

Strategic Considerations in Ship Sale and Purchase Transactions and the Crucial Role of the Escrow Agent.



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THE PROBLEM OF SHIP SALE AND PURCHASE TRANSACTIONS

- When purchasing or selling a big-ticket item like a ship, parties may find it difficult to trust each other. Buyers may seek assurance regarding the vessel's conditions and may not want to release payment unless the ship's condition is acceptable and similar to its described condition, and may have fears of encumbrances and the ship's compliance with regulatory standards. Conversely, sellers may have concerns over the buyer's creditworthiness and timely receipt of payment.
- This lack of trust is further compounded if the buyer lacks credit rating, if the seller is newly established, or if the transaction occurs in a politically and economically unstable country where fraud is rife and one may have difficulty finding recourse.

ESCROW AGREEMENTS

- Thus, Escrow Agreements help to breach such gaps and mistrust between buyers and sellers. An escrow agreement is entered into by the seller, buyer and escrow agent, who acts as a neutral third-party intermediary.

- In an escrow agreement, the buyer and seller will first agree to the transaction terms, including price, delivery date and other important details. Thereafter, the buyer pays a deposit of 10-20% of the ship's purchase price to the escrow agent, who holds the funds in a secure account. Once the escrow agent confirms the deposit, the seller prepares the ship for delivery. In the interim, the escrow agent finalises and confirms that all documents are received and in order. 1-2 days before the closing date, the buyer pays the escrow agent the remaining purchase price of 80-90%. On the closing date, the buyer inspects the ship to ensure that it is as described in the agreement. Once the buyer is satisfied with inspection, the escrow agent finally releases the funds to the seller.

THE CRUCIAL ROLE OF THE ESCROW AGENT

- There are numerous benefits to employing an escrow agent.
- Firstly, escrow agents protect both parties by providing payment security and assurance. The transaction only proceeds if the terms of the escrow agreement are met, providing certainty for buyers and sellers. By allowing the buyer to inspect the ship before releasing the funds to the seller,



the buyer can be assured of the ship's condition. Similarly, by requiring the buyer to pay the deposit and the remaining purchase price into an escrow account, the seller can be assured of full and timely payment.

- Secondly, escrow agents help in document authentication and ensure regulatory compliance. They meticulously review and authenticate legal documents such as bills of sale, registration certificates and mortgage deeds. Escrow agents also possess in-depth knowledge of international maritime regulations and conventions, ensuring that documents adhere to applicable laws and standards before facilitating their transfer to the buyer. Thus, escrow agents verify the authenticity of the transaction, reducing the risk of fraud or misrepresentation.
- Thirdly, escrow agents aid in dispute resolution. When disputes or discrepancies arise, escrow agents act as mediators. They facilitate negotiation between the parties, helping parties understand each other and explore potential solutions, thus achieving a swift and equitable resolution. Escrow agents are also impartial, with no vested interest in the outcome. Thus, they can objectively assess the situation and make informed decisions without bias. For instance, if a buyer reneges on a deal without a valid reason, the escrow agent may mediate the release of the buyer's deposit to the seller. Further, by holding funds in a secure account during the dispute resolution process, neither party has an unfair leverage to manipulate the situation.
- Fourthly, escrow agents coordinate with third parties and manage timeframes, thus expediting the transaction. Escrow agents act as the central point of contact, and

coordinate with third parties to work towards a successful closing. For instance, if there are outstanding liens or encumbrances on the ship, escrow agents can coordinate with the title company to resolve these issues before the closing takes place. Further, escrow agents set clear deadlines for document delivery, ensuring parties are committed to completing the transaction within the agreed timeframe. Thus, their involvement ensures that the transaction progresses smoothly and efficiently, minimizing delays and disputes.

- Fifthly, escrow agents only charge 1-2% of the transaction fee, which is more economical than other methods of payment security such as letters of credit, allowing parties to save cost.

CONSIDERATIONS IN CHOOSING AN ESCROW AGENT

- When selecting an escrow agent, these are some pertinent considerations to bear in mind:
- Reliability/reputation of escrow agent: Being responsible for managing the flows of a large sum of money, verifying documents and managing disputes, the escrow agent should be impartial and ideally be a party trusted by both parties. They should also have a proven track record and specialized expertise in maritime transactions.
- Detailedness of escrow agreement: The more detailed the escrow agreement, especially regarding payment procedure and situations of buyer and seller's default, the clearer parties' obligations are and the easier disputes can be resolved.
- Security measures: Given that escrow agents deal with highly sensitive and



confidential information, they should employ robust security protocols to protect the data from unauthorised access and breach. They should also adopt anti money laundering measures, exercising client due diligence by asking relevant questions regarding the client's sources of funds and requiring that the client's first payment be carried out through a bank account in his name. This reduces the possibility of parties being implicated in money laundering or having the transaction void on illegality.

- **Communication and Transparency:** Escrow agents serve as the main point of contact between the parties, facilitating communication and keeping all parties on the same page throughout the process. Thus, escrow agents should be transparent by promptly addressing any concerns or queries the parties may have. They should also update parties regularly and clearly on progress as well as subsequent steps to take.
- Hiring an escrow agent to oversee your transaction can be highly beneficial in terms of achieving payment security, regulatory compliance, speedy resolution of disputes and an overall smooth transaction.

This article was authored by our Founding Partner and Head of Corporate [Oon Thian Seng](#) and Senior Associate [Angeline Woo](#).

Oon & Bazul LLP have substantial experience in acting as escrow agents and have the ability to open trust accounts to hold client funds. Clients can be rest assured that sensitive information is kept with the highest confidentiality and parties are treated with the utmost professionalism. Our Corporate Shipping & Ship Finance practice has acted in numerous vessel sale and purchase transactions and have also advised on flag registration. Our work in this area includes advisory work and drafting of charterparties, contracts of affreightment and crewing agreements. Our experience in this area involves acting for ship finance banks, a wide range of owners, operators and other investors across all areas of the shipping and offshore sectors. Our work includes advising on all forms of finance including syndicated, club and bilateral debt financings as well as leasing, export credit financings, seller's credits, derivatives and other credit enhancement products, bond issues and other forms of capital raising.

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