

SINGAPORE SHIP SALE FORM (SSF)

SINGAPORE SHIP SALE FORM (SSF)

SINGAPORE
SHIP SALE
FORM (SSF)

A GUIDE TO THE SINGAPORE SHIP SALE FORM (SSF)

SINGAPORE SHIP
SALE FORM (SSF)

SINGAPORE
SHIP SALE
FORM (SSF)

SINGAPORE
SHIP SALE
FORM (SSF)

SINGAPORE
SHIP SALE
FORM (SSF)

SINGAPORE
SHIP SALE
FORM (SSF)

relevant

detailed and balanced

Asian

leading international
maritime centre

community-led initiative

timely move

well-thought
through

adopted by ASF
and endorsed by FASA

Alternative

tailored forward
an evolutionary leap

CONTENTS

About the Singapore
Ship Sale Form (SSF)

- Singapore Ship
Sale Form
Annex A pg13

pg 1

Why use the
Singapore Ship Sale
Form (SSF)?

pg 2

About the book:
The Singapore Ship
Sale Form 2011

pg 3

Words from the industry...

- Singapore Ship Sale Form, **Annex A pg13**
- The New Singapore Ship Sale Form: A Commentary on the New Sale Form, C. Debattista and F. Lorenzon, University of Southampton, Institute of Maritime Law, January 2011 **Annex B pg21**
- Singapore Ship Sale Form, Gina Lee-Wan, Allen & Gledhill Advocates & Solicitors, 19 May 2011 **Annex C pg31**
- Singapore Ship Sale Form: An Overview, Ticy Veluvell Thomas, B.T.G Tan, Centre for Maritime Studies, National University of Singapore, December 2010 **Annex D pg41**
- Singapore Sale Form - Commentary and Drafting Notes, Shipping Briefing, Daniel Saunders, Watson, Farley & Williams, July 2011 **Annex E pg49**
- Singapore Arbitration, Standard Bulletin, The Standard Club, Samantha Lee, Charles Taylor Mutual Management (Asia) Pte Ltd, and Chan Leng Sun, Baker & McKenzie. Wong & Leow Singapore, November 2011 **Annex F pg69**
- The Singapore Sale Form, Tricia Tong, Incisive Law LLC, and Paul Herring, Ince & Co, **Annex G pg71**
- The Singapore Ship Sale Form - A Positive Step Forward, Clara Tan, Pan Asia Wikborg Rein LLC, Singapore, and Florence Ong, Wikborg Rein, Singapore **Annex H pg73**

pg 5

Highlights of the
Singapore Ship Sale
Form (SSF)

pg 6

Key Milestones of
the Singapore Ship
Sale Form (SSF)

pg 7

Acknowledgement
and Contact us

pg 75

ABOUT THE SINGAPORE SHIP SALE FORM (SSF)

The Singapore Ship Sale Form (SSF) was launched by the Singapore Maritime Foundation (SMF) on 6 January 2011 in response to Singapore and Asian maritime communities' call for an alternative sale form that would better serve their needs for sale and purchase (S&P) of second-hand vessels.

From the inception to the implementation of the form for use by the maritime industry, the SSF was formulated in close consultation with shipping associations as well as maritime players across diverse specialisations.

The SSF seeks to serve as a viable alternative option next to other widely used forms. The SSF features clearly defined clauses which are reflective of

current S&P practices, thereby reducing the number of changes that would need to be made to a standard form. This would in turn save time and costs for both the buyer and seller. Endorsed by the Federation of ASEAN Shipowners' Associations (FASA) and strongly supported by the Asian Shipowners' Forum (ASF), the SSF has been gaining in momentum with close to 80 known shipping transactions that have adopted the form, as of 3 April 2012.

A digital editable version of the form is also available on the Charter Party Editor (CPE) by SD Software Developers Ltd (SDSD), in a bid to make the SSF more readily accessible by shipbrokers and shipowners in the global maritime community.

For the SSF, refer to [Annex A pg13](#).

“ The launch of the SSF is in response to the Singapore and Asian maritime community's call for an **alternative** form. The SSF incorporates the latest regulatory changes and payment procedures and is formulated to address pertinent issues of interest to the shipping community, in particular the **Asian** shipping community. ”

Mr Michael Chia
Chairman
Singapore Maritime Foundation, 2011

WHY USE THE SINGAPORE SHIP SALE FORM (SSF)?

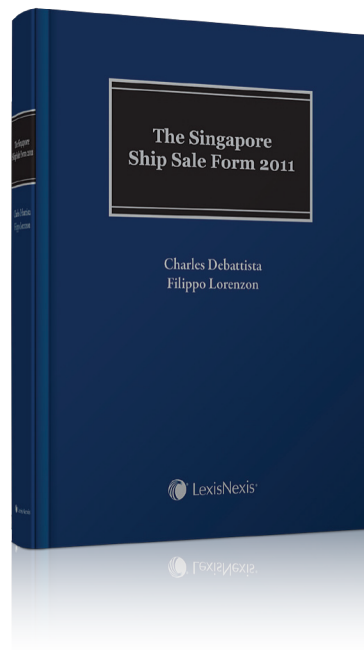
The Singapore Ship Sale Form (SSF) is structured to be;

- Balanced in addressing the needs of both the buyers and the sellers of vessels
- Comprehensive and up-to-date by being in line with the latest sale & purchase (S&P) practices
- Convenient for the Asian shipping community by providing an Asian venue for arbitration
- Easy to use with all essential details stated on one page
- Unambiguous by clarifying and defining all essential terms
- Up-to-date with changes in maritime and banking regulations

“ The SSF has proven to be highly **relevant** with the incorporation of ship and purchase regulations and practices that are **in tandem with the changing times** and developments in the maritime scene, especially in Asia. We are proud to support and use the SSF which was **meticulously developed** and brought to fruition by the Singapore maritime community. ”

Mr S.S. Teo
Managing Director
Pacific International Lines, 2011

ABOUT THE BOOK: THE SINGAPORE SHIP SALE FORM 2011



This brand new practitioners' title is entirely dedicated to the new Singapore Sale Form and provides the reader with a very detailed clause by clause commentary of the form, the case law from which it has drawn inspiration and the main differences between the Singapore text and the one in the Norwegian Sale Form, both in its 1993 and 2012 editions. The book contains a number of tips on how to make the most of this new form and provides the sale and purchase practitioner with the essential reference tool for the negotiation closing and enforcement of any ship sale, including the details of Singapore arbitration proceedings.
ISBN: 978-981-236-932-1
Price: SGD\$428

ABOUT THE AUTHORS:



Filippo Lorenzon (LL.D., LL.M., FCIL) is the Director of the Institute of Maritime Law, a Senior Lecturer in the Law School at the University of Southampton and a Consultant at Campbell Johnston Clark LLP in London.

Filippo is a dual qualified lawyer with a wealth of experience in maritime contracts across several jurisdictions. He is a member of the editorial team of Shawcross and Beaumont: Air Law and has published extensively on carriage of goods by sea and international sale of goods.

He has just authored the fifth edition of C.I.F. and F.O.B. Contracts in the prestigious British Shipping Laws Series (London, 2012) and his first-of-its-kind treatise on The Law of Yachts and Yachting with Richard Coles (London, 2012).



Charles Debatista LL.D. (Malta), M.A. (Oxon); MCI Arb is an Associate Member at Stone Chambers in Gray's Inn. He is an active arbitrator in international maritime and international trade disputes and takes appointments as arbitrator under LMAA, SCMA, GAFTA, FOSFA AND ICC

Rules; he also takes instructions as advocate in arbitral disputes. Charles has written many books and articles in his specialist subjects and has also been very active in the drafting of international trade instruments such as Incoterms.

Charles was Professor of Commercial Law at the University of Southampton until 2011, where he taught and published in the fields of Carriage of Goods by Sea and International Trade Law since 1979. One of the founding members of the Institute of Maritime Law, he was twice its Director.

Available online via **www.lexisnexis.com.sg** store and at major bookstores near you
Or contact:

Helpdesk: +65 6349 0110 or Email: help.sg@lexisnexis.com

<http://twitter.com/LexisNexisSG/>

<http://facebook.com/LexisNexisSingapore>



LexisNexis® 3 Killiney Road, #08-08, Winsland House 1, Singapore 239519
Helpdesk: +65 6349 0110 | Fax: +65 6733 1175 | Email: help.sg@lexisnexis.com | www.lexisnexis.com.sg

ORDER FORM

Please mail/fax order to:

LexisNexis Singapore

3 Killiney Road, #08-08, Winsland House 1, Singapore 239519

www.lexisnexis.com.sg | Helpdesk: +65 6349 0110 | Fax: +65 6733 1175 | Email: help.sg@lexisnexis.com

Log on to **www.lexisnexis.com.sg/store** to browse and purchase books online

<http://twitter.com/LexisNexisSG>

<http://facebook.com/LexisNexisSingapore>

Qty	Title	ISBN	Unit Price (SG\$)*	Total
	The Singapore Ship Sale Form 2011	978-981-236-932-1	428.00	
*Price includes 7% GST				
TOTAL AMOUNT (SG\$)				

Company & Title

Name

Address

(Postal Code)

Email

Telephone / Fax

PAYMENT METHODS

☐ Enclosed crossed cheque/bank draft (Please make your cheque/draft payable to "**LEXISNEXIS**")

☐ Please charge to my LexisNexis Account

Account No

Signature

Company Stamp & Date

Prices are subject to change without prior notice. All orders are subject to stock availability. Cash or credit details are essential. Corporate orders must bear company's official stamp. All orders must bear authorized signature(s) and are subject to acceptance by the publisher.

WORDS FROM THE INDUSTRY...

Since the launch of the Singapore Ship Sale Form (SSF), many partners in the legal fraternity have written commentaries. These have certainly helped to raise the awareness of the SSF among fellow lawyers, shipbrokers and shipowners, both in Singapore and overseas. They include:

- Singapore Ship Sale Form, **Annex A pg13**
- The New Singapore Ship Sale Form: A Commentary on the New Sale Form, C. Debattista and F. Lorenzon, University of Southampton, Institute of Maritime Law, January 2011 **Annex B pg21**
- Singapore Ship Sale Form, Gina Lee-Wan, Allen & Gledhill Advocates & Solicitors, 19 May 2011 **Annex C pg31**
- Singapore Ship Sale Form: An Overview, Ticy Veluvell Thomas, B.T.G Tan, Centre for Maritime Studies, National University of Singapore, December 2010 **Annex D pg41**
- Singapore Sale Form - Commentary and Drafting Notes, Shipping Briefing, Daniel Saunders, Watson, Farley & Williams, July 2011 **Annex E pg49**
- Singapore Arbitration, Standard Bulletin, The Standard Club, Samantha Lee, Charles Taylor Mutual Management (Asia) Pte Ltd, and Chan Leng Sun, Baker & McKenzie. Wong & Leow Singapore, November 2011 **Annex F pg69**
- The Singapore Sale Form, Tricia Tong, Incisive Law LLC, and Paul Herring, Ince & Co, **Annex G pg71**
- The Singapore Ship Sale Form - A Positive Step Forward, Clara Tan, Pan Asia Wikborg Rein LLC, Singapore, and Florence Ong, Wikborg Rein, Singapore **Annex H pg73**

Details of these documents can also be found on the SSF website, www.singforms.com.

“ The Singapore Maritime Foundation is to be **commended** for providing an alternative to NSF93 which is **tailored** towards Asian owners, and incorporates sensible practice and procedure. ”

Ms Tricia Tong
Executive Director
Incisive Law LLC

HIGHLIGHTS OF THE SINGAPORE SHIP SALE FORM (SSF)

- **UPDATED AND EFFECTIVE**
To serve as a viable alternative option next to other widely used forms, the SSF provides an updated and effective deposit clause which clarifies the obligations of both the buyers and the sellers regarding the deposit payment and avoids uncertainty in relation to the purchase price and use of the deposit.
 - **BETTER CERTAINTY IN PLANNING**
The new and practically relevant Notices and Notice of Actual Readiness (NOAR) provides the buyers with sufficient advance notice of the vessel's itinerary as well as imposes on the sellers an obligation to take reasonable steps not to hinder delivery of the vessel and its future trading, by allowing the tender of NOAR only if both "physical readiness" and "legal readiness" are achieved.
 - **DETAILED AND WELL THOUGHT OUT**
By detailing the documents needed to be delivered by the buyers and the sellers, the documentation clause ensures effective completion of the sale & purchase (S&P). The clause also acts as a useful and relevant documentary checklist for parties who may wish to specify their required documentation in a separate addendum.
 - **BROADENED AND UNAMBIGUOUS**
The Encumbrances clause removes the uncertainty of the intermediate term "warranty" by explicitly making the encumbrance's clause a condition of the agreement and also widens the scope of the guarantee so that it includes writs, port state detentions, stowaways, trading commitments and other debts which might interfere with the buyers' free use of the vessel after delivery.
 - **DISTINCTIVE PRO-ASIAN ARBITRATION CLAUSE**
The SSF provides Singapore as the default venue of arbitration, thereby offering the buyers and the sellers in Asia a more convenient, cost-efficient and familiar alternative for arbitration and dispute resolution. With over 30 local and foreign law firms in Singapore and world-class arbitration institutions which provide adhoc arbitration or the party autonomy model, preferred by the maritime community, Singapore is a viable arbitration venue. As Singapore is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, any awards secured in Singapore can also be enforced internationally.
- However, should users of the SSF prefer to choose another country as the venue of arbitration, they have the freedom to do so.

KEY MILESTONES OF THE SINGAPORE SHIP SALE FORM (SSF)

“ I hope that you will pledge your support to this initiative so that we can make Singapore truly a **leading international maritime centre**, one that matches up with our excellent ports and top-notch shipyards and the comprehensive range of ancillary services, including marine arbitration and the pro-business and vibrant maritime environment. ”

Tan Sri Frank Tsao
Founder and Senior Chairman
IMC Group

“ As the nation’s largest carrier, we are happy to support this Singapore maritime **community-led initiative** and be among the first to use the form. The Singapore Ship Sale Form (SSF) is a **well-thought through** document that meets our **current** ship sale and purchase needs. ”

Mr Cedric Foo
Group Deputy President and Chief Financial Officer
Neptune Orient Lines (NOL)

2008 Commissioning Centre for Maritime Studies, NUS

In 2008, the Singapore Maritime Foundation (SMF) commissioned the Centre for Maritime Studies of the National University of Singapore (NUS) to embark on the research and drafting of a new ship sale form that would enhance the current ship sale and purchase (S&P) practices and procedures in view of regulatory developments. Through this partnership, SMF hopes to formulate a form that would minimise ambiguities through its clearly written clauses and reduce the number of changes to be made to the standard form. The Singapore Shipping Association (SSA) was instrumental in helping to engage the shipping community by facilitating meetings with their members.

27 April 2010 Consultation session on SSF

After the initial drafting of the form, SMF and SSA jointly organised a sharing session, Presentation for Consultation of Proposed New Ship Sale Form at M Hotel on 27 April 2010, in conjunction with the Singapore Maritime Week.

The Guest-of-Honour of the event was Tan Sri Frank Tsao, Founder and Senior Chairman of IMC Group. The three-hour session was well-attended by over 120 maritime professionals, including maritime lawyers, ship bankers, shipbrokers and shipowners.

25 to 29 October 2010 SSF - Consultation sessions for Asian shipowners

Consultation sessions for Asian shipowners were held in four Asian cities, namely Hong Kong, Shanghai, Tokyo and Taipei to share the development of the SSF with the respective shipping communities. These sessions allowed participants to raise questions and gain a better understanding of the proposed form.

“ Today, Asian shipowners control and command about 50% of the world’s merchant fleet and maritime activities and transactions will continue to grow in this region. The SSF spearheaded by SMF is a **timely move** and is **endorsed** by **FASA** and strongly supported by **ASF**. ”

I would like to urge members of the global maritime community to welcome this form that SMF has painstakingly introduced as a **gift** to our maritime community. ”

Mr Johnson Sutjipto
Former Chairman
Indonesian National Shipowners’ Association (INSA),
Federation of ASEAN Shipowners’ Associations (FASA) and Asian Shipowners’ Forum

10 December 2010 Presentation of the SSF to delegates of Federation of Asean Shipowners’ Associations (FASA)

The 36th Annual General Meeting (AGM) of FASA was hosted by the Indonesian National Shipowners’ Association (INSA) in Jakarta on 10 December 2010.

The meeting was attended by representatives from the Filipino Shipowners’ Association (FSA), INSA, the Malaysia Shipowners’ Association (MASA), SSA, the Thai Shipowners’ Association (TSA) and the Vietnam Shipowners’ Association (VSA). A presentation on the SSF was made to all delegates present. FASA then endorsed the SSF and encouraged the use of the SSF amongst the various shipping communities in their respective countries.

6 January 2011 Official launch of the SSF

The SSF and its official website, www.singforms.com were launched by Mr Michael Chia, Chairman of SMF as part of the annual SMF New Year Cocktail Reception.

The signing ceremony of the first-ever S&P transaction using the SSF also took place then, with the form inked between Marco Polo Offshore II (Pte) Ltd, a member of the SSA, represented by Mr Sean Lee, CEO, and Abbeypure Pte Ltd, represented by Mr Darmawan Layanto, Director for the vessel, SMS Spectrum.

17 and 19 January 2011 Presentation of the SSF to the Korean and Indian shipping communities

SMF received invitations to give presentations on the SSF to the shipping communities in Seoul and Mumbai on 17 January and 19 January 2011 respectively. These presentations were co-organised by the Korea Shipowners’ Association (KSA) and the India National Shipowners’ Association (INSA). Both sessions were well-received by the shipping communities there.

28 January 2011 Explanatory session with the SSA

SMF worked with SSA to co-organise a special explanatory session on the SSF at Marina Mandarin Singapore. The session was well-attended by 140 maritime professionals from various sectors in the industry involved with the S&P market.

“ As the exclusive distributor of the editable version of the SSF, ASF has spearheaded this initiative to market the SSF and encourage the shipping community, both in **Asia and beyond**, to use this form as the **preferred form** of agreement. With over 800 worldwide subscribers to the Charter Party Editor, our partnership with SDSD will elevate the awareness of the SSF and make the form more readily accessible to the industry players. ”

Mr Yuichi Sonoda
Secretary General
Asian Shipowners' Forum

“ The SSF provides a **detailed and balanced** starting point for lawyers, shipowners and shipbrokers alike and we eagerly wait to see if the SSF emerges as the preferred form of agreement in the ship sale and purchase market. ”

Mr Daniel Saunders
Solicitor
Watson, Farley & Williams LLP

29 March 2011

Neptune Orient Lines (NOL) uses SSF for vessel deal

NOL adopted the newly launched SSF for the sale of one of its ships, a 300-teu feeder ship, Tiger River.

23 to 25 May 2011

Approval to distribute the SSF by Asia Shipowners' Forum (ASF) at its 20th Annual General Meeting (AGM)

The ASF agreed to undertake the distribution of the SSF at its 20th AGM held in Bali, Indonesia, from 23 to 25 May 2011. It was attended by representatives from all eight members comprising the Australian Shipowners Association (ASA), China Shipowners' Association (CSA), FASA, Hong Kong Shipowners Association (HKSOA), INSA, Japanese Shipowners' Association (JSA), KSA and National Association of Chinese Shipowners (NACS). ASF members have also shown support for the use of the form.

July 2011

SSF - Commentary and Drafting Notes

Renowned international law firm, Watson, Farley & Williams LLP featured a 20-page analysis article on the SSF, titled Singapore Sale Form - Commentary and Drafting Notes in their corporate newsletter.

In his commentary, author and solicitor of Watson, Farley & Williams LLP, Mr Daniel Saunders highlighted, "In the SSF, the market has been gifted an alternative to the NSF and Nipponsale Forms which certainly has the potential to become a mainstay in the global shipping industry."

24 August 2011

SSF gains momentum with Pacific International Lines (PIL) using the form for the purchase of two container vessels

In a joint press release with SMF, PIL, a Singapore-based shipping company announced its use of the SSF for the purchase of two container vessels in June to add to its fleet.

“ The SSF is an **evolutionary** leap forward which accounts for the most common additions, amendments and alteration to the current forms and incorporates many of the suggestions received from the industry. ”

Mr Charles Debattista
Arbitrator and Associate Member,
Stone Chambers,
London, Middle Temple,
Formerly Professor
of Commercial
Law, University of
Southampton

1 November 2011

SMF gives SSF's rights to ASF

SMF gave the exclusive rights to distribute the editable version of the SSF to ASF for two years.

24 November 2011

SSF expands its reach with the inclusion of SSF in the Charter Party Editor by SDSD

In its first bold attempt to market the SSF, ASF partnered and licensed leading maritime software and tools development and consultancy company, SDSD to distribute a digital editable version of the form through the Charter Party Editor programme on the website, <http://www.charterpartyeditor.com/>.

5 December 2011

Insights on the practical use of SSF for S&P

SMF and SSA collaborated once again on a learning perspective session on the SSF one year on. Attendees of this session included maritime professionals who are directly involved in ship sale and purchase, namely maritime lawyers, shipping agents, shipbrokers, shipowners, ship managers, amongst other maritime partners. The event was well-attended by over 70 people.

12 January 2012

76 known S&P transactions that have adopted or are currently using the SSF since its launch a year ago

At the high-level networking function, Mr Michael Chia, Chairman of SMF, highlighted in his welcome address that there were 76 known S&P transactions that have adopted the SSF. He also announced that two renowned lecturers from the Institute of Maritime Law of the University of Southampton, Mr Filippo Lorenzon and Mr Charles Debattista, will co-author a 300 to 400 pages publication on the SSF to provide practical annotation which carefully examines the use of the form.

2012

Launch of the SSF book: The Singapore Ship Sale Form 2011

This brand new publication seeks to be a useful guide which provides a comprehensive clause by clause commentary of the SSF as well as details the differences between the SSF and the 1993 and 2012 editions of the Norwegian Sale Form. The launch of this publication marks an important milestone of the SSF.

