldrein (n 27) 48.

the sale price[75]. It is worth noting that Clause 20 is only relevant to the total loss, if the vessel suffers from partial loss, the seller shall repair the damage by restoring to previous physical condition agreed under the sale agreement[76].

T. Sanctions

Clause 21 is rooted in 'Sanctions Clause' for voyage and time charter parties introduced by BIMCO in 2020. Sanctions are emphasized in SHIPSALE 22, which has a specific language (an updated BIMCO sanction provision) demanding an assurance from all parties involved. This is a reasonable approach to an issue that is undoubtedly going to remain relevant for some time to come[77]. Subclause 21(b)(ii) addresses a situation where a sanctioned party uses a company to sell or purchase the ship in circumstances where that sanctioned party is prohibited by the applicable sanctions regimes from selling or purchasing the ship directly. Each party warrants to the other that it is acting as principal and not as an agent, trustee, or nominee of any "sanctioned party." That the ship is not a "sanctioned party" is the first limb of the ship-related guarantee, just like with the parties' warranty. Nevertheless, there is another leg in subclause 21(c) where the vendor guarantees that the ship is not engaged in any "sanctioned activity"[78].

U. Anti-corruption

According to Clause 22 of SHIPSALE 22, the contracting parties undertake not to act contrary to the anti-corruption legislation in force at the time of conclusion of the contract. In relation to UK law, notable laws on anti-corruption are Bribery Act 2010, Criminal Finances Act 2017, OECD Anti-Bribery Convention and UN Convention against Corruption with regard to bribery, influence peddling, abuse of function, dealing with the proceeds of crime and financing of terrorism[79]. It should be stated that this article does not directly mention anti-money laundering, which is left to the responsibility of the contracting parties.

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75 *Sveriges Angfartygs Assurans Forening (The Swedish Club) and others v. Connect Shipping Inc and another (the "Renos")* [2019] UKSC 29.

76 Hannaford, Turner and Goldrein (n 27) 214.

77 Jens Mathiasen, Gudmund Bernitz, William Maclachlan and Zain Kazmi, 'New Form on the Block – Shipsale 22: A BIMCO Standard Contract for Sale and Purchase of Vessels' (HFW 2022) <https://www.hfw.com/app/uploads/2024/04/004050-HFW-New-form-on-the-block-BIMCO-Shipsale-22.pdf>.

78 Hannaford and Turner (n 27) 217.

79 ibid, 220.

V. Confidentiality

In Clause 23, confidentiality is in fact an article stipulating that confidential information must remain confidential 'unless compulsorily requested by an authorised body'. This article is also important in terms of keeping the relevant information for as long as possible. However, it will be explained at some point. However, as foreseen in many contracts, the parties cannot terminate the contract due to breach of confidentiality; because if the contrary is accepted, this situation may be abused and create an ambiguous situation[80].

W. Notices and Communications

As per Clause 24, the text of the contract stipulates that all notices and communications shall be in writing in English. Relevant notifications should also be addressed to the contact details of parties specified in Boxes 21 and 22[81]. Since Clause 1 does not specify the meaning of 'in writing', one supplementary view could be adopted from NSF 2012, which defines 'in writing' as "a letter handed over from the Sellers to the Buyers or vice versa, a registered letter, email or telefax".

X. Entire Agreement

SHIPSALE 22 includes an integration clause aimed at, among other things, background application exclusion, i.e. superseding prior agreements between parties. In this regard, Clause 25 is so important that subparagraph (c) provides that any applicable custom, statute, or law does not apply when interpreting the SHIPSALE 22. The main purpose of this integration clause is essentially to create an order in which freedom of contract is fully ensured, where the restrictions provided for in the Sale of Goods Act do not apply. Integration clauses originate from Anglo-American law. The purpose of the traditional integration clause is to clarify and limit i) which documents are to be considered part of the treaty and ii) the de facto context in which the treaty is to be interpreted. However, major doubts have been expressed about this integration clause. Firstly, it may be noted that the common law tradition is not compatible with the continental European law tradition and that mixing normally entails considerable difficulties[82]. Secondly, attention may be drawn to the

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80 See, Clause 23(c); Hannaford and Turner (n 27) 223-226.

81 Noting the exclusion at Clause 26(f).

82 Giuditta Cordero-Moss, *Boilerplate Clauses, International Commercial Contracts and the Applicable Law* (Cambridge University Press 2011) 268.

consideration of foreseeability. The use of common law-inspired contractual clauses has been introduced primarily to ensure predictability in the contractual relationship. However, when such clauses are taken out of their natural context and applied according to Norwegian law, this often leads to increased uncertainty[83].