SSF 2011

meticulously
developed

preferred form

a gift
to the maritime
community

Asia and beyond

in tandem with
the changing
times**Annex A pg13**

Singapore Ship Sale Form

Annex B pg21

The New Singapore Ship Sale Form:
A Commentary on the New Sale
Form, C. Debattista and F. Lorenzon,
University of Southampton, Institute
of Maritime Law, January 2011

Annex C pg31

Singapore Ship Sale Form, Gina Lee-
Wan, Allen & Gledhill Advocates &
Solicitors, 19 May 2011

Annex D pg41

Singapore Ship Sale Form: An
Overview, Ticy Veluvellet Thomas,
B.T.G Tan, Centre for Maritime Studies,
National University of Singapore,
December 2010

Annex E pg49

Singapore Sale Form - Commentary
and Drafting Notes, Shipping Briefing,
Daniel Saunders, Watson, Farley &
Williams, July 2011

Annex F pg69

Singapore Arbitration, Standard
Bulletin, The Standard Club,
Samantha Lee, Charles Taylor Mutual
Management (Asia) Pte Ltd, and Chan
Leng Sun, Baker & McKenzie. Wong &
Leow Singapore, November 2011

Annex G pg71

The Singapore Sale Form, Tricia Tong,
Incisive Law LLC, and Paul Herring,
Ince & Co

Annex H pg73

The Singapore Ship Sale Form - A
Positive Step Forward, Clara Tan, Pan
Asia Wikborg Rein LLC, Singapore,
and Florence Ong, Wikborg Rein,
Singapore

MEMORANDUM OF AGREEMENT

SINGAPORE SHIP SALE FORM (SSF 2011)

MEMORANDUM OF AGREEMENT

Singapore Ship Sale Form [SSF2011]

Date of Agreement:

1. The Sellers:	
1(a) Guarantor (optional)*:	
2. The Buyers or Nominee**:	
2 (a) Guarantor (optional)*:	
3. Name of the Vessel:	4. IMO No./Official No./Call Sign:
5. Type, Built Yard, Built Year & GT:	6. (a) Flag/Port of Registry:
7. Classification Society ("Class"):	(b) Bare-boat Registry (if any):
8. Purchase Price:	
(i) Deposit (10 % of Purchase Price):	
(a) Payee Bank:	
(b) Value Date:	
(ii) Balance Purchase Price (Purchase Price less Deposit): + any extras under Clause 7	
(a) Payee Bank:	
(iii) Place of Closing:	(iv) Daily Cost of Delayed Delivery:
9. (i) Physical Inspection (Port and Date):	
(ii) Pre-Delivery Divers Inspection (Port):	
10. Delivery Place (at safe anchorage or berth in):	
Delivery Date (Range):	
Cancelling Date:	
Declaration: It is hereby mutually agreed that this Agreement shall be performed according to the terms and conditions set out herein. Additional clauses, if any, shall be deemed to be fully incorporated into this Agreement.	
11. Signatures - For and on behalf of:	
The SELLERS: (Name/Title)	The BUYERS: (Name/Title)
GUARANTOR, if any: (Name/Title)	GUARANTOR, if any: (Name/Title)

* This is an optional clause applicable in instances where either both parties or one of the parties requires to have a guarantor to guarantee the performance of this Agreement. The Guarantor by signing this Agreement irrevocably and unconditionally guarantees the due performance of the relevant party. In such cases, default by a party shall vest the other party with the immediate right to start a single arbitration against both the named party and its guarantor as co-respondents (in accordance with Clause 15 of this Agreement) and thereby to recover damages from the guarantor, who shall be jointly and severally liable with the defaulter.

** The Buyers shall have more than one right of nomination provided that the Nominee is nominated latest upon receipt of the 15 days notice to be given under Clause 5 (a) of this Agreement or by such date as may be agreed to by the Sellers and the Buyers, failing which the right to nominate shall be lost. A three-party addendum to this Agreement recording the novation in favour of the Nominee Buyers shall be entered into by the Buyers, Sellers and Nominee Buyers.

1 Whereas it is hereby agreed on this day that the Sellers identified in Box 1 have agreed to sell and the Buyers identified
2 in Box 2 have agreed to buy, the Vessel with specifications stated in Box 3, 4, 5, 6, 7, for the Purchase Price stated in
3 Box 8, subject to the following terms and conditions:

4 1. Deposit

5 The Buyers shall pay a deposit of 10 per cent of the Purchase Price specified in Box 8 (i) as security for the fulfillment
6 of this Agreement to the bank nominated by the Sellers in Box 8 (i) (a), with a value date no later than that specified
7 upon in Box 8 (i) (b) of this Agreement. Notwithstanding that the amount received may be lesser due to bank
8 remittance charges imposed during the normal course of transfer, such amount shall stand as due fulfillment of the
9 Buyers obligation to pay the deposit and be held in a joint escrow account of both the Sellers and the Buyers, which
10 shall be released to the Sellers as part of the Purchase Price in accordance with joint written instructions of the Sellers
11 and the Buyers. The Sellers are to arrange the opening of the joint escrow account latest by 2 banking days prior to the
12 Value Date. The Buyers, latest together with their remittance of the Deposit, are to arrange bank-to-bank confirmation
13 from the remitting bank to the bank specified in Box 8 (i) (a) that the Buyers, and the remitting party if different, are a
14 known customer of the bank and should it be required by the bank in Box 8 (i) (a), the Buyers will also arrange for the
15 bank-to-bank confirmation to include the confirmation by the remitting bank that they know the source of funds. Both
16 Sellers and Buyers shall comply with the anti-money laundering laws and regulations of the country in which the
17 bank(s) specified in Box 8 are located.

18 Any interest earned on the deposit shall accrue to the Buyers whereas any closing fee/fees charged for holding the
19 deposit shall be borne equally by the Sellers and the Buyers.

20 2. Payment

21 (a) The Buyers shall pay the Balance Purchase Price specified in Box 8 (ii) in full including any extras under Clause 7
22 free of bank/transfer charges to Sellers' nominated bank account at Sellers' bank stated in Box 8 (ii) (a) upon delivery
23 of the Vessel. The agreed Purchase Price shall be paid for same day value within 3 full banking days, (being banking
24 days in the place of closing and in the country of the Purchase Price currency) after the Sellers tender the written
25 notice* of actual readiness of the Vessel for delivery in accordance with Clause 5 (b).

26 (b) The Buyers may delay to take delivery of the Vessel for up to a maximum of further seven (7) consecutive days
27 paying to the Sellers the sum specified in Box 8 (iv) per day, or part thereof, as compensation for such delay provided
28 that the Buyers have declared their intention to take late delivery prior to the expiry of the specified 3 full banking
29 days. Any such amount due shall be paid at the time and place and in the same currency as the Purchase Price and any
30 additional amounts due under Clause 7. If such delay exceeds seven (7) consecutive days then the Sellers shall have the
31 right to cancel this Agreement and claim damages for their losses incurred.

32 *Throughout this Agreement, a written notice is to mean a registered letter, telex, tele-fax, e-mail or other modern form of written
33 communication between the Sellers and the Buyers.

34 3. Inspections*

35 (a) The Buyers have physically inspected the Vessel at the place and on the date specified in Box 9 (i) as well as the
36 Classification records and have accepted the Vessel making the sale outright, subject only to the terms and conditions
37 of this Agreement.

38 (b) The Sellers shall make the Vessel available for Physical Inspection as per Box 9 (i) hereof.

39 The Buyers shall undertake the Physical Inspection** without undue delay to the Vessel. Should the Buyers cause
40 undue delay, the Sellers shall be compensated for the losses incurred by them. The sale shall become definite and
41 outright, subject only to the terms and conditions of this Agreement, if the Vessel is accepted by the Buyers after the
42 inspection and a written notice of acceptance from the Buyers is received by the Sellers within 72 hours after
43 completion of Physical Inspection of the Vessel. If the Buyers decline the Vessel or if such notice of acceptance is not
44 received by the Sellers within the afore-mentioned time, the deposit together with any interest earned shall be
45 immediately released to the Buyers, whereafter this Agreement shall be null and void.

46 * 3 (a) and 3 (b) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 3 (a) shall apply.

47 ** In the context of this Agreement, Physical Inspection of the Vessel is to mean only inspection of the Vessel physically including
48 taking photographs without opening up of the Vessel and without cost to the Sellers. The Physical Inspection to include inspection of
49 Vessel's Classification records, continuous synopsis record, maintenance records, deck and engine log books and available ballast
50 spaces.

51 4. Condition on Delivery

52 Until the Vessel is delivered and taken over by the Buyers, the Vessel and everything belonging to her shall be at
53 Sellers' risk and expense, subject to the terms of this Agreement. The Sellers shall deliver the Vessel to the Buyers in

54 substantially the same condition as the Vessel was at the time of inspection*, with the exception of fair wear and tear,
55 with present Class maintained free from any outstanding Class conditions and/or recommendations**, free from
56 damage affecting Vessel's Class, with all Class and trading certificates (both national and international) clean and valid
57 at the time of delivery. All cargo spaces shall be clean and free of any cargo, subject only to immovable residues. If the
58 Vessel is not in the same condition as the Vessel was at the time of inspection, the Buyers may reject the Vessel but
59 only if the difference in condition has a substantial impact upon the Buyers' ability to trade the Vessel. Otherwise, the
60 Buyers' remedy for differences in condition shall lie in damages.

61 The burden of proof as to the condition of the Vessel at the time of inspection shall be on the Buyers.

62 * Inspection shall mean the Buyers' inspection according to 3(a) or 3(b) as applicable. If the Vessel is taken over without
63 inspection, the date of this Agreement shall be the relevant date.

64 ** Any notes in Class reports which are accepted by Class without imposing a condition/recommendation are not to be taken into
65 account and shall not constitute outstanding Class conditions and/ or recommendation within the meaning of this Clause.

66 5. Notices and Notice of Actual Readiness

67 (a) Prior to the arrival of the Vessel at the Delivery Place specified in Box 10, the Sellers shall provide the Buyers with
68 30, 15, 7, and 3 days advance written notices to keep the Buyers advised of the estimated date and port of delivery and
69 of the Vessel's itinerary. Following the tender of any notice, Sellers are to take reasonable steps not to hinder delivery
70 by the date set out in the notice.

71 (b) Upon the arrival of the Vessel at the Delivery Place and when the Vessel is physically ready in accordance with
72 Clause 4 for delivery and Sellers have ready all of the Sellers' documents required by Clause 8 (save for the Certificate
73 of Ownership or equivalent, Class Maintained Certificate, Invoice for Bunkers and Lubricants and the Protocol of
74 Delivery and Acceptance), the Sellers shall tender a written Notice of Actual Readiness of the Vessel to the Buyers.
75 Subject only to Clause 2 (b), the Buyers shall take delivery of the Vessel within 3 full banking days after the Sellers
76 tender such notice.

77 (c) However, if the Vessel becomes an actual, constructive or compromised total loss before delivery, the Sellers incur
78 no liability under this Agreement, the Buyers are entitled to the immediate return of the deposit and any interest earned
79 thereon and thereafter this Agreement shall be null and void.

80 6. Pre-Delivery Divers Inspection

81 Prior to delivery, the Sellers shall make the Vessel available to the Buyers for underwater inspection. The Sellers shall
82 be responsible for ensuring that the port, anchorage or berth chosen for underwater inspection of the Vessel is suitable
83 and permitting such inspection.

84 (a) The Buyers shall have the right to appoint, at their own expense, a Class approved diver to inspect the Vessel's
85 underwater parts below the deepest load line including rudder and propeller upon the Vessel's arrival at the port
86 specified in Box 9(ii). The Sellers shall grant Buyers sufficient daylight hours within which to conduct the said
87 inspection and Sellers shall be obliged to ensure attendance of the Class surveyor to monitor the said inspection
88 which may be attended by Buyers' and Sellers' representatives without interference to Class and/or the divers.
89 However, should the Buyers fail to arrange for such inspection then they shall lose the right of such divers
90 inspection.

91 (i) If any defects are found during underwater inspection including rudder and propeller that shall affect the
92 Vessel's present Class and the repair of which Class agrees can be deferred to the Vessel's next scheduled
93 dry-docking, the Buyers' sole remedy shall be the payment by the Sellers of the estimated cost of repair of
94 such defects only excluding any dry-dock costs, as per the average of the quotations of two reputable repair
95 yards independent of the Sellers and the Buyers in the delivery area, one to be selected by each party. The said
96 average amount in respect of the cost of repair shall be deducted from the Purchase Price to be paid to the
97 Sellers at the time of delivery of the Vessel. The costs of Class attendance and divers fees incurred for the
98 underwater inspection shall be borne by the Buyers unless damage is found and the Class imposes a
99 recommendation in which case both costs shall be borne by the Sellers.

100 (ii) If damage is found for which Class requires immediate repair, then Sellers shall repair such damage without
101 delay prior to delivery. Should the Sellers be required to dry-dock the Vessel to repair such damage, then
102 Clause 6 (b) shall apply.

103 (b) Where the Sellers are required to dry-dock the Vessel under Clause 6 (a) (ii), the Sellers shall also enable the
104 inspection of the Vessel's bottom, rudder, propeller, tail shaft and other underwater parts by a surveyor of the
105 Classification Society to the satisfaction of the Classification Society standards. The Sellers shall be obliged to
106 rectify any defects found that affect the present Class of the Vessel within the agreed time or if no agreement is
107 reached then latest within 14 days of such damage being found (and, insofar as necessary, the Cancelling Date

- 108 shall be extended to allow the full agreed or 14 days' repair period), failure of which shall enable the Buyers to
109 cancel the Agreement and recover the deposit together with interest.
- 110 (i) The Buyers shall bear the cost of the survey of the tail shaft system unless the Classification Society requires
111 such survey to be carried out, in which case the Sellers shall bear the cost. The expenses in connection with
112 putting the Vessel in and taking her out of dry-dock including dry-dock dues and Classification Society's fees
113 shall be paid by the Sellers if any condition or recommendation, excluding surveyor notes is issued as a result
114 of the survey. In all other cases Buyers shall pay the aforesaid expenses, dues and fees.
- 115 (ii) The Buyer shall have the right to place a representative for observation whilst the Vessel is in dry-dock
116 without interfering with the Classification surveyor's work or decisions, during the Classification Society
117 inspections.
- 118 (iii) The Buyers shall have the right to have the underwater parts of the Vessel cleaned and painted at their risk and
119 expense without interfering with the Classification Society's or the Sellers' work, and without affecting timely
120 delivery of the Vessel. Upon the completion of the Sellers' work, the Sellers may tender Notice of Actual
121 Readiness of the Vessel for delivery notwithstanding the non-completion of Buyers' work and
122 notwithstanding that the Vessel is not at the Delivery Place, upon which the Buyers shall be obliged to take
123 delivery of the Vessel in accordance with the aforesaid notice. All dry-docking expenses incurred after such
124 delivery except undocking expenses under Clause 6 (a) (ii) shall be borne by the Buyers.
- 125 The Classification Society shall be the only entity to determine whether any underwater damage constitutes a condition
126 of Class, and such determination shall be final and binding on both parties.
- 127 7. Spares/ Bunkers & Others
- 128 The Sellers shall deliver the Vessel to the Buyers with everything belonging to her including all spare parts and spare
129 equipment on board and on shore except those spare parts that are on order. Any forwarding charges shall be the
130 Buyers' expense. However, the Sellers are not required to replace any spare parts that are taken out of spare and used
131 as replacement in the Vessel prior to delivery unless required by Class. The radio installation and navigational
132 equipment shall be included in the sale, along with all unused stores and provisions without extra payment. Any
133 crockery, plates, cutlery, linen and other items bearing the Sellers' name, if taken by the Sellers, shall be replaced with
134 unmarked items. However, the following items shall be excluded without compensation;
- 135 (a) Items that are on use exclusively in Sellers' Vessel like library, forms etc;
136 (b) Personal belongings including slop chest of the Vessel captain, officers and crew;
137 (c) Items on hire;
138 (d) Others, if any.....
139
- 140 The remaining bunkers, unused lubricants in designated storage tanks (not header tanks) and unopened drums shall be
141 taken over by the Buyers, on payment of the net price excluding barging expenses paid by the Sellers at the date of last
142 supply to the Vessel and evidenced by relevant invoices or vouchers; copies of which shall be made available to the
143 Buyers at the time of delivery. Payment under this Clause shall be made in the same currency and at the same time and
144 place as the Purchase Price.
- 145 8. Documentation
- 146 (a) As soon as practically possible after the Deposit in Box 8 (i) has been paid in accordance with Clause 1: the Sellers
147 shall forward the Buyers scanned or photocopies of all requested Plans, Registry, Class, Safety/Trading Certificates
148 and other documents reasonably required for preparation of Buyers registration and management documentation.
- 149 (b) At the Place of Closing specified in Box 8 (iii) at the time of delivery the Sellers and the Buyers shall sign and
150 deliver to each other a signed Protocol of Delivery and Acceptance stating the date, time and place of delivery of the
151 Vessel from the Sellers to the Buyers.
- 152 The Sellers shall furnish the Buyers with the following documents (unless otherwise specified all to be originals in
153 English or with official English translations) in exchange for payment of the full Purchase Price of the Vessel:
- 154 (i) Two (2) Bills of Sale to be notarially attested and then legalized by the appropriate authorities as required by
155 the Buyers' incoming flag specifying that the Vessel is free from all encumbrances as set out in Clause 9(a) of this
156 Agreement. The notarial certificate is to confirm the identity of the signatory, his/her ability to bind the Sellers and
157 the authenticity of the signature.
- 158 (ii) Resolutions of the Sellers' Board of Directors and Shareholders meetings authorizing the sale and transfer of
159 the Vessel pursuant to this Agreement and appointing persons to represent the Sellers in connection with the sale of

- 160 the Vessel and the execution of Bills of Sale and any other documents in connection with the sale of the Vessel
161 including the issuance of a Power of Attorney. Such Resolutions are to be notarially attested and then legalized by the
162 appropriate authorities as required by the Buyers' incoming flag. The notarial certificate is to confirm the identity of
163 the signatory, his/her ability to bind the Sellers and the authenticity of the signature.
- 164 (iii) Power of Attorney issued by the Sellers authorizing their named representative(s) to effect the sale and
165 transfer of the Vessel to the Buyers, pursuant to this Agreement and carry out any delivery/closing formalities
166 including receiving the Deposit and the Balance Purchase Price or any other amounts pursuant to this Agreement.
167 Such Power of Attorney is to be notarially attested and then legalized by the appropriate authorities as required by the
168 Buyers' incoming flag. The notarial certificate is to confirm the identity of the signatory, his/her ability to bind the
169 Sellers and the authenticity of the signature.
- 170 (iv) One (1) Certificate of Ownership or equivalent, dated on the date of Vessel's delivery or such other date as the
171 parties may agree, issued by the competent authorities showing that the Vessel is registered in the ownership of the
172 Sellers and is free from registered mortgages and encumbrances.
- 173 (v) A certified true copy of the Sellers' constitutive documents.
- 174 (vi) A current Certificate of Good Standing or Equivalent.
- 175 (vii) Three (3) Commercial Invoices setting out the main particulars of the Vessel and the Purchase Price of the
176 Vessel.
- 177 (viii) One (1) Commercial Invoice setting out the particulars and cost of bunkers and lubricants remaining on board
178 together with copies of the respective vouchers.
- 179 (ix) Certificate of Deletion or in lieu thereof, a Letter of Undertaking to provide the Certificate of Deletion and
180 closed CSR from the present Ship Registry within 30 days from the date of delivery.
- 181 (x) Letter from the Sellers confirming at the time of delivery that the Vessel is free from all encumbrances,
182 charters, mortgages, maritime liens, writs (save where security has been furnished), port state and other
183 administrative detentions, stowaways, trading commitments and any other debts whatsoever, and undertaking to
184 indemnify fully Buyers against all consequences of any claims against the Buyers that may arise due to claims
185 against the Vessel originating prior to the time of the Vessel's delivery to the Buyers.
- 186 (xi) Three (3) Protocols of Delivery and Acceptance. (One each to be retained by the Buyers, the Sellers and the
187 closing Bank)
- 188 (xii) Class Maintained Certificate dated not more than 3 working days prior to the date of delivery. However, if the
189 Class Maintained Certificate is issued prior to the underwater inspection, then a copy of the Class report following
190 the divers' inspection also to be included.
- 191 (xiii) The Sellers' letter of confirmation that to the best of their knowledge the Vessel:
192 has not sustained grounding or any other damage to underwater parts since underwater inspection (or
193 most recent dry-docking in case there is no divers' inspection).
194 is not black listed by any government, state, country, political sub division and union.
- 195 (xiv) A copy of Sellers or Sellers manager's letter(s) to the respective authorities confirming cancellation of all
196 Inmarsat and other communication contracts for the Vessel effective at the time of delivery.
- 197 (c) At the time of delivery of the Vessel the Buyers shall furnish the Sellers with the following documents (unless
198 otherwise specified all to be originals in English or with official English translations):
- 199 (i) A certified true copy of the Buyers' constitutive documents.
- 200 (ii) A current Certificate of Good Standing or equivalent.
- 201 (iii) Resolution of the Board of Directors of the Buyers approving the purchase of the Vessel from the Sellers and
202 granting a power of attorney to authorized representatives of the Buyers. Such Resolution to be notarially attested
203 and then legalized by the appropriate authorities as required by the Sellers. The notarial certificate is to confirm the
204 identity of the signatory, his/her ability to bind the Buyers and the authenticity of the signature.
- 205 (iv) Power of Attorney of the Buyers authorizing the Buyers' representatives or their nominees to do all such acts
206 and things which the attorney may consider necessary or desirable on behalf of the Buyers with respect to the
207 purchase and delivery of the Vessel but including specifically, acceptance of the Bill of Sale, signing of the
208 Protocol of Delivery and Acceptance, release/payment of Deposit and Balance Purchase Price or any other
209 amounts pursuant to the Agreement. Such Power of Attorney to be notarially attested and then legalized by the

210 appropriate authorities as required by the Sellers. The notarial certificate is to confirm the identity of the signatory,
211 his/her ability to bind the Buyers and the authenticity of the signature.

212 (d) As soon as possible but not later than 14 days prior to the Vessel’s expected readiness for delivery, the Sellers and
213 the Buyers shall exchange by fax or email (copies to the extent possible) or drafts of the documents listed in sub
214 clauses (b) & (c) above for the other Party’s review and comments. Copies of executed versions which are to be in
215 strict conformity with the drafts are also to be circulated latest 3 days prior to delivery.

216 At the time of delivery onboard the Vessel, the Sellers shall hand over to the Buyers all Classification Certificates,
217 Plans, Drawings, Record Books, Instruction Manuals (excluding ISM or other documents specific only to the
218 Sellers/their Managers). All other certificates and documents onboard and pertinent to the Vessel shall also be handed
219 over to the Buyers unless the Sellers are required to retain same, in which case photocopies are to be left onboard. All
220 other documents which may be in the Sellers’/Sellers manager’s possession shall be promptly forwarded to the Buyers
221 after delivery. Forwarding charges, if any, to be for the Buyers’ account. The Sellers may keep the Vessel’s log books
222 but the Buyers to be so advised and have the right and opportunity to take copies of same.

223 9. Encumbrances

224 a) It is a condition of this Agreement, any breach of which will entitle the Buyers to reject the Vessel, that the Vessel,
225 at the time of delivery, is free from all encumbrances, charters, mortgages, maritime liens, writs (save where security
226 has been furnished), port state and other administrative detentions, stowaways, trading commitments and any other
227 debts whatsoever.

228 b) The Sellers hereby undertake to indemnify fully the Buyers against all consequences of any claims against the
229 Buyers that may arise due to claims against the Vessel originating prior to the time of delivery of the Vessel to the
230 Buyers.

231 10. Expenses

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

235 11. Vessel Name

236 The Buyers, upon delivery of the Vessel, shall change the name of the Vessel and alter its funnel markings.

237 12. Buyers Default

238 (a) In the event of failure by the Buyers to pay the agreed Deposit or to provide the bank-to-bank confirmation set out
239 in Clause 1 by the Value Date, the Sellers have the right to cancel this Agreement and they shall be entitled to claim
240 compensation for their losses and expenses (but with no automatic right to compensation in the amount of the Deposit).

241 (b) The failure to pay the agreed Purchase Price, and any additional amounts due under Clause 7 and Clause 2(b),
242 within the deadline provided by Clause 2(a) or, if applicable, Clause 2(b), shall vest the Sellers with the right to cancel
243 this Agreement and the Deposit with any interest earned thereon shall be forfeited to the Sellers (irrespective of the
244 amount of the Sellers’ actual losses and expenses). Insofar as the Deposit does not cover the Seller’s actual losses and
245 expenses, they shall be entitled to claim further compensation for those losses and expenses not so covered.

246 (c) The burden of proving any loss and expense shall be on the Sellers.

247 13. Sellers Default

248 (a) In the event of failure on the part of the Sellers to give Notice of Actual Readiness in accordance with Clause 5(b)
249 latest within the Cancelling Date specified in Box 10 or, Notice of Actual Readiness for Delivery having been
250 tendered, failure on the part of the Sellers to provide the documents required by Clause 8 and/or to deliver the Vessel
251 as provided in Clause 9, the Buyers shall have the option to cancel this Agreement.

252 (b) If after Notice of Actual Readiness has been given but before the Buyers have taken delivery, the Vessel ceases to
253 be physically ready for delivery and is not made physically ready again in accordance with Clause 4 and a Notice of
254 Actual Readiness for Delivery re-tendered latest within the Cancelling Date in Box 10, the Buyers shall retain their
255 right to cancel.

256 (c) In the event the Buyers choose to cancel this Agreement the Deposit together with interest earned shall be released
257 to them immediately.

258 (d) In addition, save where the failure was caused by matters outside of the Sellers’ reasonable control, the Buyers shall
259 be entitled to claim compensation for all their losses and expenses caused by failure of the Sellers to give Notice of
260 Actual Readiness latest within the Cancelling Date in Box 10 or, if Notice of Actual Readiness for Delivery has been
261 tendered, caused by failure by the Sellers to provide the documents required by Clause 8 and/or to deliver the Vessel as
262 provided in Clause 9. The burden of proving any loss and expense, additional or otherwise, shall be on the Buyers. The
263 burden of proving that the failure was caused by matters outside of the Sellers’ reasonable control shall be on the
264 Sellers.

265 14. Buyers Representatives

266 The Buyers are entitled to place two representatives on board the Vessel after signing a letter of indemnity in Sellers
267 usual form, for the purpose of familiarization and as observers at their expense and risk after this Agreement has been
268 signed by both parties and the Deposit has been lodged. The Buyers’ Representatives are to remain onboard until
269 delivery under the Master’s control, but are to be allowed access to the Vessel’s main spaces, machinery and
270 equipment without interference to the Vessel or her operations.

271 15. Arbitration & Governing Law

272 i)* This Agreement and any guarantee contained herein shall be governed by and construed in accordance with
273 Singapore/English* Law and any and all disputes arising out of or in connection with this Agreement, including any
274 question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in
275 Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration for the time
276 being in force at the commencement of the arbitration.

277 ii)* This Agreement and any guarantee contained herein shall be governed by and construed in accordance with
278 Law and any and all disputes arising out of or in connection with this Agreement, including
279 any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in
280in accordance with theRules for the time being in force at the
281 commencement of the arbitration.

282 * 15(i) and (ii) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 15 (i) and Singapore law
283 shall apply to the exclusion of any other law. In the absence of selection by the parties as to the applicable law, seat of arbitration
284 and arbitration rules under alternative 15 (ii); Singapore law shall apply to the exclusion of any other law, Singapore shall be the
285 seat of arbitration and the arbitration rules of the Singapore Chamber of Maritime Arbitration shall apply.

286 16. Confidentiality Clause

287 Both Parties agree in good faith to keep the terms and conditions of this Agreement private and confidential except as
288 required by law. In the event the sale or details thereof become known or reported in the market neither the Sellers nor
289 the Buyers shall have the right to withdraw from the sale or fail to fulfill all their obligations under this Agreement.

290 17. Entire Agreement Clause

291 This Agreement and any Addenda thereto contain the entire agreement between the Sellers and the Buyers relating to
292 the transaction which is the subject of this Agreement and all negotiations, understandings and agreements whether in
293 writing or otherwise between the Sellers and the Buyers are superseded and/or replaced by this Agreement.

UNIVERSITY OF SOUTHAMPTON, INSTITUTE OF MARITIME LAW

**THE NEW SINGAPORE SHIP SALE FORM:
A COMMENTARY ON THE NEW SALE FORM**

by

C. Debattista and F. Lorenzon

**Prof. Charles Debattista**

Professor of Commercial Law, Institute of Maritime Law,
University of Southampton, and Arbitrator and Associate Member,
Stone Chambers, London

**Avv. Filippo Lorenzon**

Director, Institute of Maritime Law
Senior Lecturer in Maritime and Commercial Law,
University of Southampton

January 2011 sees the launch of a new standard form contract for the sale of ships: the Singapore Ship Sale Form 2011,¹ to address the pressing need for revision considering how shipping had evolved over the years. The newborn is the work of a team of experts pulled together under the auspices of the Singapore Maritime Foundation and the result of a very thorough review of the legal and practical difficulties the use of its rival forms has generated in the last decades, particularly in the rising Asian market.

With its 17 clauses and 293 lines without amendments, alterations and riders, the SSF is slightly longer than the latest NSF² and the Nipponsale 1999.³ Although no formal division in parts⁴ or pages⁵ is made on the form, the standard form is divided into two parts: a front page with 11 boxes to be filled by the parties and/or their representatives and a second part containing the other 17 numbered clauses. This particular structure will look very familiar to those conversant with the Nipponsale 1999 form and represents a marked improvement over the NSF for a very simple reason: the simple reference which most clauses make to one or more boxes on the first page renders it unnecessary for the brokers to fill or complete the actual clauses of the contract with names, dates and other details: this reduces significantly the risk of minor omissions, mistakes and alterations which may give rise to unnecessary disputes. This is, of course, not to say that

the SSF is perfect for every deal or that it should never be amended; quite the contrary. Any standard form contract must be considered as a 'set menu' of clauses, carefully drafted for the 'average deal' and as such not ready for use yet. Every buyer, seller, vessel, deal is different and whichever the standard form used by the parties; it must be adapted to the deal at stake.⁶ The SSF is no different: it must be considered as a starting point for the parties, their brokers and lawyers to negotiate the contract and reach an agreement for the sale of a specific vessel to a specific buyer. The adaptable nature of the SSF is very apparent on its first page, designed in boxes to be filled with the details of the parties, the vessel and the key terms of the deal. But the entire document must be read and understood in exactly the same way and must be intelligently adapted to the specific circumstances of the sale at stake. There are of course risks in amending standard form contracts, the most prominent of which is that every time one word is added to or deleted from a clause the entire meaning of that clause – and at times a number of other clauses in the contract – may be affected while earlier decisions interpreting the same clause may be distinguished by virtue of the new wording, hence generating a certain degree of unpredictability. For obvious reasons this last risk is less of an issue with the SSF, a form still in its infancy.

¹Hereafter "SSF"

²The Norwegian Shipbrokers' Association's Memorandum of Agreement for sale and purchase of ships, adopted by The Baltic and International Maritime Council (BIMCO) in 1956, currently in its 1993 revision, hereafter '*the NSF*'. The process to further update the 1993 revision of the NSF has started at the end of 2010; see www.bimco.org.

³The Nipponsale Memorandum of Agreement of the Documentary Committee of the Japan Shipping Exchange Inc. 1965, currently in its 1999 revision, hereafter '*the Nipponsale 1999*'.

⁴As the Shell charters

⁵As most recent bill of lading forms

⁶For a fuller discussion on the use of standard form contracts in the sale of second hand ships see I. Goldrein, M. Hannaford, P. Turner, *Ship sale and purchase*, 5th edn (London, 2008) (hereafter "*Goldrein*"), at [4.7]; see also Strong & Herring, *Sale of Ships, The Norwegian Saleform* (2nd ed, 2010), (hereafter "*Strong & Herring*") at 2A-36.

As a standard form contract for the sale of second hand tonnage, the SSF cannot be considered a revolution but rather an evolutionary leap forward which accounts for the most common additions, amendments and alteration to the current forms and incorporates many of the suggestions received from the industry. The aim of this short publication is to offer the reader a brief account of the main innovations contained in this form and a quick comparison with the NSF and, where appropriate, the Nipponsale 1999.

In order to achieve this within the limited space available we have chosen the five clauses which – in our opinion – offer the most interesting departures from those contained in the forms currently available. These are:

1. Clause 1: Deposit
2. Clause 5: Notices and Notice of Actual Readiness
3. Clause 8: Documentation
4. Clause 9: Encumbrances
5. Clause 15: Arbitration

These clauses and the innovations they bring will be dealt with in some detail in the following pages.

1. Deposit (Clause 1)

If compared with Clause 2 of the NSF,⁷ Clause 1 of the SSF appears much longer and detailed but most of the extra wording is aimed at clarifying the duties of sellers and buyers as far as the deposit is concerned and reflects both current market practice and the

stringent anti-money-laundering requirements with which banks must now comply. As such the new Deposit clause is warmly welcome.

The opening words of the clause read as follows:

The Buyers shall pay a deposit of 10 per cent of the Purchase Price specified in Box 8 (i) as security for the fulfillment of this Agreement to the bank nominated by the Sellers in Box 8 (i) (a), with a value date no later than that specified upon in Box 8 (i) (b) of this Agreement.

The reference to the boxes on page one of the form improves substantially the clarity of the clause and reduces the need to amend it making the overall look of the finished contract much tidier, neater and possibly free from typos and other trivia.⁸ As in the NSF, the buyer's failure to pay the price will entitle the seller to the deposit and any interest earned thereon as minimum amount of liquidated damages;⁹ the action for further damages in the measure determined according to the rules of causation and remoteness proper of the law chosen by the parties¹⁰ is always available to the seller.¹¹ In the event of failure by the buyers to pay the deposit or to provide the bank-to-bank confirmation¹² the sellers have the right to cancel the contract and claim compensation for their losses and expenses. It must be noted that the form expressly excludes any link between the quantum of the deposit and the amount of

⁷On which see in general *Goldrein*, at [5.9].

⁸See discussion above. SSF, Cl. 12(b). See also NSF, Cl. 13 on which *Goldrein*, at [5.20] and ff; and Strong & Herring, 16-05 and ff.

⁹By virtue of the choice made in Cl. 15(b) or – by default – Singaporean Law.

¹⁰SSF, Cl. 12(b); NSF, Cl. 13, l. 239; Nipponsale 1999, Cl. 14(a), ll. 248-251.

¹¹See below.

¹²SSF, Cl. 12(a).

damages recoverable for the buyer's breach.¹³ On the other hand, in case of seller's default the deposit and any interest accrued shall be returned.¹⁴

Notwithstanding that the amount received may be lesser due to bank remittance charges imposed during the normal course of transfer, such amount shall stand as due fulfillment of the Buyers obligation to pay the deposit and be held in a joint escrow account of both the Sellers and the Buyers, which shall be released to the Sellers as part of the Purchase Price in accordance with joint written instructions of the Sellers and the Buyers.

This part of the clause is completely new and has a number of important consequences: (1) the deduction of bank remittance charges from the amount of the deposit is contractually accepted by the seller who expressly waives his right to cancel the contract for what would otherwise be a technical breach;¹⁵ (2) the deposit must be paid into a joint escrow account and (3) it is expressly stated that the deposit will be released to the seller as part of the purchase price. This last provision does usually appear in the NSF as a rider, given the silence of the standard form.¹⁶

The Sellers are to arrange the opening of the joint escrow account latest by 2 banking days prior to the Value Date. The Buyers, latest together with their remittance of the Deposit, are to arrange bank-to-bank confir

mation from the remitting bank to the bank specified in Box 8 (i) (a) that the Buyers, and the remitting party if different, are a known customer of the bank and should it be required by the bank in Box 8 (i) (a), the Buyers will also arrange for the bank-to-bank confirmation to include the confirmation by the remitting bank that they know the source of funds. Both Sellers and Buyers shall comply with the anti-money laundering laws and regulations of the country in which the bank(s) specified in Box 8 are located.

This part of the clause brings the form expressly in line with the anti-money laundering laws and know your client (KYC) requirements in force in the country where the banks are located.¹⁷ The SSF clarifies in great detail the obligations of both parties regarding the deposit payment, imposing on the seller the duty to open the joint escrow account in the nominated bank within a specified time and on the buyers the duty to arrange bank-to-bank confirmation from the remitting bank to the sellers' nominated bank for which the buyers (and any different remitting party) are known customers of the bank thereby facilitating basic due diligence required by the nominated bank to hold the deposit funds. Although much more detailed than both the NSF¹⁸ and the Nipponsale Form 1999,¹⁹ this clause should be considered as in line with current market practice and considerably clearer on the ancillary duties of seller and buyer regarding the opening of the deposit than those currently available.

¹³SSF, Cl. 12(a).

¹⁴SSF, Cl. 13(c).

¹⁵As they would be otherwise entitled to do by virtue of clause 12(a) of the SSF.

¹⁶See *Goldrein*, at [5.9.1] and Strong & Herring at 5-07.

¹⁷This information is known to the parties at the time of the conclusion of the agreement if Box 8 of the SSF is duly filled before signature.

¹⁸NSF, Cl. 2.

¹⁹Nipponsale 1999, Cl. 2(a).

Any interest earned on the deposit shall accrue to the Buyers whereas any closing fee/fees charged for holding the deposit shall be borne equally by the Sellers and the Buyers.

This part of the clause is fairly standard and in line with ll. 22-24 of the NSF and the corresponding provision of the Nipponsale 1999.²⁰

2. Notices and Notice of Actual Readiness (Clause 5)

This clause introduces and defines the concept of 'actual readiness' and as such seeks to eliminate the uncertainty caused by expressions like 'in every respect physically ready for delivery'²¹ or 'NOR' in a context which are in many ways more germane to the triggering of the commencement of lay-time in voyage charters.

- (a) Prior to the arrival of the Vessel at the Delivery Place specified in Box 10, the Sellers shall provide the Buyers with 30, 15, 7, and 3 days advance written notices to keep the Buyers advised of the estimated date and port of delivery and of the Vessel's itinerary. Following the tender of any notice, Sellers are to take reasonable steps not to hinder delivery by the date set out in the notice.

Once again the reference to the boxes to be filled on page one of the SSF has the dual advantage of relieving the brokers from the need to amend the actual clause and that of standardizing the number of notices to be given under the contract and the interval

among them. Under the SSF sellers must give four consecutive advance written²² notices of the estimated time and port of delivery²³ and the vessel's route. This is a considerable departure from the wording of both the NSF and the Nipponsale 1999 where the duty to give written notices is limited to the time and place of expected delivery and does not extend to the vessel's itinerary.²⁴

Another element of novelty is that as soon as any notice of estimated time and port of delivery is given, the seller is under a positive duty to take reasonable steps not to hinder delivery by the date given in the notice thus preventing deliberate overtrading. The consequences of breach of this duty – as that of failure to give any of the notices of expected delivery – are however unclear and would appear to be absorbed in the right to cancel the contract for failure to give notice of actual readiness by the cancelling date.²⁵

- (b) Upon the arrival of the Vessel at the Delivery Place and when the Vessel is physically ready in accordance with Clause 4 for delivery and Sellers have ready all of the Sellers' documents required by Clause 8 (save for the Certificate of Ownership or equivalent, Class Maintained Certificate, Invoice for Bunkers and Lubricants and the Protocol of Delivery and Acceptance), the Sellers shall tender a written Notice of Actual Readiness of the Vessel to the Buyers. Subject only to Clause 2 (b), the Buyers shall take delivery of the Vessel within 3 full banking days after the Sellers tender such notice.

²⁰Nipponsale 1999, Cl 2, ll. 19-22.

²¹As in Cl. 3 of the NSF

²²Under the SSF any *written* notice must be given by registered letter, telex, fax, e-mail or other modern form of written communication.

²³The same notices (30, 15, 7 and 3 days) are stipulated in Nipponsale 1999, at Cl. 4(b).

²⁴NSF, Cl. 5(a), l. 52; Nipponsale 1999, Cl. 4(b)

²⁵See below.

The Notice of Readiness (NOR) is a well known document to sellers and buyers under both the NSF and the Nipponsale 1999, where it is called Notice of Readiness for Delivery (NORD). Under all forms the NOR or NORD – if validly given – have the function of triggering the buyer's duty to pay the contract price²⁶ and take delivery of the vessel. Under the NSF, the NOR will be validly given if two conditions are fulfilled: (i) the vessel is at the place of delivery; and (ii) is in every respect physically ready for delivery in accordance with this agreement.²⁷ Under Nipponsale 1999 the NORD is validly given 'when the vessel becomes ready for delivery'²⁸ although presumably she must be 'within the Delivery Range'.²⁹ However, none of the current forms makes any reference to any kind of readiness which is not purely physical. This is where the SSF has broken new ground with the introduction of a substantially different notice: the Notice of Actual Readiness (NOAR).³⁰ The function of the NOAR under the SSF is exactly the same as the NOR under the NSF or Nipponsale 1999 but the requirements for its validity are radically different. For the NOAR to be valid three conditions must be fulfilled: (i) the vessel must have arrived at the delivery place agreed in the contract or notified under Cl 5(a); (ii) the vessel must be physically ready for delivery;³¹ and (iii) the seller must have ready all of the sellers' documents

required by Clause 8³² save for the certificate of ownership, class maintained certificate, invoice for bunkers and lubricants and the protocol of delivery and acceptance. This last condition may appear to be a minor alteration from the familiar concept of NOR in a ship sale context, but certainly it is not, as the lack of any of the numerous documents required under Cl. 8 (save those expressly excepted) appears to make the NOAR given invalid and hence unable to trigger the buyers' duty to pay the price and take delivery and – most remarkably – unable to stop the running of time towards the cancelling date. In fact, in case the NOAR is not validly given by the cancelling date, the buyer has the option to cancel the contract.³³

- (c) However, if the Vessel becomes an actual, constructive or compromised total loss before delivery, the Sellers incur no liability under this Agreement, the Buyers are entitled to the immediate return of the deposit and any interest earned thereon and thereafter this Agreement shall be null and void.

This tailpiece is very similar to the corresponding provision in the NSF³⁴ as under both contracts the risk of loss of or damage to the vessel rests squarely with the seller until the time of actual delivery. However the SSF offers a further clarification: in case

²⁶Under the NSF, cl. 3, ll. 27-29, together with the requirement that the vessel is 'in every respect physically ready for delivery in accordance with the terms and conditions of [the contract]' and *simpliciter* under Nipponsale 1999, cl 2(b) 26-29.

²⁷NSF, Cl. 5(a), ll. 54-56.

²⁸Nipponsale 1999, Cl. 7(a).

²⁹Nipponsale 1999, Cl. 4(a), l. 50; see Strong & Herring at 8-28; *contra* see Goldrein, at [5.12.12] who appears to infer that the ship does not need to be at the place of delivery for the NORD to be validly given.

³⁰SSF, Cl. 5(b).

³¹The express reference to cl. 4 of the SSF here means that physical readiness has a very well defined meaning: "[...] in substantially the same condition as the Vessel was at the time of inspection, with the exception of fair wear and tear, with present Class maintained free from any outstanding Class conditions and/or recommendations, free from damage affecting Vessel's Class, with all Class and trading certificates (both national and international) clean and valid at the time of delivery. All cargo spaces shall be clean and free of any cargo, subject only to immovable residues."

³²See below.

³³SSF, Cl. 13(a).