However, clause 25(d) states that nothing in Shipsale is intended to limit or exclude liability for fraud. In this case, the main issue of discussion is whether the scope of "fraud" covers situations where the seller gives or conceals misleading information about the ship. For the interpretation of English terms, the common English usage of the term is observed. The terms refer to intentional or fraudulent behavior in which a party provides false information or withholds important information with the intention of gaining unfair advantages at the expense of others. The content of the term 'fraudulent misstatements' was defined by the House of Lords in *Derry v. Peek*. It was held that in order to prove the existence of 'fraud' it was necessary to prove that there was no good faith in the truth of what was disclosed. Lord Herchell remarked that fraud is established where a false representation is shown to have been made (1) knowingly; or (2) without a belief in its truth; or (3) carelessly and recklessly, without regard to whether it is false or not'[84].

An alternative understanding of the explanation is that a person cannot be held liable for the offence of 'fraud' as long as they acted in good faith, no matter how negligent. This was clearly expressed in *Derry v. Peek*, where the court held that the accused could not be held liable for 'fraud' because they 'sincerely believed that what they claimed was true'. Consequently, fraud exists when one party intentionally misleads the other party. Deception consists of the deliberate provision of false information or the deliberate concealment of information. Clear cases of fraud exist where the seller gives information about the vessel that he knows with certainty to be false and deliberately tries to prevent the buyer from discovering defects during the inspection. For example, the seller may be thought to camouflage defects as rot and unusual corrosion by using panelling or paint. More complex cases arise where the seller deliberately withholds information about the vessel in his possession. It is more uncertain whether such cases reach the threshold of fraud.

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83 Amund Bjøranger Tørum, *Interpretation of Commercial Contracts* (Universitetsforlaget 2019) 176.

84 *Derry v. Peek* [1889] 14 App. Cas 337.

It is possible to state that the concept of 'fraud' in Shipsale presupposes, in all respects, that the seller deliberately misleads the counterparty to the contract with the intention of obtaining unfair advantages at the expense of the buyer's interests. The term therefore does not constitute any impediment if the seller in good faith, negligently or grossly negligently fails to provide or gives misleading information about the vessel. The starting point after Shipsale is the sale of the ship as it was at the time of inspection, without any reservations regarding hidden defects. With regard to concealed or misleading information, the seller will be held liable for the offence of 'fraud' if the act was intentional and the purpose was to gain an unfair advantage at the expense of the interests of the buyer. However, there is no fault if the seller acted in good faith or was negligent or grossly negligent. Such an arrangement can be summarised as meaning that the risk regarding the seller's information lies largely with the buyer[85].

Y. BIMCO Law and Arbitration Clause 2020

According to Clause 26, namely BIMCO law and arbitration, the law to be applied is presented in box 26, which can also reflect the rules of the parties' preferred legal systems[86]. The interpretation and application of SHIPSALE 22 clauses is left to the parties' choice of law. Parties are given the opportunity to choose this for themselves in box 26 under part I, followed by the arrangement itself. If the parties do not make a choice themselves, the standard solution according to Shipsale 22 is English law. It is a consistent practice of English courts to avoid limiting the contractual freedom of parties engaged in trade, even when this involves the application of restrictive interpretations. It is notable that the Sale of Goods Act[87] does not require that written contracts be drawn up for the sale of ships. Another significant aspect of English law is that, except for

85 ibid.

86 Those options are (a) British Law / London Arbitration, (b) US Law / New York Arbitrage, (c) English Law / Singapore Arbitrating, (d) Singapore Law/Singapore arbitration, (e) Hong Kong Law/Hong Kong Arbitral, (f) UK Law / Hong Kong arbitrations, and (g) other law and arbitrations. In the given box, for example, when U.S. law with letter b is selected, article 26/a is automatically altered through the agency of smart contract. Arbitration is preferred in most disputes in the field of maritime law, and there is now almost no recourse to the courts; also, mediation has begun to lose its appeal due to the high fees of mediators and the fact that the outcome cannot be reached as quickly as it used to be. Perhaps for this reason, a mediation clause is not foreseen in SHIPSALE 22.

87 Sales of Goods Act 1893 s.4(I).

insurance contracts, the principle of good faith is not applied in the interpretation of contracts[88].

Second-hand ship sales are generally based on a standard contract. Compared to individually negotiated contracts, questions may arise as to whether there are special circumstances regarding the interpretation of standard terms. The starting point in interpreting standard contracts should be an objective interpretation, with particular emphasis on the wording. However, for some ambiguous situations that may arise, it is very important to explain the relevant issues under the heading of explanatory notes, which might be added the contract during the negotiations. The Explanatory Notes can be considered a form of preparatory work for the ship sale and should be equated with the preparatory work for other types of standard contracts. The Explanatory Notes have been prepared by the drafters behind the standard agreement and give a good starting point of the purpose and intended content of the clauses in Shipsale.