³⁴NSF, Cl. 5(d).

the vessel is lost between the time when the NOAR is given and the time of delivery, the seller has no liability under the contract and the contract immediately becomes null and void.³⁵ All money paid and interest earned shall be reimbursed.

3. Documentation (Clause 8)

Clause 8 of the SSF is a very long clause listing the documents which the parties must provide for each other: the clause occupies 176 lines of the form, as against the 30 lines occupied in the equivalent clause in the NSF³⁶ and the 12 lines occupied in the equivalent clause in the Nipponsale Form.³⁷ What those forms have left to the practice of ship sales and to special clauses negotiated between parties to particular ship sale contracts, the SSF has set out in the Form itself as the default position, making it unnecessary for lengthy lists of documents to be added by parties to specific agreements. There are three main distinguishing features to Clause 8 of the SSF. The first is the one already alluded to. For the NOAR required under Clause 5 of the SSF to be valid, the seller must have ready all the seller's documents required by Clause 8 other than a small number of documents specified in Clause 5. As indicated earlier, the inclusion of the seller's documents in the clause setting out the requirements for a valid NOAR has the effect of delaying the buyer's obligation to pay the price and of starting the running of the clock towards possible cancellation by the buyer. Secondly, the SSF lists not only those documents which need to be tendered by the seller but also those tendered by

the buyer.³⁸ Thirdly, and most obviously, the list of seller's documents is considerably longer; the SSF listing no fewer than eight documents mentioned neither in the NSF nor in the Nipponsale 1999,³⁹ among which are documents attesting to the seller's entitlement to sell the ship, invoices for the purchase price of the vessel setting out the main particulars of the vessel and invoices for bunkers remaining on board.

The additional documents have been included following careful consideration of what the market normally expects, both for the completion of a secure sale and for the purposes of complying with current money-laundering banking regulations.⁴⁰ The net result of the enormous enlargement of Clause 8 is that a comprehensive list is provided for use by the parties who are free, of course, to delete any one or more of these documents – or indeed to add any to what is already a long list of documents.

4. Encumbrances (Clause 9)

If an encumbrances clause is nothing new in a ship sale contract, the Encumbrances clause in the SSF is indeed substantially different from any other corresponding provision in both the NSF and the Nipponsale 1999. Clause 9 of the SSF is divided in two parts: part (a) imposes on the seller the duty to deliver the vessel free from the encumbrances listed therein;⁴¹ and part (b) gives the buyer the right to indemnity in given circumstances.⁴² Both parts will now be dealt with separately in detail.

³⁵Compare the rather different wording of Nipponsale 1999, Cl. 8.

³⁶NSF, Cl. 8.

³⁷Nipponsale 1999, Cl. 3.

³⁸SSF, Cl. 8(c).

³⁹SSF, clause 8(b)(ii)(iii)(v)(vi)(vii)(viii)(xiii)(xiv).

⁴⁰See Strong & Herring, at 11-19.

⁴¹SSF, Cl. 9(a).

⁴²SSF, Cl. 9(b).

Part (a) of Clause 9 represents a major departure from the current forms in two respects: (i) the very different nature of the duty imposed on the seller and (ii) the much wider scope of the express list of encumbrances.

(i) *The nature of the duty imposed on the seller:* The opening words of Cl. 9 of the NSF are "The Sellers warrant that the vessel [...]"⁴³; the corresponding provision in Nipponsale 1999 reads "The Sellers hereby undertake to indemnify the Buyers against all claims [...]"⁴⁴ But whether this wording favours the interpretation of these causes as conditions, warranties or innominate terms is a matter which has caused some debate.⁴⁵ Uncertainty is usually unwelcome in commercial contracts, either requiring detailed negotiation or leading to difficult disputes. The draftsmen of the SSF have taken a very strong initiative and have made very clear that this clause is a condition of the contract⁴⁶ the breach of which entitles the buyer to reject the vessel and claim damages. This follows from the opening words of Cl. 9 of the SSF:

- a) It is a condition of this Agreement, any breach of which will entitle the Buyers to reject the Vessel, that the Vessel [...]

Hence, a vessel delivered with any of the encumbrances listed in Clause 9(a) – in the absence of any alteration or amendment to the clause itself – can be rejected.

ii) *The scope of the list:* Given the draconian consequences for the breach of Cl. 9 of the

SSF, the widened list of encumbrances of which the vessel should be delivered free becomes even more important to both buyers and sellers and will probably be one of those parts of the form which will be looked at very carefully during negotiations. Against the NSF list of only five items,⁴⁷ the new form lists twice as many and reads:

[...] is free from all encumbrances, charters, mortgages, maritime liens, writs (save where security has been furnished), port state and other administrative detentions, stowaways, trading commitments and any other debts whatsoever.

Under the new form therefore the vessel may be rejected if delivered under arrest⁴⁸ or port state control detention on virtually any ground, with stowaways on board – supposedly at the time of the NOAR, on delivery or any time in between – and any other trading commitment. As far as the words 'any other debts whatsoever' are concerned, it may be worth noting that they have been held by the English Court of Appeal to include debts which, at the time of delivery, had given rise to actual existing rights affecting the property in or the use of the vessel.⁴⁹

Part (b) of the clause reads:

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

⁴³NSF, Cl. 9, l. 100.

⁴⁴Nipponsale, Cl. 13, ll. 232-233.

⁴⁵See *Goldrein*, at [5.16.6]; Strong & Herring, at 12-03 to 12-05.

⁴⁶*B.S. & N. Ltd (BVI) v. Micado Shipping Ltd (The Seaflower)* [2001] 1 Lloyd's Rep 341.

⁴⁷NSF, Cl. 9. The five items are: (1) charters, (2) encumbrances, (3) mortgages, (4) maritime liens, and (5) any other debts whatsoever.

⁴⁸*Cfr Athens Cape Naviera S.A. v Deutsche Dampfschiffahrtsgesellschaft "Hansa" Aktiengesellschaft (The Barenbels)* [1985] 1 Lloyd's Rep 528.

⁴⁹*Ibidem* and *Goldrein*, at [5.16.2]; and Strong & Herring at 12-12 and 12-13.

Both the NSF⁵⁰ and Nipponsale 1999⁵¹ contain a similar duty but the wording of the SSF is considerably different with important consequences. The current forms impose on the seller the duty to indemnify the buyer against ‘all consequences of *claims made against the Vessel*’⁵² (emphasis added) where the indemnity under the SSF is due against ‘all consequences of any *claims against the Buyers* that may arise due to claims against the Vessel’ (emphasis added). In order to trigger the indemnity under the new form the buyer must prove that (1) he suffered a quantified loss (2) as the consequence of a claim against him (3) arisen due to a claim against the vessel. This is clearly a pro-seller amendment as the following example will show. The arrest of a vessel sold under the NSF and arrested for a claim originating from a cargo damaged prior to delivery would have allowed the buyer to recover damages such as loss of hire or fixture, two heads of loss clearly falling within the scope of the sentence ‘all consequences of *claims made against the Vessel*’. If the vessel is sold under the SSF however such losses may not be recovered as the arrest is certainly not a claim *against the buyer* that may arise due to a claim against the vessel.

5. Arbitration & Governing Law (Clause 15)

This clause is extremely important for the Singapore shipping community. It provides for two alternatives from which the parties may choose by deleting whichever is not applicable.⁵³ In the absence of such deletion,

however, alternative 15 (i) and Singapore law will apply to the exclusion of any other law and Singapore will be the seat of arbitration, under the rules of the Singapore Chamber of Maritime Arbitration.⁵⁴

The clause itself reads:

i) This Agreement and any guarantee contained herein shall be governed by and construed in accordance with Singapore/English Law and any and all disputes arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration for the time being in force at the commencement of the arbitration.

The choice of Singapore as the default venue of arbitration offers a cost-efficient and geographically convenient Asian venue to the Asian shipping community while promoting Singapore as the dispute resolution centre for the SSF.⁵⁵ The similarity between the Rules of the Singapore Chamber of Maritime Arbitration (SCMA) Rules and those of the London Maritime Arbitration Association (LMAA) helps to boost the confidence of the Asian community in the choice of this relatively new arbitration centre to the benefit of all those lawyers and arbitrators who are active in the region. But all this is no surprise. What must be applauded is the

⁵⁰NSF, Cl. 9, ll. 209-211.

⁵¹Nipponsale 1999, Cl. 13, ll. 232-235.

⁵²*Ibidem*.

⁵³Cl. 16 of the NSF is structured in a similar but slightly more complicated way whereby 16(a) represents the English law and arbitration alternative, 16(b) is the New York law option and 16(c) is the open alternative. In the NSF the absence of an express choice triggers the English law default alternative.

⁵⁴Cl 16(a) of the NSF does not make reference to the LMAA Rules while Cl. 15 of the Nipponsale 1999 makes express reference to the Tokyo Maritime Arbitration Commission (“TOMAC”) of the Japan Shipping Exchange Inc. and their Rules.

⁵⁵This is now a clear alternative to Tokyo, the only option under the Nipponsale 1999.

Choice of allowing the parties to opt for a more traditional seat such as London or New York which – it is submitted – may allow the form to harvest widespread consensus well beyond the Asian market.

Conclusions

Only time will tell how successful this new sale form will be in the marketplace and whether its use will be limited to the Asian region or spread around the world. So far, the initiative has been extremely well received by the most important Asian shipping players who appear seriously keen on adopting the form as soon as it becomes available. In the words of Mr Sutjipto, chairman of FASA (the Federation of Asian Shipowners’ Associations): “[...] I am pleased to inform this gathering that we have

pledged our strong support for the Singapore Ship Sale Form. In the interest of Asian shipping and solidarity, I would also like to take this opportunity to urge all other FASA Members to give their similar support to the Singapore Ship Sale Form”.⁵⁶ This understandably strong regional sentiment may offer this form a fast track to start life as a real contract for the sale of real ships from as soon as this first quarter of 2011.

As a legal instrument, this form is very carefully drafted with the most common modern needs of sellers and buyers taken into account in a sensibly balanced manner; as such, it may well travel well beyond the Asian market. A lot more will be heard of and written about it.

⁵⁶J. W. Sutjipto, Welcome speech by FASA Chairman at the opening of the 36th FASA Annual General Meeting, 10th December 2010, Jakarta. The full speech is available at www.fasa.org.sg.

19 MAY 2011

SINGAPORE SHIP SALE FORM

ALLEN & GLEDHILL LLP
ONE MARINA BOULEVARD #28-00
SINGAPORE 018989

Allen & Gledhill LLP (UEN/Registration No. T07LL0925F) is registered in Singapore under the Limited Liability Partnerships Act (Chapter 163A) with limited liability. A list of the Partners and their professional qualifications may be inspected at the address specified above.

TABLE OF CONTENTS

Contents	Page
1. Introduction	1
2. Outline	1
3. Structure of the SSF (Boxes 1 to 11)	2
4. Deposit and Payment (Clause 1 and Clause 2 of the SSF)	3
5. Inspections (Clause 3 of the SSF)	4
6. Condition on Delivery (Clause 4 of the SSF)	4
7. Notice of Actual Readiness (Clause 5 of the SSF)	4
8. Pre-Delivery Divers Inspection (Clause 6 of the SSF)	5
9. Spares / Bunkers and Others (Clause 7 of the SSF)	5
10. Documentation (Clause 8 of the SSF)	5
11. Encumbrances (Clause 9 of the SSF)	6
12. Buyers Default (Clause 12 of the SSF)	6
13. Sellers Default (Clause 13 of the SSF)	7
14. Buyers' Representatives (Clause 14 of the SSF)	7
15. Pro-Asian Arbitration (Clause 15 of the SSF)	8
16. Confidentiality and Entire Agreement (Clause 16 and Clause 17 of the SSF)	8
17. Conclusion	8
18. Further Information	8

Singapore Ship Sale Form

1. Introduction

- 1.1** This memorandum examines the Singapore Ship Sale Form (SSF).
- 1.2** The SSF was launched by the Singapore Maritime Foundation (SMF) on 6 January 2011 to address the pressing need for revision of existing ship sale forms considering the evolution of shipping over the years and in view of increasing maritime activities and maritime arbitration cases in Asia.
- 1.3** Prior to the launch of the SSF, two ship sale forms are effectively in circulation and use in the world: (a) the Norwegian Ship Sale Form (1993) (NSF 93) and (b) the Nipponsale 1999, amongst which the NSF 93 is more widely in use. The Nipponsale 1999 is mainly in use amongst Japanese ship owners. For the purpose of this memorandum, the main basis of comparison with the SSF will be the NSF 93.
- 1.4** This memorandum serves to highlight the provisions of the SSF and its advantages as a standard form contract for the sale and purchase of second-hand vessels.

2. Outline

- 2.1** This memorandum will set out the salient provisions of the SSF as follows:

- 2.1.1** Structure of the SSF (Boxes 1 to 11);
- 2.1.2** Deposit and Payment (Clause 1 and Clause 2 of the SSF);
- 2.1.3** Inspections (Clause 3 of the SSF);
- 2.1.4** Condition on Delivery (Clause 4 of the SSF);
- 2.1.5** Notice of Actual Readiness (Clause 5 of the SSF);
- 2.1.6** Pre-Delivery Divers Inspection (Clause 6 of the SSF)
- 2.1.7** Spares / Bunkers and Others (Clause 7 of the SSF)
- 2.1.8** Documentation (Clause 8 of the SSF);
- 2.1.9** Encumbrances (Clause 9 of the SSF);
- 2.1.10** Buyers Default (Clause 12 of the SSF);
- 2.1.11** Sellers Default (Clause 13 of the SSF)
- 2.1.12** Buyers' Representatives (Clause 14 of the SSF);
- 2.1.13** Pro-Asian Arbitration (Clause 15 of the SSF); and

- 2.1.14** Confidentiality and Entire Agreement (Clause 16 and Clause 17 of the SSF).

3. Structure of the SSF (Boxes 1 to 11)**3.1 User-Friendly**

The SSF has a distinctive and user-friendly dual layout. The layout of the SSF is divided into 2 parts: (a) a tabular layout on the first page with 11 boxes and (b) with the descriptive and substantive clauses (Clauses 1 to 17) comprising the remainder of the SSF.

3.2 Advantages

- 3.2.1** Other than from an aesthetic perspective, the advantage of such a layout is evident:
- (i) the essential and salient details of the transaction are consolidated and set out on the first page, giving parties a bird's eye view of the transaction and allowing parties to easily refer to essential details at any point in time without having to sift through the entire agreement;
 - (ii) the tabular layout reduces significantly the risks of minor mistakes, omissions and inconsistencies within the document; and
 - (iii) by amassing all the essential details in one page, this greatly increases the clarity and flow of the substantive clauses and minimises the number of alterations required to the substantive clauses, thereby achieving a much tidier and reader-friendly document whilst minimising mistakes throughout the document at the same time.

3.3 Highlights

- 3.3.1** Some highlights of the tabular layout on the first page which differs from the NSF 93 are (a) the inclusion of an optional guarantor(s) clause and (b) an expanded nominee clause.
- 3.3.2** Box 1 of the SSF includes an optional clause which allows the sellers and buyers to each have a guarantor, who can be made a party to the SSF. As the buyers of a vessel are frequently special purpose vehicles, the option to include a guarantor offers the sellers safeguards in the event of a breach or default by the buyers. The SSF also eases the process of enforcement by stating in no uncertain terms that parties can commence a single arbitration against both the defaulting party and the guarantor.
- 3.3.3** As regards the buyer's rights of nomination (Box 2 of the SSF), the SSF explicitly provides that the buyers shall have multiple rights of nomination within a prescribed time period (the latest being upon receipt of the 15 days notice to be given under Clause 5(a) of the SSF or by such date as the parties may agree), a breach of which will disentitle the buyer's right to nominate. Notably, the SSF also prescribes the procedure for a valid nomination by way of a separate novation

agreement, thereby eliminating any ambiguity as to the effect of such a nomination.

4. Deposit and Payment (Clause 1 and Clause 2 of the SSF)

4.1 Clauses 1 and 2 of the SSF on the deposit and the balance purchase price of the vessel seek to clarify, expand on and improve the existing provisions of the NSF 93 and to address the issues arising therefrom (see *PT Berlian Laju Tanker TBK & Another v. Nuse Shipping Ltd* (2008) EWHC 1330 Comm (The Aktor)).

4.2 The salient provisions of Clauses 1 and 2 are as follows:

4.2.1 the deposit must be paid into a joint escrow account by a specified date and the sellers are to arrange the opening of the account within a specified time;

4.2.2 any shortfall in the deposit as a result of bank charges is deemed accepted by the sellers who expressly waive their right to terminate the contract;

4.2.3 it is expressly stated that the deposit will form part of the purchase price;

4.2.4 the buyers are obliged to arrange bank-to-bank confirmation from the remitting bank to the sellers' nominated bank;

4.2.5 both the buyers and the sellers are obliged to comply with anti-money laundering laws and know your client requirements;

4.2.6 it clarifies the definition of "banking days" as being banking days in the place of closing and in the country of the currency of the purchase price; and

4.2.7 in the event of failure by the buyers to pay the deposit, the sellers have the right to cancel the contract and claim compensation for their losses and expenses, without having an automatic right to compensation in the whole amount of the deposit.

4.3 Accordingly the provisions of Clauses 1 and 2:

4.3.1 eliminate the issue of the contract being terminated for what would otherwise be a technical breach (bank charges causing a shortfall in deposit);

4.3.2 avoid uncertainty in relation to the purchase price and use of the deposit,

4.3.3 avoid issues that normally arise when the sellers insist that the whole purchase price be paid to the bank nominated by them in the payment clause as in the case of The Aktor;

4.3.4 bring the contract expressly in line with any anti-money laundering laws and know your client requirements; and

4.3.5 give the buyers the option to take late delivery of the vessel of up to a maximum of 7 days provided that the buyers inform the sellers in advance and pay the sellers the agreed cost of delayed delivery.

4.4 The objectives of Box 8, Clauses 1 and 2 of the SSF are to introduce certainty and a clear delineation of each party's obligations in respect of the deposit and the balance purchase price. As the issues surrounding payments of deposit and balance purchase price are of great concern to all parties involved and are frequently the subject matter of disputes in sales of second-hand vessels, the SSF has tried to address these issues by introducing a greater degree of certainty where payment of the deposit and the balance purchase price is concerned by clearly setting out the procedure and by being clear on the ancillary duties of the sellers and the buyers.

5. Inspections (Clause 3 of the SSF)

The definition of "physical inspection" in Clause 3 departs from the NSF 93 in that it is drafted broadly to include, *inter alia*, maintenance records, continuous synopsis records, deck and engine log books. This is a departure from the NSF 93 which includes only inspection of the vessel and Class records. The buyers are also given the express right to take photographs during the inspection which would aid the buyers in any future claims. Lastly, the buyers are given the right to accept or reject the vessel within 3 days after the completion of inspection.

6. Condition on Delivery (Clause 4 of the SSF)

6.1.1 This clause is carefully drafted to balance the competing interests of the sellers and the buyers.

6.1.2 The use of the words free from damage affecting class means that any damage (whether ordinarily covered by insurance or not) of a character as to prevent the vessel being in class will result in the vessel's non-compliance with Clause 4.

6.1.3 As for the remedy for such non-compliance, the SSF clarifies that the buyers may reject the vessel only if the difference in the condition of the vessel has a substantial impact on the ability of the buyers to trade the vessel. Otherwise the buyers' remedy shall only be the right to recover damages.

6.1.4 Another significant improvement of this clause over existing sale forms is that the condition of the cargo space on the vessel at the time of delivery is addressed.

7. Notice of Actual Readiness (Clause 5 of the SSF)

7.1.1 Clause 5 of the SSF seeks to clarify the concept of "readiness" by stating that a vessel is "ready" only if both "physical readiness" and "legal readiness" are achieved. In other words, the vessel must be physically ready for delivery (as provided for in NSF 93) and in addition must also be legally ready, i.e. all required documentation (save for certain documents stated therein) are in a position to be provided to the buyers.

7.1.2 Under the existing NSF 93, the buyers' obligation to pay the purchase price is triggered upon service of the notice of readiness (NOR) to the buyers notwithstanding that any required documentation remains uncompleted. The SSF introduces a significant improvement in position to the buyers in which the obligation of the buyers to pay the purchase price does not arise until the vessel is both physically and legally ready (notice of actual readiness (NOAR)). If the NOAR is not validly given by the cancelling date, the buyers have the option of cancelling the contract.

7.1.3 Under Clause 5 of the NSF 93, the sellers are to give 30, 15, 7, and 3 days prospective/advance notice of the vessels' itinerary and estimated date and port of delivery. The sellers are also under a positive duty to take reasonable steps not to hinder the delivery by the date given in the notice thus preventing deliberate overtrading. All this coupled with the NOAR enables the buyers a greater degree of certainty in planning the delivery schedule of the vessel and the post delivery voyage and future trading of the vessel without undue delay.

8. Pre-Delivery Divers Inspection (Clause 6 of the SSF)

8.1 This clause contains a two part regime:

8.1.1 a default buyers' right to have underwater inspection provision and the rights and duties of the sellers and the buyers with the remedy available should there be damage; and

8.1.2 a provision for dry-dock inspection triggered only by major defects (requiring immediate dry-dock according to the class) found upon underwater inspection, that also clarifies the rights and duties of the sellers and the buyers with the available remedy.

9. Spares / Bunkers and Others (Clause 7 of the SSF)

9.1.1 The buyers are obliged to pay for the remaining bunkers and unused lubricants in designated storage tanks and unopened drums.

9.1.2 This language clarifies that the buyers are only to pay for lubricants that are unused and have not passed through the vessel's system. The deliberate choice of "unopened drums" instead of "sealed drums" is used to exclude any drums which have been opened, partially emptied and then re-sealed.

9.1.3 The buyers are to pay only the net price of last supply to the vessel evidenced by copies of vouchers made available to the buyers with payment to be made at the same place and time and in the same currency as the purchase price.

10. Documentation (Clause 8 of the SSF)

10.1.1 One of the more common and frequent amendments made to the NSF 93 is to Clause 8 on documentation. Clause 8 of NSF 93 is a general framework which

requires substantive amendments in order to ensure that the buyers are provided with the necessary documents to satisfy prevailing laws and regulations, register the vessel in most jurisdictions and/or trade the vessel. The SSF on the other hand has tried to be as exhaustive as possible on the assumption that it is easier for users to delete what is not required than to have to include and insert any necessary documents.

10.1.2 Clause 8 of the SSF has been carefully thought out in detail to list out the documents required and to ensure that documentation requisite for the effective completion of the contract are provided. As a result the list has been significantly enlarged so that it is as comprehensive as possible. This is to ensure that the need for any additional input by any party is greatly minimised and lesser time is spent on negotiating and amending the contract. Whilst Clause 8 may seem to be favourable towards the buyers, the buyers are also required to produce and transfer a list of documents to the sellers at the time of delivery which is not present in the existing NSF 93.

10.1.3 Further, the SSF also deviates from the NSF 93 in that it imposes an obligation on both the sellers and the buyers to exchange copies of documents no later than 14 days prior to the vessel's expected readiness for delivery, followed by the exchange of copies of executed documents (in strict conformity with agreed drafts) not later than 3 days prior to delivery. This ensures that documentary closing will proceed smoothly and there will arise no issues or arguments as to the form of documents required at closing.

11. Encumbrances (Clause 9 of the SSF)

11.1.1 Clause 9 of the SSF also departs substantially from NSF 93 – it imposes on the sellers the duty to deliver the vessel free from the encumbrances listed therein and gives the buyers the right to be indemnified in certain circumstances. The list of encumbrances in Clause 9 is broadened, unambiguous and also significantly wider than that in the existing NSF 93, covering not only commercial claims but also for example issues such as writs, port state detentions etc. which might interfere with the buyers' free use of the vessel after delivery.

11.1.2 In relation to the duty to deliver the vessel free from encumbrances, Clause 9 of the SSF makes it clear that a breach of this by the sellers is a breach of contract which entitles the buyers to reject the vessel and claim damages. The objective of this is to address the debate which has arisen from the usage of warranty and indemnity language in existing sale forms and which has caused some uncertainty as to the remedies available to the buyers in such situations.

12. Buyers Default (Clause 12 of the SSF)

12.1 This clause is divided into 3 sub-clauses dealing with:

12.1.1 remedy / effects for failure to pay the agreed deposit in which event the sellers have the right to cancel the agreement and claim compensation for their loss and

expenses (but with no automatic right to compensation in the amount of the deposit);

- 12.1.2** failure of the buyers to pay the purchase price and any additional amounts due under Clause 7 and Clause 2(b) vests in the sellers the right to cancel the agreement, forfeit the deposit with any interest earned thereon (irrespective of the actual amount of the sellers' actual losses and expenses) and also the right to claim further compensation for the losses and expenses not covered by the deposit; and
 - 12.1.3** the sellers' right to claim damages is made subject to the extent of proven losses and expenses which in existing forms is left open ended.
- 12.2** By so imposing a burden of proof on both the sellers and the buyers, the SSF brings in a balance between competing interests of both the parties.

13. Sellers Default (Clause 13 of the SSF)

- 13.1** This clause deals with the sellers' default in both the pre-NOAR position and the post-NOAR position. The post-NOAR position deals with sellers' failure to make the vessel physically ready for delivery if the vessel ceases to be ready after NOAR is tendered. In both instances the buyers are provided with the right to choose to cancel the agreement.
- 13.2** The buyers' right to cancel the agreement is not made subject to the 3 banking days' provision given to the sellers for completing the documentation under the existing sale forms.
- 13.3** Under Clause 5(b) of the SSF, should the sellers' documents not be ready when the NOAR is tendered, the sellers will be in default giving the buyers the right to cancel and claim compensation for non-delivery and delay in delivery.
- 13.4** This is another significant improvement favouring the buyers.

14. Buyers' Representatives (Clause 14 of the SSF)

- 14.1** The SSF clarifies the scope of the word "familiarisation" by stating that buyers' representatives are to be allowed access to the vessel's main spaces, machinery and equipment.
- 14.2** This is a marked improvement from the existing sale forms which do not specify what is permitted for the purpose of familiarisation making buyers' rights under this clause ambiguous. This clause makes it clear that buyers' representatives shall be under the master's control while they are on board.
- 14.3** Under the NSF 93, because of the lack of certainty, a lot of problems arose in relation to what rights the buyers' representative had.

15. Pro-Asian Arbitration (Clause 15 of the SSF)

- 15.1** The SSF provides for Singapore or English law as the governing law of the contract and although the default position is Singapore as the seat of arbitration with Singapore Chamber of Maritime Arbitration Rules (SCMA Rules) applicable, parties are at the end of the day free to choose the venue, applicable rules and governing law.
- 15.2** The purpose of the pro-Asian arbitration clause set out in Clause 15 of the SSF is to address the rise of Asia as a maritime hub and the increase in the number of arbitration cases in Asia. The choice of Singapore as the default venue of arbitration offers a cost-efficient and geographically convenient Asian venue for disputes arising in Asia or between Asian ship owners. The similarity of SCMA Rules and London Maritime Arbitrators Association Rules – both providing for adhoc arbitration or the party autonomy model preferred by the maritime community will also be familiar and of comfort to ship owners. In addition, as Singapore is a party to the New York Convention, the international enforcement of awards will not pose an issue.

16. Confidentiality and Entire Agreement (Clause 16 and Clause 17 of the SSF)

The SSF provides for a confidentiality clause (Clause 16) which is commonly the practice in ship sale transaction but which is not present in the NSF 93. An entire agreement clause (Clause 17) is also included to ensure that all prior negotiations and agreements are superseded by the contract which contains the entire understanding and agreement of the parties relating to the subject matter.

17. Conclusion

In conclusion, the SSF seeks to build and improve on the existing ship sale forms by considering market practice, the evolution of the shipping industry over the years and the issues and case law that have arisen over the years in relation to the existing ship sale forms. The objectives of the SSF are to ensure that the transaction proceeds as smoothly as possible, certainty and clarity are introduced and that the interests of both buyers and sellers are adequately addressed in a balanced approach.

18. Further Information

Should you require any further information, please contact Gina Lee-Wan at +65 6890 7582 or gina.leewan@allenandgledhill.com.

The contents of this Memorandum are intended to provide general information. Although we endeavour to ensure that the information contained herein is accurate, we do not warrant its accuracy or completeness or accept any liability for any loss or damage arising from any reliance thereon. The information in this Memorandum should not be treated as a substitute for specific legal advice concerning particular situations.



Centre for Maritime Studies

CENTRE FOR MARITIME STUDIES, NATIONAL UNIVERSITY OF SINGAPORE

SINGAPORE SHIP SALE FORM: AN OVERVIEW

Centre for Maritime Studies Academic Paper Series

Paper Number: CMS-2010-2

Singapore Ship Sale Form: An Overview

Ticy Veluvell Thomas^a, B.T.G Tan^a

^a*Centre for Maritime Studies, National University of Singapore, Singapore*

Abstract

The appended new sale form which is named the “Singapore Ship Sale Form” is a modest attempt to present the shipping community with an alternative standard sale form which, we believe, will cater to the needs of the shipping community. The new Form brings in recent ship sale and purchase practices and incorporates provisions in line with the prevailing stringent maritime security and safety regime. The Form also balances the interests of both buyers and sellers.

Keywords:

Ship Sale Forms, Singapore Sale Form

I. Introduction

This paper and the appended new Singapore Ship Sale Form are the result of a study of standard ship sale forms commissioned by the Singapore Maritime Foundation and undertaken by the Centre for Maritime Studies, NUS. The appended “Singapore Ship Sale Form” (SSF) is a modest attempt to present the shipping community with an alternative standard sale form which, we believe, will cater to the needs of the Asian shipping community. The SSF is in a simple and user-friendly format and seeks to balance the interests of both buyers and sellers.

II. Singapore Ship Sale Form (SSF)

The sale and purchase of second-hand vessels are carried out through a sale agreement referred to as a Memorandum of Agreement (MoA) document by the parties or a standard form contract which, sets out the contractual terms between the parties. Ship Sale Forms are such standard form contracts used widely in second-hand ship sale and purchase transactions. However, only two ship sale forms are effectively in current circulation and use in the world: (a) Norwegian Ship Sale Form (NSF) and (b) Nippon Ship Sale Form, amongst which the NSF is more popular.¹

The ship sale form sets out the contractual terms between the parties including any rights that the buyers may have to inspect the vessel prior to taking

delivery, warranties from the sellers regarding the vessel’s condition and that the vessel is sold free of any encumbrances, payment details and documentation to be exchanged. Sale forms also have provisions dealing with default of parties and method and process of dispute settlement. Once the negotiations are completed and the parties sign the MoA there exists a legally binding contract between the parties, the essence of which is that the buyers agree to take delivery of the vessel in a certain condition upon the payment of an agreed price to the sellers.

The Singapore Ship Sale Form (SSF) is a new, balanced and updated standard form designed especially to cater to the growing and changing needs of the Asian shipping community. One of the distinct features of the SSF is that it provides for an Asian venue for arbitration. The SSF also reflects present ship sale and purchase practices and latest maritime and banking regulatory changes.

III. Structure of the SSF

The SSF has a distinctive and user-friendly dual layout. The front page of the SSF is in tabular form wherein all the essential details required of the parties to be agreed upon in order to create an enforceable and valid agreement are provided in a logical sequence followed by detailed Clauses in the rest of the document.

IV. Discernible Clauses in the SSF

Boxes 1 & 2

One major departure of the SSF is that it allows both the sellers and the buyers to each have a guarantor. However, taking into account the freedom of choice of the parties and the practical difficulties that might ensue by the imposition of an obligatory guarantor provision, SSF makes it an optional clause (see, clarification given in * in the SSF). Nevertheless, in order to ensure the safeguards intended under such a guarantor provision, the SSF clarifies in no uncertain terms that the liability of the guarantor co-exists with that of the named guaranteed party by stipulating that the aggrieved party would have the immediate right to recover damages by initiating a single arbitration (in accordance with the arbitration clause under the SSF) against both the guarantor and the defaulting party as co-respondents.

As regards the buyers' right of nomination, the SSF explicitly provides that buyers shall have multiple rights of nomination provided the nominee is nominated within the prescribed or agreed time. The SSF clarifies that a breach of such prescribed time limit will disentitle the buyers of their right to nominate. The SSF, notably, also prescribes the procedure for a valid nomination (the Nominee is to be nominated by a three party novation agreement between the sellers, buyers and the nominee buyers). The stipulation that there has to be a separate novation agreement, wherein all the rights and responsibilities under the SSF are transferred from the original named party to the nominee, removes any ambiguity as to the effect of such nomination.

Clause 1: Deposit

Clause 1 of the SSF dealing with the deposit requires the buyers to pay a deposit (10% of purchase price) as security for the due performance under the Agreement to a bank nominated by the sellers (in front page) and by a specified date agreed by the parties. It is important to note that the SSF stipulates in line 9, 10 that this deposit shall be held in a joint escrow accountⁱⁱ of both parties and shall be released to the sellers as part payment of the purchase price. The SSF thus avoids the uncertainty in relation to the purchase price and use of the deposit as well as the timing of the deposit payment. In line with the latest banking rules obligating financial institutions to adhere to the anti-money laundering laws and know your client (KYC) requirements, the SSF clarifies the obligations of both parties regarding the deposit payment in lines 11-17.ⁱⁱⁱ Whereas the sellers are obliged to arrange for the opening of the joint escrow account in the nominated bank and within a specified time (latest by 2 days prior to the value date specified for the payment of the deposit), the buyers are to arrange bank-to-bank confirmation from the remitting bank to the sellers' nominated bank for which the buyers (and any

different remitting party) are known customers of the bank thereby facilitating basic due diligence required by the nominated bank to hold the deposit funds.

For the buyers' failure to pay the agreed deposit, lines 239 and 240 in Clause 12 of the SSF gives the sellers the right to cancel the Agreement and to claim compensation for their losses and expenses, without having an automatic right to compensation in the whole amount of the deposit. Line 246 also stipulates that the burden of proving any such loss and expense shall be on the sellers.

Clause 2: Payment

Clause 2 of the SSF dealing with payment is divided into 2 sub-clauses. Sub-clause (a) provides that the balance purchase price including any extras under Clause 7 specified (in the front page) shall be paid in full for the same day value into the sellers' nominated account at the sellers' nominated bank. The improvement resulting from this SSF clause is that it expressly stipulates that payment under this clause is of the balance purchase price, thereby avoiding issues that normally arise when sellers insist that the whole purchase price be paid to the bank nominated by them in the payment clause as in the case of *The Aktor*^{iv} even if that bank is different in location and time zone from the bank nominated for the payment of deposit. Further, the SSF clarifies that "banking days" shall be considered based on the place of closing and the country of purchase price currency thereby ensuring that payment obligations will not fall due on a day when the relevant banks are not open for business.

Sub-clause (b) provides an option for the buyers to delay taking of the vessel's delivery for a maximum of 7 days provided the buyers inform the sellers in advance and pay the cost of delay per day (agreed in Box 8(iv)) to the sellers as compensation. Lines 32-33 in the SSF which define a written notice are drafted sufficiently broadly and up-dated to include modern means of communication like e-mail, thereby making the SSF more in line with the shift towards e-commerce.

Clause 3: Inspections

Clause 3 of the SSF offers two alternatives in relation to inspections for the parties to choose from. The definition of "physical inspection" in Clause 3 of the SSF is noteworthy. It is drafted broadly to include not only inspection of the vessel and Class records but also of maintenance records, continuous synopsis record, deck and engine log books, and available ballast spaces supporting the buyers needs. Line 47 states expressly the right of the buyers to take photographs during such inspection which is also very relevant for future reference while making a claim under Clause 4 dealing with the vessel's condition on delivery. The SSF also gives the buyers unfettered discretion to accept or reject the vessel within 3 days after the completion of physical inspection through a

written notice of acceptance to the sellers, the failure of which shall result in immediate release of the deposit to the buyers with any interest earned.

Clause 4: Condition on Delivery

Clause 4 in the SSF provides for the vessel's condition at delivery. The clause is carefully drafted to balance the competing interests of the sellers and the buyers which has been a point of contention in many past cases. The sellers' obligations under this clause are to deliver the vessel: (a) substantially in the same condition as the vessel was at the time of inspection fair wear and tear excepted, (b) with present Class maintained free from any outstanding Class conditions and/or recommendations, (c) free from damage affecting Class, (d) with clean and valid national and international trading certificates and with, (e) clean and free cargo spaces. This wording reflects more current market practice and the judicial decision in *Great Marine*.^v

Moreover, the use of words "damage affecting class" (compared to the words "average damage affecting class" in the existing sale forms) means that any damage (whether ordinarily covered by insurance or not) of a character as to prevent the vessel being in Class will mean that the vessel does not comply with Clause 4.^{vi} However, on the remedy under this clause, the SSF clarifies that the buyers may reject the vessel only if the difference in the condition of the vessel has substantial impact on the ability of the buyers to use the vessel for trade. In all other cases, buyers' remedy shall only be the right to recover damages.

Another significant improvement of this SSF clause is the specific consideration given to the condition of the cargo space on the vessel at the time of delivery, which is conspicuously absent in the existing sale forms. The SSF in line 57 addresses this issue and stipulates that all cargo spaces in the vessel shall be clean and free of any cargo, subject only to immovable residues.

Moreover, the sellers' obligation under this clause is balanced by the burden of proof imposed on the buyers as to the condition of the vessel at the time of inspection in line 61.

Clause 5: Notices and Notice of Actual Readiness

The SSF deals with Notice of Actual Readiness (NOAR) in Clauses 2, 5(b) and 13. The combined effect of these provisions is that the sellers shall not tender NOAR until the vessel and the sellers are ready in all respects with the vessel at the delivery place. Therefore, it is important to note that under the SSF, sellers may tender NOAR only if both "physical readiness" and "legal readiness" is achieved. This clause ensures that both the vessel and the vessel's documents are ready so that the buyers can start gearing up for the vessel's delivery and post-delivery voyage without delay.^{vii} This is a marked deviation from the existing Notice of Readiness (NOR) concept

in the NSF and the Nippon Sale Form. This clause further provides that the buyers are to be given 30, 15, 7 and 3 days prospective/advance notice of the vessel's itinerary and estimated date and port of delivery. The sellers are also obligated to take reasonable steps not to hinder delivery set out in such notice. This provision is intended to prevent the use of the vessel for deliberate overtrading. The buyer's right to take delivery is subject to the proviso that they shall exercise it within 3 full banking days (as at the place of closing and in the country of purchase price currency) after the NOAR is tendered by the sellers thereby safeguarding the sellers' interest.

Clause 6: Pre-delivery Diver's Inspection

Clause 6 of the SSF deals with a pre-delivery diver's inspection. It contains a two-part regime:

- A default buyer's right to have underwater inspection provision, also providing rights and duties of the sellers and the buyers with remedy available in case damage is found (lines 84-102);
- A provision for dry-dock inspection which is only triggered by major defects (requiring immediate dry-dock according to the Class) found upon underwater inspection, that also clarifies the rights and duties of the sellers and the buyers with the available remedy (lines 103-126).

Following market practice, the SSF provides buyers with the right to appoint a Class approved diver to inspect the vessel's underwater parts below the deepest load line including the rudder and propeller, at their expense, to confirm whether the vessel has sustained any damage to its underwater parts which affects her Class. The sellers' corresponding duties are given in lines 86-90. The SSF in line 87 expressly provides that the Class surveyor will be in attendance during the inspection. Further, the SSF clarifies the remedy available to the buyers if the diver's inspection reveals damage. In accordance with market practice, the sellers are to pay to the buyers the estimated cost of repair of defects, if the Class agrees that the repair of such defects can be deferred to the next dry-dock. It is important that the SSF also clarifies the method of estimation of repair costs. In lines 94-97, it is given that the repair costs payable by the sellers (in practice deducted from purchase price) should be based on the average of the quotations of two reputable independent (of the parties) repair yards in the delivery area, one selected by each party.

On the contrary, if the defects found on the diver's inspection call for immediate repair (according to the Class) and if such defects also require dry-docking for repair, then the sellers shall arrange for dry-docking at their expense triggering the application of Clause 6(b) of the SSF. Under this clause, the sellers are obliged to rectify defects that affect the present Class of the vessel within an agreed time or latest within 14 days after such defects are found

(lines 105-109). The standard of repair has been laid down in *Great Marine* (1990)^{viii} where it has been held that the seller's obligation is to deliver the ship with a clean Class certificate. This essence is reflected in lines 125-126 of the SSF wherein the Class is given the absolute discretion and finality to decide the nature of the damage. Lines 108-109 provide that should the sellers fail to complete the repair within given time, the buyers have the right to cancel the contract and recover the deposit with any interest earned.

Clause 7: Spares/ Bunkers & Others

Clause 7 of the SSF deals with other items on the vessel which are included in the sale and those items which are expressly excluded from the sale (lines 131-133, 135-139). The basic obligation of the sellers is to deliver the vessel with everything belonging to her on board and onshore. In line 130 of the SSF, the stipulation that the sellers are not required to replace any spare parts which have been taken out of spares and used as replacement prior to delivery is clearly made subject to any Class requirement. The buyers are obliged to pay for remaining bunkers and unused lubricants in designated storage tanks and unopened drums. By the use of words "designated storage tanks", the SSF clarifies that the buyers need to pay only for lubricants (which include both lubricating oils and greases) that are unused and have not passed through the vessel's system. The word "unopened drums" instead of "sealed drums" is used because the word "sealed" could cover drums which have been opened, partially emptied and then resealed. With regard to payment for bunkers and unused lubricants under this clause, lines 140-144 of the SSF provide that the buyers are required to pay only the net price of last supply to the vessel evidenced by copies of vouchers made available to the buyers. It is further clarified that such payment is to be made at the same place and time and in the same currency as the purchase price.

Clause 8: Documentation

Clause 8 of the SSF identifies the documents to be delivered both by the sellers and the buyers. This clause is a significant improvement for 2 main reasons: (a) the extended list of documents required from both parties have been carefully thought-out to ensure that all major documents needed for the effective completion of the contract are provided; (b) the buyers are also required to produce and transfer a list of documents to the sellers at the time of delivery, in line with current needs (KYC compliance requirements of banks). In lines 146-148 the SSF requires the sellers to forward scanned copies of all plans, certificates and documents required by the buyers for registration preparation.

The documents required from the sellers at the time of delivery are:

- (i) Two (2) original bills of sale
- (ii) Resolutions of the sellers' board of directors and shareholders' meetings authorizing the sale and transfer of the vessel
- (iii) Power of Attorney issued by the sellers authorizing their named representative(s) to effect the sale and transfer of the vessel
- (iv) One (1) original certificate of ownership or equivalent, dated on the date of the vessel's delivery or such other date as the parties may agree on
- (v) A certified true copy of the sellers' constitutive documents
- (vi) A current certificate of good standing or equivalent
- (vii) Three (3) original commercial invoices setting out the main particulars of the vessel and the purchase price of the vessel
- (viii) One (1) commercial invoice setting out the particulars and cost of bunkers and lubricants remaining on board
- (ix) Certificate of deletion or in lieu thereof, a letter of undertaking to provide the certificate of deletion and closed CSR from the present ship registry within 30 days from the date of delivery
- (x) Letter of undertaking from the sellers
- (xi) Three (3) protocols of delivery and acceptance
- (xii) Class maintained certificate dated not more than 3 working days prior to the date of delivery
- (xiii) The seller's letter of confirmation that to the best of their knowledge the vessel has not sustained damage after inspection and is not black listed
- (xiv) A copy of the sellers or the sellers manager's letter(s) to the respective authorities confirming cancellation of all Inmarsat and other communication contracts for the vessel effective at the time of delivery

The documents required from the buyers at the time of delivery are:

- (i) A certified true copy of the buyers' constitutive documents
- (ii) A current certificate of good standing or equivalent
- (iii) One original resolution of the buyers' board of directors approving the purchase of the vessel from the sellers and granting a power of attorney to authorized representatives of the buyers.
- (iv) One original power of attorney of the buyers authorizing the buyers' representatives or their nominees to do all such acts and things which the attorney may consider necessary or desirable on behalf of the buyers with respect to the purchase and delivery of the vessel.