Z. BIMCO Electronic Signature Clause 2021

Electronic meetings and signatures as new features are currently available under Clause 27. Regarding the implementation of the provision of the BIMCO Electronic Signature Clause 2021, parties are provided with the opportunity to complete transactions both physically and electronically[89]. In addition, a new electronic signature clause has been added in accordance with Article 16 and Box 19. However, it is important for the parties to verify the admissibility of electronic signatures in the relevant jurisdictions to ensure the validity and enforceability of the contract[90]. The only criticism that can be made regarding the signature boxes is that the signatures are only under Part 1 and the subsequent documents (Part 2 and annexes) do not have signatures. Normally it would be better if the signature came at the end.

III. MISCELLANEOUS OTHER MATTERS EXCLUDED FROM THE CONTRACT

BIMCO has deliberately left some matters out of the contract. However, free-standing clauses are provided to the parties in any case for the parties (for instance, clauses for exclusion of third party, waiver, partial invalidity,

88 Strong and Herring (n 12) 8; *Yam Seng Pte Ltd v. International Trade Corp Ltd.* [2013] EWHC 111 (Q.B.).

89 *Bioconstruct GmbH v. Winspear and another* [2020] EWCH 7 (QB).

90 Pınarbaşı (n 24) 36.

cumulative rights and remedies, variation, back-to-back sales and warranty) who may see the need to include these cases in the contract. In general terms, no clause for force majeure is foreseen. The concern behind this is the idea that the abuse of the substance will go beyond the benefits it will bring (as seen in COVID-19 period). Only some exclusive situations are counted instead of a general force majeure situation, such as total loss, anti-technicality, and disruptive banking[91]. It is more possible to list these situations in shipbuilding contracts since they cover much larger periods, and therefore more likely to encounter force majeures. On the other hand, since second-hand ship sales are much more imminent, such a clause has not been foreseen. There is also no separate clause for recycling or scrapping. There is no box in the type of contract stating that the ship was purchased for the continuation of commercial life or for any other reason. Especially if the ship was purchased for recycling, it could have been foreseen that the undertaking that these operations were carried out in accordance with the Hong Kong Convention within the framework of green responsibility should be written in the contract. However, since it may be possible to foresee this as an additional clause, we believe that there is no problem in excluding it for simplicity[92].

CONCLUSION

By meeting contemporary demands and technology improvements, BIMCO's SHIPSALE 22 introduces a substantial change in the contractual environment of second-hand ship sales. SHIPSALE 22 attempts to expedite and simplify the ship sale process by including measures that address concerns like electronic signatures and the effects of COVID-19. Numerous extra terms, which were frequently required in earlier contracts to account for new changes, are no longer required with this new style. A strong foundation for both buyers and sellers, the SHIPSALE 22 contract is notable for its adaptability and comprehensiveness, since it is intended to reduce misunderstandings and legal problems. While highlighting SHIPSALE 22's updated approach, a comparison with previous forms such as the Norwegian Sale Form (NSF) and the Nippon Sale Form also demonstrates the continuity of fundamental concepts controlling ship sales. The fundamental legal obligations, such as making sure the vessel is unencumbered and following the correct procedures for inspections and delivery, do not change

91 *MUR Shipping BV v. RTI Ltd* [2022] EWCA Civ. 1406; *Tandrin Aviation Holdings v. Aero Toy Store LLC* [2001] 2 Lloyd's Rep. 668; *Davis Contractors Ltd. v. Fareham UDC* [1956] AC 696.

92 Hannaford, Turner and Goldrein (n 27) 266-268.

in spite of the sophisticated features and upgrades. This consistency guarantees that SHIPSALE 22, although introducing much-needed innovation, will maintain the dependability and familiarity that experts in the field rely on.

SHIPSALE 22, though, is not without its difficulties. Because there isn't a lot of case law that particularly addresses this new contract form, interpretations will mainly rely on earlier forms' precedents. This can cause some early confusion while arbitrators and courts work through the subtleties of SHIPSALE 22. Moreover, every transaction still needs to be customized because no standard form can adequately capture the particulars of every transaction without some level of adjustment. SHIPSALE 22, though, is not without its difficulties. Because there isn't a lot of case law that particularly addresses this new contract form, interpretations will mainly rely on earlier forms' precedents. This can cause some early confusion while arbitrators and courts work through the subtleties of SHIPSALE 22. Moreover, every transaction still needs to be customized because no standard form can adequately capture the particulars of every transaction without some level of adjustment.

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