Further, the SSF imposes a mutual obligation on both the sellers and the buyers to exchange copies of the documents listed above for the other party's review and comments on a date not later than 14 days prior to the vessel's expected readiness for delivery. This is to be followed by the exchange of copies of executed versions which are in strict conformity with the agreed drafts not later than 3 days prior to delivery. Further, in response to the House of Lords decision in *The Evia Luck*,^{ix} line 194 of the SSF ensures a letter of confirmation from the sellers to the buyers that the vessel is not blacklisted at the time of delivery, thereby protecting bonafide buyers. The combined effect of Clause 5 and Clause 8 is that the buyers are given sufficient time and provided with all necessary documents well in advance for their preparation for vessel delivery and subsequent processes.

Clause 9: Encumbrances

The Encumbrances clause (Clause 9) in the SSF is another discernible improvement intended to protect the buyers. The purpose of Clause 9 is to afford protection to the buyers against the possibility that there was in existence at the time of delivery some undisclosed encumbrance on the vessel or some maritime lien attaching to the ship or any other liability in respect of which a claim could be made against the vessel after delivery. The nature of the sellers' obligation under this Clause in the NSF and Nippon Sale Form is uncertain due to the use of the word "warranty". This word has been interpreted by the Courts as an intermediate term, making the buyers' right to contractual remedy dependable on how serious the sellers' breach is considered to be, on a case by case basis.^x The SSF removes this uncertainty by explicitly making the encumbrance's clause a condition of the Agreement. The distinct and positive effect of this change is that it makes the sellers' promise in lines 224-227 a condition, thereby giving buyers the option to refuse to take delivery of the ship. This is also in line with the decision of the English Court of Appeal in *Associated British Ports v. Ferryways NV & Another*^{xi} wherein the importance of being clear about the difference between a guarantee and an indemnity is stated. The SSF Clause 9 also widens the scope of the guarantee so that it covers not only the commercial claims as in the NSF but also issues such as writs (where security has not been furnished), port state detentions, stowaways, trading commitments and other debts which might interfere with the buyers' free use of the vessel after delivery, making the SSF more relevant and consistent with the prevailing stringent shipping regulations.^{xii}

Clause 12: Buyers' Default

Clause 12 of the SSF dealing with the buyers' default is divided into 3 sub-clauses. Sub-clause (a) deals with the remedy/effects for failure to pay the agreed deposit, namely the right to cancel the Agreement and claim compensation for their losses and

expenses (but with no automatic right to compensation in the amount of the deposit). Sub-clause (b) provides that the buyers' failure to pay the purchase price and any additional amounts due under Clause 7 and Clause 2(b), shall vest the sellers with the right to cancel the Agreement, forfeit the deposit with any interest earned thereon (irrespective of the amount of the sellers' actual losses and expenses) and also the right to claim further compensation for the losses and expenses not covered by the Deposit.

The significant point to note in this clause is that the seller's right to claim damages is made subject to the extent of proven losses and expenses^{xiii} (sub-clause (c)) which in existing forms is left open-ended favoring the sellers). By imposing a similar burden of proof for both the sellers and the buyers, the SSF brings in a balance between the competing interests of both the parties.

Clause 13: Sellers' Default

Clause 13 of the SSF dealing with the sellers' default is another distinctive provision that marks SSF apart from the existing sale forms. The clause provides for two instances where the sellers are considered to have defaulted. Sub-clause (a) dealing with pre-NOAR position provides for the remedy for sellers' failure to tender NOAR in accordance with Clause 5(b) and Clause 8 and/or Clause 9 and Sub-clause (b) dealing with post-NOAR provides for the sellers' failure to make the vessel physically ready again if the vessel ceases to be ready after NOAR is tendered. In both the above instances, the buyers are provided with the right to choose to cancel the Agreement.

The buyer's right to cancel the agreement is not made subject to the 3 banking day's provision given to the sellers for completing the documentation under the existing sale forms. In line with the new concept of NOAR introduced in Clause 5(b) of the SSF, the sellers are considered to have defaulted if the documentation is also not ready when the NOAR is tendered. The SSF, therefore, allows the buyers the right to cancel and claim compensation (general damages for contractual breach) for non-delivery and delay in delivery (lines 78-79 of Clause 5(c) read together with lines 258-264 of Clause 13) which is another significant improvement favoring the buyers.

Clause 14: Buyers Representatives

The SSF in Clause 14 clarifies the scope of the word "familiarization" by stating in lines 266-268 that buyers' representatives are to be allowed access to the Vessel's main spaces, machinery and equipment. This clarification is a marked improvement from the existing sale forms which are silent as to what is permitted for the purpose of familiarization leaving intentional ambiguity as to the buyers' rights under the corresponding clause dealing with this provision. The SSF further limits the rights of the buyers' representatives by providing in line 269 that the buyers'

representatives shall be under the master’s control while they are on board. Although sellers may perceive this as a buyer friendly clause, it is reiterated that the SSF by clearly defining the rights of the buyers’ representatives on board have in turn confined their rights and hence protects the sellers’ interests.

Clause 15: Arbitration

Another discerning provision of the SSF is Clause 15 dealing with arbitration and governing law. The parties are given two alternatives under this Clause: (i) Singapore as the default venue of arbitration with Singapore or English law as the governing law and the rules of Singapore Chamber of Maritime Arbitration as the governing rules; (ii) some other place of arbitration and system of law to be agreed between the parties. Although an open choice is left for the parties as one of the alternatives, it is to be noted that the failure by the parties to select the place of arbitration, governing law and applicable rules shall result in automatic application of Clause 15 (i) and Singapore law shall be applied as the governing law.

Clause 16: Confidentiality Clause

In line with the practice in ship-sale transactions, a confidentiality clause which is new to standard sale forms is included in the SSF (Clause 16).

Clause 17: Entire Agreement Clause

For preventing claims based on misrepresentations, the SSF contains an entire-agreement clause which states that the agreement contains the entire understanding of the parties relating to the subject matter and that all prior negotiations, understandings and agreements are superseded by the agreement.

V. Summary of the SSF Highlights

- (1) Differentiating structure of the SSF
- (2) Distinctive improvement in the deposit and payment clause (differentiation of deposit and balance purchase price (extras included), new and clear definition of banking days, joint escrow account provisions and liquidated damages provision)
- (3) Broad, updated and useful definition of physical inspection in Clause 3
- (4) Unambiguous condition on delivery clause reflecting preferred market practice, inclusion of provision for clean cargo spaces on vessel delivery and burden of proof provision under Clause 4
- (5) New and practically relevant NOAR concept
- (6) Clear and unambiguous provision on spares/bunkers in Clause 7
- (7) Elaborate and carefully thought-out documentation requirements in Clause 8

- (8) The broader scope of the encumbrances clause in line with latest maritime regulatory changes (Clause 9)
- (9) Balancing of competing interests between the sellers and the buyers in the default clauses (Clause 12 & 13)
- (10) Combined effect of new NOAR concept and the sellers’ default provision on the buyers’ rights
- (11) Distinctive pro-Asian arbitration provision under Clause 15
- (12) New and additional Confidentiality Clause 16
- (13) New Entire Agreement Clause 17

VI. Relevance of the SSF to Asia

The SSF is a concise, simple and unambiguous alternative ship sale form being made available to the shipping community. The front page of the SSF contains all the essential terms of the ship sale and purchase contract comprehensively and coherently so that once the parties agree on those terms and sign the MoA, it results in a valid and enforceable agreement in itself thus making the use of the SSF very simple and less time consuming. The SSF also strikes a right balance between the competing rights and interests of the sellers and buyers taking into account the restrictions the second-hand ship buyers usually encounter, and is up-to date with ship sale and purchase practices in the industry. As mentioned above, the SSF is also an updated sale form that reflects the recent mandatory changes in the maritime and banking regulations. Finally, the SSF caters to the needs of the Asian shipping community by providing for a recognized Asian venue for arbitration.

VII. Acknowledgements

The Singapore Ship Sale Form would not have been possible had it not been for the strong support of the SMF and the MPA. Special thanks must also go to ATMD Bird & Bird for their advice on copyright and to all members of the Focus Group for the development of the Form: Dato’ Jude Benny, Henry Mytton-Mills, Gina Lee-Wan, Tan Chin Hee, Jonathan Le Feuvre, Jeremy Choo, Daniel Mah, Wong Peng Soon Edwin, Siana A. Surya, Lu Jian, Bosco Lau, KW Sum, Nick Sansom, Bernard Tan, Fwa Tien Fang, Ticy Thomas, David Chin, Wilson Tan and Christopher Lau SC. Each gave up valuable time and provided the necessary expertise and knowledge needed for the improvement and refinement of the Form. Even more special thanks must go to David Lewis of 20 Essex Street London for his invaluable advice on English law and to Henry Mytton-Mills who “toiled” away at all hours to see the Form’s fruition, without whose efforts the launch of the Form would not have been possible.

Endnotes

i

Norwegian Ship Sale Form was produced by the Norwegian Shipbrokers’ Association and was adopted by the Baltic and International Maritime Council in 1956 and has underwent four revisions the latest being in 1993 (hereinafter referred to as NSF). The Nippon Sale Form, on the other hand, was produced by the Documentary Committee of the Japan Shipping Exchange in 1977 and has undergone 3 revisions latest being in 1999. The latest revisions of the existing forms are thus more than a decade old necessitating a revised Form that reflects the changes in the sale and purchase practices in the shipping industry as well as the changes in the maritime and banking regulations.

ii

An escrow agreement is a separate agreement between sellers, buyers and the deposit-holding bank regulating the opening, operation and closure of the joint account, which reflects the present industry practice.

iii

There is a renewed focus on the anti-money laundering and terrorist financing regulations in the aftermath of the 9/11 incident, which require states to implement customer due diligence (e.g. identity verification), record keeping and suspicious transaction reporting requirements for financial institutions and designated non-financial businesses and professions. Banks are also required to focus on Know Your Customer (KYC) high-risk databases of good third party vendors. For more details, see, FATF 8 Special Recommendations on Terrorist Financing in October 2001 and Forty Recommendations in

2003 available online at http://www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_34032073_1_1_1_1,00.html

iv

PT Berlian Laju Tanker TBK & Another v. Nuse Shipping Ltd (2008) EWHC 1330 Comm; Swift Fortune Ltd v. Magnifica Marine SA [2007] EWHC 1630 (Comm)

v

[1990] 2 Lloyd’s Rep 245

vi

For judicial precedents that support the “damage affecting Class” wording to the redundant “average damage”, See: Star of Kuwait [1986] 2 Lloyd’s Rep 641 wherein J. Bingham clarified that “average damage” means “free of recommendations affecting Class and free of defects affecting Class” (p.645); see also, Ateni Maritime Corporation v. Great Marine Ltd (No.2) [1990] 2 Lloyd’s Rep 250

vii

See, Zeluga Polska v. TR Shipping Ltd [1998] 2 Lloyd’s Rep 341, wherein the Court have held that a notice of readiness is valid only when the vessel is ready in all respects

viii

2 Lloyd’s Rep 250

ix

[1991] 3 WLR 875

x

The Barenbels [1984] 2 Lloyd’s Rep.388; Rank Enterprises v. Gerard [2000] 1 Lloyd’s Rep. 403

xi

[2009] EWCA Civ 189

xii

The scope of the encumbrance clause is widened to reflect the changes in the maritime safety and security regulations that have come into effect in the light of 2002 amendments to the Safety of Life at Sea Convention (SOLAS) 1974.

xiii

Anna Spiratour [1998] 2 SLR 536

7

D
Annex

Shipping Briefing

July 2011

Watson, Farley & Williams



Contents	
Introduction	01
The Box System	02
Clause 1 (Deposit)	03
Clause 2 (Payment)	05
Clause 3 (Inspections)	08
Clause 4 (Condition on Delivery)	08
Clause 5 (Notices and Actual Notice of Readiness)	09
Clause 6 (Pre-Delivery Divers Inspection)	12
Clause 7 (Spares/Bunkers & Others)	13
Clause 8 (Documentation)	14
Clause 9 (Encumbrances)	15
Clause 10 (Expenses) and Clause 11 (Vessel Name)	16
Clause 12 (Buyer's Default)/Clause 13 (Seller's Default)	16
Clause 14 (Buyer's Representatives)	17
Clause 15 (Arbitration and Governing Law)	18
Clause 16 (Confidentiality Clause)	18
Clause 17 (Entire Agreement Clause)	19
Conclusion	19
Contact	20
References	20

Singapore Sale Form – Commentary and Drafting Notes

Introduction

The Singapore Sale Form (the “SSF”) is a new pro-forma memorandum of agreement for the sale and purchase of second-hand ships introduced by the Singapore Maritime Foundation in January 2011. It is a direct competitor to the widely used Norwegian Sale Form 1993 (the “NSF”) and the Nipponsale 1999 Form (“Nipponsale”) and purports to offer an evolutionary step forward in relation to such contracts (referred to generally in this article as “MOAs”).

Whilst there are many good articles outlining the major differences between the SSF and the NSF and Nipponsale forms, there are few that provide guidance concerning the approach to drafting the SSF. As is well known, both the NSF and the Nipponsale have issues that need to be addressed by way of drafting amendments in order to produce a legally sound document that reflects the intentions of the parties. Whilst the SSF contemplates some of the issues not addressed by the NSF and Nipponsale, the necessity for drafting amendments applies equally to the SSF. This article outlines potential issues that may arise out of the wording found in the standard clauses of the SSF and provides suggestions as to how such issues should be approached.

This article does not touch on every issue which may arise and as with the NSF and Nipponsale, both the buyers and the sellers (and their advisors) must look carefully at every provision to ensure that the drafting properly reflects the commercial agreement of the parties. Where appropriate, this article makes comparisons between the wording of the standard SSF clauses and that of the NSF and Nipponsale forms. Furthermore, it should be noted that some of the wording of the SSF is similar to that of the NSF and it is advisable therefore to refer to existing commentary on the issues found in the NSF to supplement the guidance in this article.

It is also important to note that the NSF and Nipponsale rely on a foundation of years of case law in relation to their standard wording.

02 SHIPPING BRIEFING

There is also a strong sense of “market standard” alteration of the wording of the standard provisions of the NSF and Nipponsale forms. Without the existing base of legal precedent it is difficult to say how certain provisions of the SSF will be interpreted when tested in the courts or in arbitration. One would expect that in most cases, the findings would be consistent with past judgements concerning NSF based MOAs, however, only time will tell if this will be the case.

The clauses of the SSF will be addressed in the order they appear in the standard form. Please note that this article should not be substituted for formal legal advice on any matter. I certainly hope that you find this article useful.

Daniel Saunders, Solicitor - Singapore

1. The Box System

A useful advantage of the SSF is the cover page “box” format. This is a user friendly feature which, whilst found in the Nipponsale form, is missing from the NSF. One should be careful however, to ensure that the boxes are completed correctly as it is common with box format contracts that the drafter does not fully read the contract before filling out the boxes. This can result in the drafter not having a full understanding of the effect the information in the boxes will have on the substantive terms of the contract.

A useful addition in the box format is the option to include a guarantor of the buyers or the sellers (or both). Whilst a guarantor is not common in the case of the seller, a buyer will often be required to provide a guarantor due to the fact that buyer will often incorporate a special purpose company with no assets of its own to purchase the Vessel. This is a legitimate strategy for the buying company (or group of companies) in order to ring-fence their liability, however, it leaves the seller with little chance of effective recourse should the buyer default under the MOA. It is therefore common for the substantive parent company of the buyer to guarantee the obligations of the buyer under the MOA (including and most importantly, the obligation to pay the purchase price).

Under English law however, simply stating the name of the guarantor on a contract may not constitute an effective guarantee. A party requiring a guarantee for the obligations of their counterparty should therefore seek, at the very least, either a separate short form letter of guarantee from the guarantor or include more extensive provisions in the MOA as to the terms of the guarantee. An additional point of English law to note is that when a contract constitutes consideration flowing from one party and not the other (as is usually the case for a guarantee), such a contract must be executed as a deed. Therefore in the event of a guarantor providing a guarantee, the party seeking to rely on the guarantee should ensure that the guarantor is required to execute the guarantee (or document that contains the guarantee obligations) under seal.

It is important to note that having a guarantor for the buyer is different from a buyer nominating a further company to be the buyer under the MOA (although a nominating company will often be required to guarantee the performance of its nominee). A nomination (depending on the drafting of the MOA) may serve to be a novation of the contract. This means that if such nomination (or the right of nomination by the buyer) has been agreed to by the sellers in advance or at the time of nomination without specific provisions as to the nominating company guaranteeing the nominee, the old buyer may no longer be liable for any of the buyer obligations under the MOA. Therefore, it is important for the seller to ensure that the right of the buyers to nominate a third party (as the new buyer under the MOA) is subject to the old buyer guaranteeing the obligations of the new buyer.

2. Definition of Banking Days

In the SSF there is no standard definition of banking days. The default position in the NSF is that banking days are “days on which banks are open both in the country of the currency [of the Purchase Price... and in the place of closing”, the latter being stipulated in clause 8 of the standard NSF. In Nipponsale, a clear distinction is made between “Banking Days” (being the days on which banks are open for business in the countries or cities stipulated in Box 15 therein) and “Working Days” (being the days other than Saturdays, Sundays or public holidays in the countries or cities stipulated in Box 15 therein).

The concept of banking days in any contract can lead to issues if defined ambiguously. Unfortunately the terms “banking days”, “full banking days” and “working days” are used variously and interchangeably throughout the SSF. The closest these terms come to being defined is in clause 2(a) which states “3 full banking days (being banking days in the place of closing and in the country of the Purchase Price currency)”. The bracketed wording however, does not appear next to the same term “3 full banking days” in clause 2(b) or clause 5(b), nor does it appear in relation to the terms “banking days” used in clause 1 or “working days” in clause 8(b)(xii). It is a recognised principle of contract interpretation that like terms have like meanings and different terms will have different meanings. For instance, if “banking days” has the meaning of being days in which banks in certain jurisdiction are open for business, it follows that the term “working days” used in the same contract, must have a separate and different meaning; otherwise the parties would have simply used the term “banking days”.

Drafting Suggestions

The insertion of a definition of banking days seems necessary along with a clarification/standardisation of the other references to the various types of “days” which may or may not be intended to have the same meaning as “banking days”. This is an important practical consideration, especially in relation to the SSF’s liquidated damages clause, which will be discussed below.

3. Clause 1 (Deposit)

(A) Opening of Account

Neither the standard NSF nor the standard Nipponsale place an obligation on any particular party with regard to ensuring that the joint deposit account is opened. The Nipponsale goes a bit further in its standard wording than the NSF by stating that the deposit is to be held at “a bank nominated by the sellers”. A traditional amendment is for the parties to specifically state the details of the bank that will hold the deposit. Alternatively, for the NSF, the aforementioned “nominated by the sellers” wording is often included. For the purposes of this article, I will refer to the bank which is to hold the deposit as the “escrow bank”.

The absence of a strict obligation as to who is responsible for opening the joint account may cause a problem for the buyer who (under the standard NSF and Nipponsale) must remit the deposit amount to the escrow bank within a certain number of banking days (traditionally three) of the MOA being signed. Here, a typical amendment is to include wording to the effect that the deposit is payable three banking days after the signing of the MOA or the opening of the joint account, whichever is later.

The standard wording of the SSF bridges this gap by including:

- i. the concept of a “Value Date” by which the deposit must be lodged, being a specific date included in the Box 8 of the SSF;
- ii. the requirement that the name of the escrow bank be set out in the Box 8 of the SSF;

- iii. a provision stating that “The Sellers are to arrange the opening of the joint escrow account by latest 2 banking days prior to the Value Date”.

These changes have been welcomed by escrow banks as such banks are often forced to chase both parties for account opening documents right up until (and sometimes after) the date of delivery. With regard to point (iii) above, a potential issue for the seller could arise if certain documents are required from the buyers in order to open the joint escrow account as it is, after all, a joint account. If the buyer wished to be difficult (which, granted, would be unlikely if they have just signed a MOA), they could refuse to provide relevant account opening documents thus delaying the opening of the account. Once the account opening is delayed, the buyer could then claim that the seller has failed in their obligation to open the account.

Drafting Suggestions

The seller should be careful to ensure that any agreement that is made on their part in respect to the account opening can be fulfilled. This may include adding additional wording that states that the buyer is to provide all assistance required in order to ensure that the seller can successfully open the joint account in accordance with the terms of the MOA. Alternatively, the requirement to open the joint account could be altered to be a joint requirement whereby the obligation to open the account rests jointly with the buyers and sellers.

(B) Deposit Less Bank Charges

A useful inclusion for the buyer in lines 7-9 of the SSF standard wording is that any shortfall in the deposit placed with the escrow bank due to a deduction for normal remittance charges will not give the seller the right to treat the deposit as not being paid in accordance with the terms of the MOA.

It is also worthy to note that the SSF states that the deposit is to be released “as part of the Purchase Price”, which is an attempt to avoid the issue that arose in *The Aktor*¹.

Drafting Suggestions

If acting for the seller, it would be desirable to delete the wording “Notwithstanding that the amount received may be lesser due to bank remittance charges imposed during the normal course of transfer,” and further stipulate that the deposit must be placed with the escrow bank in full and free of all bank charges. The buyer would, of course, seek to retain such wording.

(C) Requirement of Buyer to Provide Bank-to-Bank Confirmation

The standard SSF wording includes a requirement that the buyer provides “bank-to-bank confirmation from the remitting bank to [the escrow bank] that the Buyers, and the remitting party if different [from the buyers], are a known customer of the bank² and should it be required by the [escrow bank], the Buyers will also arrange for the bank-to-bank confirmation to include confirmation by the remitting bank that they know the source of funds.”

This is an additional requirement of the buyer that is not found in the standard NSF or Nipponsale and is not an amendment commonly required by seller. Failure to comply with this requirement is explicitly stated to be a default of the buyer under clause 12 of the SSF. Such a default gives the seller a right to cancel the MOA and claim compensation for their losses and expenses.

This additional requirement has the potential to pose a problem for the buyers. Consider a situation where the buyer pays the deposit in accordance with the MOA however, for reasons outside their control or otherwise attributable to their remitting bank, the buyer

1 PT Berlian Laju Tanker TBK & Another v Nuse Shipping Ltd, *The Aktor* [2008] EWHC 1330 Comm. In this case, the sellers nominated separate places for holding of the joint deposit (Singapore) and payment of the 90% balance amount (Piraeus, Greece). The sellers held that under the terms of the contract, upon delivery both portions of the purchase price were to be released to the seller’s bank in Greece whilst the buyers held that payment of the two portions needed to be made in Singapore and Greece respectively (thus avoiding a further remittance to Greece of the 10% deposit prior to delivery). Upon the buyer’s refusal to pay the 100% of the purchase price in Greece the sellers treated the contract as repudiated by the buyers, cancelled the contract and claimed the deposit. The buyers took the sellers to arbitration and, upon losing the arbitration, appealed to the English courts where they were unsuccessful in reversing the arbitration tribunal’s findings.

2 This reference to “bank” found in Line 14 should be clarified so as to stipulate that it is the “remitting bank” rather than it just being referred to as the “bank” as more than one bank is referred to in this clause.

cannot provide the adequate bank-to-bank confirmation within the stipulated time frame. In this situation, the buyer will be in default under clause 12, giving the seller the right to cancel the MOA and claim compensation for their losses and expenses. Although under clause 12 this default will not automatically allow the sellers recourse to take the buyers deposit (as will be discussed later), it does leave the buyer in a position where their deposit is being held in a joint account requiring the seller's signature to release the funds back to the buyer. The seller will be able to use this to their advantage and will be unlikely to release the deposit back to the buyer without first claiming compensation for losses and expenses. In practice, this scenario could lead to the deposit funds being tied up in the escrow account for a long period of time whilst the dispute is settled or alternatively the buyer may have to resort to releasing a portion of those funds to the seller to ensure a speedy release of the remainder.

Drafting Suggestions

Of course the above example is a hypothetical scenario and in a great majority of transactions, such bank-to-bank confirmation will be readily available. Even if the bank-to-bank confirmation is not available, this generally will not lead the seller to cancel the MOA as they will usually be happy to waive the bank-to-bank confirmation requirement once it can be seen that the funds have been remitted into the escrow account (and assuming that the escrow bank does not require it to release the funds). Both parties (especially the buyer) should consider, however, whether such a clause is absolutely necessary. Although this clause provides some security for the seller in relation to ensuring that the buyer's funds are "clean money", the provision is seemingly more geared towards easing the way with the escrow bank's internal "know-your-customer" requirements. Given the exposure this wording creates for the buyer along with the fact that escrow banks have operated for some time now with the NSF and Nipponsale forms (that do not require the buyer to arrange for a bank-to-bank confirmation), the buyer may wish to have the relevant wording in clause 1 and in line 238 of clause 12 deleted³.

(D) Compliance with Anti-Money Laundering ("AML") Regulations

Additional wording has been introduced to clause 1 as follows: *"Both Sellers and Buyers shall comply with the anti-money laundering laws and regulations of the country in which the bank(s) specified in Box 8 are located."* Although escrow banks will be very glad to see this wording included in the SSF, the requirement is of little benefit to the parties. As most escrow banks will not allow a party to proceed with payment until both parties have completed their AML requirements, such wording seems superfluous and at worst, provides an additional tool for any party looking to delay or cancel the sale. This clause could create a further issue in that the parties may need to ensure that they are in compliance with all the *"anti-money laundering laws and regulations"* of the country of the escrow bank. Such a requirement would certainly require legal assistance and therefore represent further cost to both parties.

Drafting Suggestions

Unless there is a specific concern that the counterparty will not provide such AML documentation, the parties may wish to delete this clause on the basis that it creates additional obligations with no tangible benefit to the parties.

4. Clause 2 (Payment)

Generally, the purpose of clause 2(a) of the SSF is the same as clause 3 of the NSF. In addition, however, the SSF includes a stipulation that the purchase price must be paid *"for same day value"*, which is not found in NSF or Nipponsale. An additional distinction is the SSF's requirement that a "notice of actual readiness" (hereinafter referred to as "NOAR") must be given, the requirements for which can be distinguished from a "notice of

³ Please see the later section on bank-to-bank confirmation default for further guidance on this point.

readiness" or "NOR" as described under clause 5 of the NSF and the "Notice of Readiness for Delivery" or "NORD" as described in clause 7 of the Nipponsale. This point is discussed in more detail in section 7 below.

Liquidated Damages for Buyer's Delay in Taking Delivery

Clause 2(b) provides for liquidated damages for the seller in certain situations where the buyers fail to take delivery of the vessel. Such a clause is not found in the NSF, however, a similar concept is found in clause 7(c) of the Nipponsale. Often when using the NSF, if a buyer delays taking delivery of a vessel past the three banking days after issuance of the notice of readiness by the seller, the seller will either cancel the MOA and claim the deposit or, more usually, the buyer and seller will negotiate an increase in the purchase price payable by the buyer to offset the seller's costs in keeping the vessel available for delivery past the contracted laytime. Such an increase would usually accrue on a daily basis and may be payable either upon actual delivery or (if the funds are not readily available) an undertaking may be given for the buyer to pay the seller the outstanding amount within a stipulated time after delivery. Either process would require a side letter or further addendum to the MOA to be entered into in order to document such an agreement. Furthermore, negotiations surrounding such an agreement can be messy and may only serve to further delay the delivery of the vessel, resulting in additional costs to both parties.

Clause 2(b) of the SSF provides a useful pre-agreed mechanism for the above contemplated situation. Although this clause is very helpful to avoid the ad hoc haggling that usually arises, it should be approached with caution. The wording of clause 2(b) is as follows:

"(b) The Buyers may delay to take delivery of the Vessel up to a maximum of further seven (7) consecutive days paying to the sellers the sum specified in Box 8 (iv) per day, or part thereof as compensation for such delay provided that the Buyers has declared their intention to take late delivery prior to the expiry of the specified 3 full banking days. Any such amount due shall be paid at the time and place and in the same currency as the Purchase Price and any additional amounts due under Clause 7. If such delay exceeds seven (7) consecutive days then the sellers shall have the right to cancel this Agreement and claim damages for their losses incurred".

There are three issues with clause 2(b) that should be considered:

- i. Issue 1
- The clause states that the buyer may delay the taking of "delivery" of the vessel, however, the clause does not explicitly state that the buyer may delay making payment for the vessel which, in accordance with clause 2(a), must be made *"for same day value within 3 full banking days, (being banking days in the place of closing and in the country of the Purchase Price currency) after the sellers tender the written notice of actual readiness of the Vessel in accordance with clause 5(b)"*. It may therefore be interpreted that, although the buyer may delay taking delivery, they will not be able to delay making payment of the purchase price.
- ii. Issue 2
- In connection with Issue 1, this clause says that the amount of liquidated damages due shall be paid at the time and place and in the same currency as the purchase price. This leads to the dual problems of (a) the contracted time for payment of the purchase price being within three banking days of the issuance of NOAR (which would have already passed before the liquidated damages start accruing, let alone before the final quantum of liquidated damages are determined); and (b) the likely possibility that the buyer has not remitted enough funds to the closing bank in order to cover the additional cost of the liquidated damages and is therefore unable to pay them at the time of delivery, further

delaying the delivery until such funds are made available.

iii. *Issue Three*
The clause says that the permitted delay and resulting liquidated damages payable to the seller will apply provided that the buyers declare “*their intention to take late delivery prior to the expiry of the specified 3 full banking days*”. If the buyer does not declare such an intention within the prescribed time frame, there is a question as to whether the liquidated damages will accrue at all. In this event the seller may only be left with their rights to cancel the MOA under clause 12 and may not be entitled to receive the liquidated damages from the buyer. Consider the following scenario:

The seller has made the vessel ready for delivery and have prepared all documentation. Accordingly, the seller has issued a NOAR. The buyer, not being very organised, has failed to have their crew ready at the delivery port in time. The seller is keen to sell, the market is dipping and the buyer is aware of this. The three banking days in which the buyer is obliged to take delivery pass by and it becomes apparent that the crew will only arrive at the delivery port on the fifth day after the NOAR is tendered. If the buyer has declared their intention to take delivery after the standard three day laytime for delivery, then assuming a delivery on the fifth day, they would be liable to the seller for two days worth of liquidated damages. But what if they do not declare their intention to take delivery late? Is the buyer still liable for the liquidated damages? On a strict interpretation of the standard wording, they may not be. Of course, as the buyer has not declared their intention, the seller will gain the right to cancel the MOA under clause 12. However, realistically, in a dipping market, it is unlikely that the seller would cancel and the buyer may successfully avoid liability for liquidated damages.

Drafting Suggestions
In order to tackle Issue 1, the requirement of the buyer to take delivery within three banking days in line 76 should be made subject to a delay in the delivery of the Vessel in accordance with clause 2(b).

Issue 2 is primarily a practical problem. One solution would be that the seller requests that the buyer remits additional funds in preparation for closing in order to cover the cost of any liquidated damages should they become payable. Alternatively, wording could be included to state that amounts payable in relation to liquidated damages are payable to the seller not later than a certain number of days after delivery takes place, however, this would create a credit risk for the seller.

In relation to Issue 3, the seller may wish to amend the wording of clause 2(b) so that the obligation to pay liquidated damages is triggered automatically upon delay and that there is no requirement for the buyer to declare their intention to delay. The seller should be careful, however, to ensure that they maintain their right to cancel the MOA if the buyer does not take delivery within the initial three days.

The buyer, on the other hand, may wish to try to limit the amount of liquidated damages’ payable by amending line 27 to read “*full days*” instead of “*days, or part thereof*”. The buyer may also consider amending this provision so that the liquidated damages may be payable within a certain amount of time after delivery rather than upon delivery, as discussed above. If such an amendment is made, the buyer should also seek to include wording to the effect that the seller shall not have a lien over the Vessel for unpaid liquidated damages unless the liquidated damages are not paid by the stipulated time.

A further consideration to have in mind is that the level of liquidated damages per day

must not be so high so as to be characterised as a penalty. If the rate of liquidated damages is too high, this may render the liquidated damages provisions unenforceable against the buyer. The general principle to follow to ensure this does not occur in this respect is that the amount of liquidated damages payable must be a reasonable pre-estimate of the loss of the party seeking the liquidated damages.

(B) Form of Notices
At the conclusion of clause 2 there is a definition of “written notice” in italics. This definition implies that notices are exchanged directly between sellers and buyers. In order to avoid potential disputes, it may be advisable to amend this definition to note the fact that notices between the parties are often traded through brokers or lawyers.

Drafting Suggestions
Add “*or their agents, representatives or professional advisors*” after the words “*the Sellers and the Buyers*”.

5. Clause 3 (Inspections)
Clause 3 of the SSF generally follows the template provided by clause 4 of the NSF in that it provides two inspection options for the buyers, one for before signing the MOA and one for after signing the MOA. In practice, most buyers will inspect the vessel prior to signing of the MOA, therefore preferring the first option, or alternatively for some demolition sales, will not conduct any inspection at all. The Nipponsale does not have an equivalent clause 3(b) and assumes that an inspection of the vessel has been conducted prior to signing the MOA⁴.

Clause 3(a) of the SSF has slightly different wording that clause 4(a) of the NSF however the meaning remains fundamentally the same: the buyer has inspected the vessel and its classification records and has accepted it subject to the terms of the MOA.

Clause 3(b) of the SSF provides greater specificity on what constitutes an inspection and if this alternative is chosen, the buyer should look at this clause carefully to ensure that they are not restricted from inspecting aspects of the vessel that they wish to inspect.

The other aspect of clause 3(b) of the SSF that differs from clause 4(b) of the NSF is a requirement that the inspection by the buyer does not cause undue delay to the vessel. If the buyer do cause undue delay, clause 3(b) provides that the seller shall have the right to claim losses incurred by the seller. As a practical matter however, it is unclear what may constitute “undue delay”. Further, it may be difficult for the seller to recover such losses without recourse to arbitration, especially if, as a result of the inspection, the buyers should opt not to purchase the vessel.

6. Clause 4 (Condition on Delivery)
Clause 4 of the SSF is the equivalent of clause 11 in the NSF and clause 5 of the Nipponsale. The drafting of the SSF clause resembles that of the NSF but contains some important changes and additions.

The use of “*damage affecting class*” as opposed to the words “*average damage affecting the Vessel’s class*” as found in the NSF is one such change. The wording in the NSF covers damage affecting class and occasioned by a peril ordinarily covered by insurance as opposed to defects resulting from general wear and tear⁵. Under the new wording in the SSF, a plain reading would suggest that if there is any damage whatsoever effecting class, it will be sufficient to breach the condition on delivery clause.

⁴ However it should be noted that Nipponsale does include separate provisions in relation to underwater inspection after signing the MOA as does the NSF and SSF.
⁵ *The Alfred Trigon* [1981] 2 Lloyd’s Rep. 333

Also notable is that the SSF includes the wording “All cargo spaces shall be clean and free of any cargo, subject only to immovable residues”. In contrast, wording of this nature would generally need to be added to the NSF and Nipponsale.

The major difference between this SSF clause and its relevant NSF and Nipponsale counterparts is the inclusion of wording governing the rights of the buyers should the vessel not be in the required condition upon delivery. The SSF states that “If the Vessel is not in the same condition as the Vessel was at the time of inspection, the Buyers may reject the Vessel but only if the difference in condition has a substantial impact upon the Buyers’ ability to trade the Vessel. Otherwise, the Buyers’ remedy for differences in condition shall lie in damages.” No such equivalent wording is found in the NSF. The effect of the wording in the SSF is that it provides greater certainty to the parties should the condition of the vessel be inadequate whereas under the NSF it is unclear as to whether the buyer’s remedy would be the ability to reject the vessel or claim for damages.

Clause 4 also explicitly states that “The burden of proof as to the condition of the Vessel at the time of inspection shall be on the Buyers”. Thus, it is very important that the buyer takes comprehensive notes during their initial inspection of the vessel as, if they wish to rely on this clause to reject the vessel, they will need to clearly prove the change in condition.

Drafting Suggestions

In order to avoid protracted arguments should this clause need to be invoked by the buyers, the parties may wish to stipulate that a decision on whether there is a difference in condition that “has a substantial impact upon the Buyers’ ability to trade the Vessel” is to be determined by the vessel’s Class. However, this may not be appropriate in all cases and the parties may be happy to submit such questions to arbitration in accordance with clause 15 or leave it up to the negotiation of the parties.

7. Clause 5 (Notices and Actual Notice of Readiness)

(A) Sellers not to hinder delivery date and to give details of itinerary

Clause 5(a) of the SSF generally deals with the notices to be given by the seller to the buyer leading up until the date of delivery and reflects the similar obligation found in clause 5(a) of the NSF and clause 4(b) of the Nipponsale. Arguably the change in wording of the SSF from the NSF and Nipponsale holds that these notices must also include the itinerary of the vessel along with the estimated date that the vessel will arrive at the delivery port.

Under the SSF there is a further obligation placed on the seller to “take reasonable steps not to hinder delivery by the date set out in the notice[s]”. The purpose of this addition is to give the buyer more certainty when making arrangements for taking delivery of the vessel and also to ensure that the seller does not engage in any deliberate overtrading of the vessel.

(B) Issuance of NOR/NOAR

Clause 5 of the SSF marks one of the biggest practical departures from the standard procedures under the NSF and Nipponsale in the form of the NOAR. Under Nipponsale, NORD can be given “when the vessel becomes ready for delivery”. The standard wording of the NSF is more detailed and requires that the vessel be “at the place of delivery and in every respect physically ready in accordance with” the MOA.

The SSF introduces a third limb and requires that the NOAR may only be delivered when:

- a. the vessel is at the Delivery Place as indicated in Box 10;
- b. the vessel is physically ready in accordance with clause 4 (see above); and

- c. the sellers “have ready all of the sellers’ documents required by clause 8 (save for the Certificate of Ownership or equivalent, Class Maintained Certificate, Invoice for Bunkers and Lubricants and the Protocol of Delivery and Acceptance)”.

The purpose of this third limb is to ensure that there will be no delay in the provision of the documents to be delivered by the seller to the buyer upon delivery, whilst providing exceptions for those documents that are to be issued at, or as close as possible to, the time of delivery.

Although no one can disagree that having all of the seller’s documentation prepared well in advance (and certainly by the time of issuance of the NOAR) is advantageous, it does create a few practical issues which must be considered, especially by the seller. For example, the seller must be very careful to ensure that when finalising the list of documents they have agreed to provide under clause 8 (or, as the case may be, under a separate addendum to the MOA as described in section 9 below) that they can be fully ready at the time of issuance of the NOAR. This includes any notarisation, legalisation or apostilling processes that need to be completed.

In particular the seller should ensure that any and all time sensitive documents are included as exceptions from the documents that the seller is to have ready to effect valid issuance of the NOAR. The reason for this is as follows:

Consider a situation where the seller has agreed to provide a Certificate of Goodstanding to the buyer upon delivery (as is contemplated in line 174 of the SSF) however the parties have added the requirement in line 174 that such certificate must have been issued within three banking days prior to the delivery of the vessel. The best practice for the sellers in this case would be to have arranged for this document to be issued on the same day as tendering the NOAR, on the understanding that the delivery would occur within the next three banking days as per clause 2 and that the Certificate of Goodstanding would need to be valid for all three days as the date of delivery would, at that time, be in the control of the buyer.

The buyer, however, decides to delay the delivery for an additional banking day in accordance with clause 2(b). This would mean that the Certificate of Goodstanding that the seller had issued would no longer have been issued within three days of the delivery. The question then arises as to whether the NOAR is still valid as the seller can no longer say that the vessel is documentarily ready for delivery. Of course, the seller could relatively easily get another Certificate of Goodstanding issued which was up-to-date and alternatively one could argue that the seller’s documents need only be valid at the time of issuance of the NOAR. However, based on the current practice under the NSF as to the physical readiness of the vessel, if, after the NOR is issued, the vessel ceases to be physically ready for delivery, the NOR becomes invalid and a new NOR must be issued upon the seller making the vessel physically ready for delivery again. There is a strong argument to be made that this rationale may also apply to the seller’s documentation. A similar problem may arise if a deficiency in a document is only discovered at the closing meeting for the vessel – will this entitle the buyer to refuse delivery until the deficiency is rectified and a new NOAR is issued? Will this give the buyer a further three days to take delivery?

There is a further practical issue. How does the buyer determine that the seller actually has all of the required documents prepared as of the date of the NOAR? Whilst there is a requirement in clause 8 of the SSF that the parties swap copies and drafts of the documents no later than 14 days prior to the vessel’s expected date of readiness for

delivery, the buyer may wish to include a further requirement that the seller must send copies of all finalised documents along with the issuance of the NOAR. An alternative would be for the buyer and seller to meet on the day of issuance of the NOAR for a pre-closing meeting in order to inspect all of the documents. Whilst pre-closing meetings of this kind are not unusual in order to ensure a smooth delivery, it is not common practice to have a meeting on the date of issuance of the NOR/NORD/NOAR.

Drafting Suggestions

It would be in the seller’s interest to negotiate an entire deletion of the requirement to have the vessel documentarily ready prior to issuing the NOAR, thus effectively reverting to the position under the NSF. If this is not possible, the seller may seek to either clarify that the documents need only be ready as at the actual time of issuance of the NOAR (so as to avoid any documents expiring due to delays by the buyer) or, alternatively, seek to widen the number of documents included in the exception from the documentary readiness requirement.

In connection with the latter, the seller should take extra care to ensure that the documents agreed under clause 8 can be finalised at the time of issuance of NOAR and to the extent that they are not able to do so, that such documents are also included in the exceptions.

The buyer, on the other hand, should seek to retain these requirements and indeed should seek to add wording to ensure that copies of all finalised documents are provided along with the issuance of the NOAR. This requirement should be in addition to the requirement to provide copies within 14 days of delivery found in clause 8(d).

It should also be noted that if the parties agree to list the documentation in an addendum to the MOA after it is signed, the wording of this clause should be amended to refer to such addenda rather than referring to clause 8.

(C) Line 75

Line 75 of the SSF states that “Subject only to clause 2(b), the Buyers shall take delivery of the Vessel within 3 full banking days after the Sellers” tender NOAR. Considering that under clause 4, if the vessel is not in the same condition as it was at the time of delivery, the buyer can reject the vessel if the difference in condition has a substantial impact on the buyer's ability to trade the vessel, the buyer should seek to have this clause amended to state that the buyer should take delivery subject to both clause 2(b) and clause 4. This amendment will be especially important if the buyer is only able to view the vessel (to ensure the condition remains as it was at the time of inspection) after the NOAR has been tendered.

Additionally, if after the NOAR has been given the vessel ceases to be physically ready for delivery, the buyer should not be under any strict obligation to take delivery of the vessel (as is reflected in clause 13(b)). Therefore the required delivery under line 75 should also note the relevance of clause 13(b).

Drafting Suggestions

In accordance with the above comments, buyers should seek to have line 75 amended to read “Subject to clause 2(b), 13(b) and the right of the buyers to reject the Vessel under clause 4, the Buyers shall take delivery of the Vessel within 3 full banking days after the sellers”.

(D) Total Loss

The wording of clause 5(c) of the SSF is similar to that of clause 5(d) of the NSF. However, in the SSF, there is additional wording which states that if the Vessel is an actual, constructive or compromised total loss before delivery “the sellers incur no liability under [the] Agreement”. This additional wording is especially important for the seller in a situation where a total loss occurs after the NOAR is given but before actual delivery.

8. Clause 6 (Pre-Delivery Divers Inspection)

Similar to clause 6 of the Nipponsale and clause 6 of the NSF, clause 6 of the SSF regulates the rights of the buyer to a diver’s inspection of the underwater parts of the vessel prior to delivery and also the buyer's right to a dry-dock inspection if there are major defects effecting the class of the vessel.

(A) Dry-docking Inspection

A noticeable difference between the SSF and the NSF is that whilst the NSF provides an option for dry-docking as an initial mode of inspection, the SSF does not. This reflects current market practice in that a dry-docking is rarely undertaken unless (a) the vessel is already laid up in dry-dock, or (b) major defects are found during the underwater inspection. Situation (b) is contemplated in both the SSF and the NSF.

(B) Port of Diver’s Inspection

A second notable difference is the way with which the NSF and SSF deal with the choice of the port in which the diver’s inspection is conducted. The NSF states that “If the conditions at the port of delivery are unsuitable for such inspection, the Sellers shall make the Vessel available at a suitable alternative place near the delivery port”.

The SSF, however, states that “The Sellers shall be responsible for ensuring the port, anchorage or berth chosen for underwater inspection of the Vessel is suitable and permitting such inspection” and also “The Buyers shall have the right to appoint, at their own expense, a Class approved diver to inspect the Vessel’s underwater parts... upon the Vessel’s arrival at the port specified in Box 9(ii)”.

The net effect of the wording in the SSF is that the seller must ensure (at the time of signing the MOA) that the port stated in Box 9 (ii) of the SSF is suitable and will permit an underwater inspection of the vessel as under the standard wording of the SSF there is little scope to change such port at a later date without the buyer’s agreement. It should also be noted that the port for divers inspection stated in Box 9(ii) may be different from the port for delivery stated in Box 10.

Drafting Suggestion

The seller may wish to ensure that in Box 9 (ii), they include a port range rather than a specific port in case, for reasons unknown at the date of signing of the MOA, the expected port for diver’s inspection becomes unsuitable or unavailable.

(C) Line 99

Line 97-99 of the SSF states “The cost of Class attendance and divers fees incurred for the underwater inspection shall be borne by the Buyers unless damage is found and the Class imposes a recommendation in which case both costs will be borne by the Sellers”.

Drafting Suggestion

The buyer may wish to widen this wording to refer, not only to a recommendation from Class, but also to a condition of Class.

9. Clause 7 (Spares/Bunkers & Others)

This is another clause that largely follows the wording found in the NSF. The first substantial difference in this clause from the NSF is found in line 131. Under both the NSF and the SSF, the seller is not required to replace any spare parts that are used as replacements in the vessel prior to delivery; however, the SSF also includes the exception “*unless required by Class*”. This useful clarification means that under the wording of the SSF, if the vessel’s Classification Society stipulates that a part of the vessel needs to be replaced with a spare part, the seller is under an obligation to provide a replacement spare before delivery.

Secondly, unlike the NSF, the SSF does not state that the radio and navigational system are only to be included in the sale if they are the property of the seller. It is important therefore, that if the radio and navigational equipment are not the property of the seller, then they should be included in the items listed as excluded from the sale. This is an important point to note for drafters who are accustomed to the standard NSF wording.

The final paragraph of clause 7 deserves special attention as it is the clause that is relied upon by the parties for the calculation on amounts payable for unused bunkers. Most practitioners would identify the calculation of amounts payable for bunkers as one of the primary sources of disputes at closing meetings; therefore it is of the utmost importance that this clause is unambiguous in its terms.

The SSF is certainly the most explicit of the three standard forms in relation to how amounts payable for bunkers and lubricants are to be calculated; however, the default method for determining the price payable per unit is different under the NSF than under the SSF and Nipponsale. Under the NSF the prices for bunkers and lubricants are to be determined by “*the current net market price (excluding barging expenses) at the port and date of delivery of the Vessel*”. Under the Nipponsale and SSF, bunker and lubricant prices are calculated based on the net price paid by the sellers at the last date of purchase, supported by vouchers and invoices. As an additional note, the SSF mentions that this should be less “*barging expenses*” whilst Nipponsale is silent on this point.

A further benefit of the SSF wording is that it provides greater clarification as to which bunkers and lubricants are to be included in the sale. Under the NSF the buyer shall “*take over the remaining bunkers and unused lubricating oils in storage tanks and sealed drums*” while its SSF counterpart is clarified to be “*remaining bunkers, unused lubricants in designated storage tanks (not header tanks) and unopened drums*”. The SSF wording thus avoids the risk of the seller re-sealing drums in order to have them included in the sale.

Drafting Suggestions

As to which method should be used to calculate the price of the bunkers and lubricants, this is a matter of personal preference for the parties as each method has its pros and cons.

While the NSF’s method provides an accurate account of the actual value of the fuels as at the time of delivery, it also means that the amount payable for bunkers can only be determined on the delivery date, which may result in delays at the closing meeting whilst such amounts are calculated. This method may also lead to problems due to up-to-date fuel prices usually only being published on websites (such as PLATTS or Bunkerworld) at the end of any particular day, thus forcing the parties to rely on bunker prices from the day prior to delivery rather than the actual day of delivery as contracted.

The method under the SSF and Nipponsale has the benefit of being able to be calculated as soon as the physical amounts of bunkers and lubricants remaining on board the Vessel

have been determined by reference to the last purchase price of the sellers. Additionally, the wording of the SSF and Nipponsale have the benefit of preventing the seller from seeking to profit from the sale of the fuels (which is usually not the intention of the deal) by pegging the price payable by the buyer to the actual amount paid by the seller. This method, however, requires the seller to provide vouchers or invoices for all grades of fuel showing their last purchases of such fuels. If such vouchers or invoices have not been retained or do not exist then there will be a problem. There is also very little opportunity for the buyer to verify the validity and accuracy of the vouchers and invoices, most if not all of which will be photocopies of the originals.

As with all provisions of any ship sale and purchase document, the primary consideration is that it reflects the commercial agreement of the parties. However, the drafter should always ensure that this clause is clear and unambiguous as to:

- a. which bunkers and lubricants are being sold;
- b. how the price for each grade of fuel is to be determined; and
- c. when and in what currency the payment for bunkers and lubricants is to be made.

10. Clause 8 (Documentation)

(A) Lengthening of standard document list

A marked difference between the documentation clause in the SSF as compared to the documentation clauses in both the NSF and Nipponsale is the widening of the detail and scope of documents listed in the SSF to be provided by the seller to the buyer upon delivery of the vessel. The NSF and Nipponsale contain the bare minimum of documentary requirements that a buyer would expect to receive from the seller and provide scope for expansion of these items upon mutual agreement of the parties. The SSF takes a different approach and provides a lengthier list of documents which the parties can add to or subtract from as needed. An additional improvement found in the SSF is that it includes a list of documents that the buyer must deliver to the seller, which, while common in practice, is not reflected in the standard terms of the NSF or the Nipponsale.

These differences found in the SSF can be seen as an attempt to do away with the current practice of agreeing the documents to be delivered between the parties in an addendum to the MOA, which is usually signed after the other terms of the MOA are agreed. This practice can often lead to problems if the parties cannot reach an agreement as to what documents are to be provided.

(B) Lack of catch-all clause

An important point to note for the buyers is that the SSF does not contain a “catch all clause” with regard to documentation. For example clause 8(f) of the NSF states that the sellers must provide the buyer “*Any such additional documents as may be reasonably required by the competent authorities for the purpose of registering the Vessel, provided the Buyers notify the Sellers of any such documents as soon as possible after the date of the Agreement*”. This allows the buyer to request that the seller provide any additional documents not contemplated at the time of signing of the MOA of which they later become aware are required for registration of the vessel on the incoming shipping registry. The lack of a catch-all clause makes it all the more important when using the SSF for the buyer to ensure that the list of documentation is complete and accurate. Alternatively the buyer may wish to include a “catch all clause” in clause 8 of the SSF.

(C) Protocol of Delivery and Acceptance

There is a minor inconsistency in the drafting of the SSF between lines 152-153 and lines 186-187. In lines 152-153 it states that “*The Sellers shall furnish the Buyers with the following*

documents” and then proceeds to say in line 186-187 “(xi) Three (3) Protocols of Delivery and Acceptance. (one each to be retained by the buyer, the seller and the closing Bank)”. It is a reasonable interpretation from the wording of lines 186-187 that in fact the seller is only under an obligation to provide one Protocol of Delivery and Acceptance to the buyer, not three as is specifically stated however, given that there is a separate obligation for the buyer and seller to sign and exchange original copies of the Protocol of Delivery and Acceptance under lines 149-151. An easy solution to this inconsistency is simply to delete lines 186-187.

The seller may also wish to amend the reference to “*All other documents which may be in the Seller’s/Sellers manager’s possession*” found in line 219-220 to limit this to documents required for the buyer to trade the vessel. Alternatively, the seller may wish to delete this language altogether as it implies a very wide scope of documents that the buyer could insist on receiving from the seller or seller’s manager, which may include documents not directly related to the sale or trading of the vessel.

Drafting Suggestions

I will refrain from discussing the drafting in relation to each single document listed in clause 8 as the documents to be delivered will likely vary from transaction to transaction. However, the general principle is that the parties should (a) ensure the drafting of the list of documents represents what they have commercially agreed; (b) ensure that neither party agrees to provide any documentation in such a form or within such a time period that may result in the provision of such document being impossible; and (c) in the case of the buyer, ensure that the documents listed will satisfy their flag registration (and if necessary, financing bank) requirements.

11. Clause 9 (Encumbrances)

Clause 9 of the SSF is drafted in a similar way to the corresponding clauses in both the NSF and the Nipponsale. The SSF standard clause improves on the NSF form by providing a longer list of encumbrances that the vessel is to be free from at the time of delivery. It will be in the seller’s interest to limit these items however the buyer may wish to expand this list further by adding that the vessel also be free from any blacklisting, boycotting or any other form of embargo and also, if applicable, hazardous wastes⁶.

The main addition to this clause in the SSF, however, is the inclusion of the statement that the vessel being free from encumbrances at the time of delivery “*is a condition of this Agreement, any breach of which will entitle the buyer to reject the Vessel*”. The corresponding wording in the NSF states that the seller “*warrant*” that the Vessel is free from encumbrances at the time of delivery.

To understand the effect of this difference, one must understand the differing treatment of a ‘condition’ as compared to a ‘warranty’ under law. Very generally, a condition of a contract is a term so important to the nature of the contract that if it is breached, the innocent party can treat the contract as discharged and therefore will not be bound to perform any of their further obligations under the contract. A warranty, on the other hand, is a term of a contract which is collateral or subsidiary to the main purpose of the contract. A warranty is therefore not so vital as to give rise to the ability of the innocent party to terminate the contract if it is breached and accordingly will only be entitled to bring an action for damages.

There is also the concept of an ‘intermediate term’ which is a term which can be treated like a warranty, or a condition, depending on the severity of the breach of the term. It can be argued that the standard wording of clause 9 the NSF is an intermediate term whereas

⁶ It is common for these items to be included in separate confirmation or undertaking letters from the sellers to the buyers, for example, the seller’s document listed in clause 8(b)(xiii) of the SSF. The drafter should also ensure that the wording in clause 9 matches the wording in clause 8(b)(x).

the wording of the SSF leaves no doubt by identifying this clause as a condition of the contract, the breach of which will entitle the buyer to cancel the MOA.

One problem, however, arises from expressing this clause as a condition of the MOA. The provisions of the clause say that the vessel must be encumbrance free “*at the time of delivery*”. Thus, a plain reading of these words would indicate that the seller will only be in breach once the vessel is delivered. This then leads to the illogical conclusion that the buyer will only have a right to reject the vessel and terminate the contract after the passing of title (and payment of the purchase price assuming payment and delivery happen concurrently as is the common practice). We have yet to see how the courts will treat this provision, and whether some type of reversionary title would come into effect (where the title is passed back to the sellers). However, one would expect that a claim for damages is, in fact, the more appropriate remedy in this case.

12. Clause 10 (Expenses) and Clause 11 (Vessel Name)

Apart from some minor changes to the wording, the standard wording in these two clauses reflects the same commercial agreement as found in clause 10 (Taxes etc) and clause 12 (Name/markings) of the NSF.

13. Clause 12 (Buyer's Default) / Clause 13 (Seller's Default)

Whilst the buyer and seller default clauses in the SSF follow the general framework found in the NSF, the SSF provides a more balanced approach when compared to the corresponding default clauses found in the NSF, which, it can be argued, are biased towards the seller. The SSF also provides clearer wording as to when the buyer’s deposit is and is not forfeit.

(A) Forfeit of Buyer's deposit

Clause 12(a) of the SSF states that if the buyer does not pay the deposit or provide the bank-to-bank confirmation by the Value Date, the seller shall have the right to cancel the MOA. It further specifically states that the seller shall not have an automatic right to the deposit but must instead claim for their actual costs and expenses. This express statement is not found in the NSF and is useful for clarifying the position when English law is the choice of law. Further, this language reflects the Singapore Court of Appeal’s decision in *The Anna Spiratou* (1998)⁷ which was a case involving the 1987 version of the NSF⁸. If the buyer fails to pay the purchase price however, as in the NSF, the seller will have the right to cancel the MOA and claim the deposit plus interest and will also receive the right to claim for further losses and expenses if they are not covered in full by the deposit.

(B) Bank-to-bank confirmation default

One very important change that buyers should be aware of is that a failure to provide the bank-to-bank confirmation set out in clause 1 will give the seller the right to cancel the MOA and claim compensation for their losses and expenses, regardless of whether the deposit is paid or not. Whilst generally, there would be little reason for the seller to cancel the MOA if the deposit has been validly paid, in a rising market a devious seller may wish to take advantage of a better offer and may use this default as a way to get out of the deal. This would effectively leave the buyer without the opportunity to purchase the vessel and (assuming the buyer had already remitted the deposit funds to the joint account) with 10% of the intended purchase price lodged in an account which can only be operated jointly by the buyer and the seller. Given that the seller may be seeking compensation for their expenses and losses, they may choose not to return these funds to the buyer without the buyer agreeing to release a portion of the deposit to the seller, essentially holding the buyer’s deposit as ransom. Of course, this would be an extreme situation; however, the buyer should consider whether the provision of the bank-to-bank confirmation should

⁷ [1998] SLR 536.
⁸ It should be noted that this case is not binding on the English courts and the relevant English case on this point is *Damon Compania Naviera S.A. v Hapag-Lloyd International S.A., The Blankenstein* [1985] 1 Lloyd’s Rep. 93 which decided under the equivalent clause in the NSF ‘66, the deposit was in fact forfeit. Most commentators submit, however, that, because of their wording, *The Blankenstein* case can be distinguished when referring to the NSF ‘87 and NSF ‘93 and that the principles set out in *The Anna Spiratou* would likely apply.

remain as a default event or whether the relevant wording should be deleted.

Drafting Suggestion

If there is any doubt over whether the provision of a bank-to-bank confirmation is available, possible or that the bank that is providing that confirmation on behalf of the buyer is reliable, the buyer may wish that the failure to provide such a bank-to-bank confirmation is not included as a specific buyer’s default under clause 12. An alternative option would be to limit the specificity of what information is required to be included in the bank-to-bank confirmation. The standard wording of clause 1 of the SSF states that the bank-to-bank confirmation must include statements (a) that the buyer (or third party remitting the deposit) is a party known to the remitting bank; and (b) that the remitting bank knows the source of the funds. Generally, an escrow bank will only need to be assured that the buyer and seller are both bonafide parties. The key here is that the parties (especially the buyer) should discuss with the relevant bankers what type of confirmation is actually required by the escrow bank and then confirm whether the remitting bank is capable of providing such a confirmation. The outcome of these discussions should then be reflected accurately in clause 1.

(C) Effect of documentation readiness requirement

An important change that should be considered by the seller is the effect of the requirement to have the Vessel documentarily ready upon issuance of NOAR. Under the SSF, the buyer’s right to cancel the MOA for non-delivery of the vessel is not made subject to the three days grace given to the seller for completing the documentation which is found in the NSF and Nipponsale. This means that if the NOAR is given without the documents being ready and complete, it may be treated as an invalid NOAR. If a valid NOAR is not given by the cancelling date, or if a valid NOAR is given but not all of the documents are able to be made available to the buyers thereafter, the seller will likely be in default and the buyer will be able to cancel the MOA, obtain a refund of their deposit and claim damages against the seller.

Drafting Suggestions

With regard to the seller’s default clause, the earlier comments regarding the vessel being documentarily ready should be considered. Accordingly, the seller may wish to seek an amendment so that the failure to be documentarily ready does not result in a seller’s default under clause 13.

14. Clause 14 (Buyer's Representatives)

In relation to the rights of the buyer to place representatives on board after the deposit is lodged, both the SSF and NSF indicate that such representatives are allowed on board for familiarisation and observation purposes only, must not interfere with the operation of the vessel and must sign a letter of indemnity in favour of the seller. The SSF clarifies, however, that *“The Buyers’ Representatives are to remain onboard until delivery under the Master’s control, but are to be allowed access to the Vessel’s main spaces, machinery and equipment”*.

Whilst this wording certainly helps clarify the scope of what the buyer's representatives are allowed to do, it may serve to limit that scope as compared to the scope under the standard NSF. It is clear that the buyer’s representatives are under the control of Master of the vessel and therefore must follow the instructions of the Master. The limit on this control is that the Master must allow them access to the vessel’s main spaces, machinery and equipment, however, the wording is silent as to the duration, timing and supervision level for that access and also as to what constitutes a *“main space”*. There is also no mention of access to the vessel’s classification and other documents, all of which are to be delivered

to the buyers upon delivery in accordance with clause 8.

Drafting Suggestions

The buyer may want to expand the list of what areas and items the buyer’s representatives are allowed access to, including the ability to review all vessel certification and the vessel’s log books.

15. Clause 15 (Arbitration & Governing Law)

The standard wording of clause 15(i) allows for a choice of English or Singapore law and arbitration in Singapore under Singapore Chamber of Maritime Arbitration (“SCMA”) rules.

The NSF or Nipponsale both contain similar arbitration clauses that may be altered to have Singapore law and arbitration apply. Similarly, the SSF can be amended so that the governing law and seat of arbitration are jurisdictions other than Singapore. It should be noted however, that the SCMA rules are similar to the widely used and trusted London Maritime Arbitration Association (LMAA) rules. Thus, if the contracting parties are located in Asia, the preference for arbitration in Singapore under SCMA rules can be an effective cost-saving option without compromising the quality and effectiveness of the arbitration process.

Further, it should be noted that in the absence of the parties indicating an alternate choice of law and seat and rules of arbitration, under clause 15(ii), clause 15(i) and Singapore law will automatically apply.

16. Clause 16 (Confidentiality Clause)

A clause of this type is not found in either the NSF or the Nipponsale, although such a clause is often included as a rider clause to both forms.

(A) Permitted Disclosure

The terms of the standard clause state that the confidentiality restriction does not apply to disclosures which are required by law. Whilst this is a common exception there may be other parties that the terms and conditions of the MOA will need to be disclosed to and therefore, such parties will need to be included in this exception. These may include the escrow bank, the parties’ financiers, legal advisors, ship brokers, financial advisors, stock markets and related group companies. These should also be carved out of the confidentiality clause, if necessary.

(B) Restriction on Withdrawal from Transaction

The wording of the second sentence of this clause may lead to issues when a strict interpretation of the wording is taken. The second sentence states *“In the event the sale or details thereof become known or reported in the market neither the Sellers nor the Buyers shall have a right to withdraw from the sale or fail to fulfil all their obligations under this Agreement”*. A problem arises when a disclosure is made to the market in breach of this clause. Under a strict reading of this clause, the buyer and seller will not be able to withdraw from the sale, even if there is a default by the buyer or seller. Whist this is clearly not the intention, on a plain reading interpretation of the clause, it is certainly arguable.

Drafting Suggestion

Although the above scenario is an extreme example, the parties may wish to add the words *“due to a breach of this clause 16”* to the end of the second sentence to clarify that the buyer and seller can still withdraw from a sale due to other reasons, either under common law or in accordance with the terms of the MOA.

17. Clause 17 (Entire Agreement Clause)

This is another useful clause that is not found in either the NSF or the Nipponsale. An “entire agreement” clause is a type of clause which is commonly found in commercial agreements, the purpose of which is to prevent the parties to the agreement from raising claims that pre-contractual statements constitute additional terms of the agreement. This is important in relation to ship sale and purchase transactions as it is common that a recap, recording the primary terms, is drafted by brokers during the negotiation phase of the transaction. The inclusion of this clause makes it clear that the terms of the recap are superseded by the terms of the MOA.

Conclusion

With three valid alternatives in the market, which form should a ship-owner prefer for their second-hand ship sale and purchase transactions?

The SSF provides a more balanced starting document than the NSF and solves some of the problems that arise from the use of the standard wording of the NSF and Nipponsale. However, the NSF has the backing and certainty of over 45 years of case law. The Nipponsale on the other hand, whilst not as common or as comprehensive as the other two forms, has its place in providing a familiar form for the Japanese market⁹.

Whichever form is chosen, the most important thing to remember is that all three forms, SSF, NSF and Nipponsale are simply starting points. Every transaction will be slightly different meaning that no one form will be ready-made for any particular deal. As has been said numerous times in this article, the most important consideration is that the final product accurately represents the commercial agreement which the parties have reached. In the SSF, the market has been gifted an alternative to the NSF and Nipponsale forms which certainly has the potential to become a mainstay in the global shipping industry.

⁹ It is worth noting that the SSF has been translated into both Japanese and Mandarin.

Contact



Daniel Saunders
Solicitor
Singapore

dsaunders@wfw.com
+65 6551 9141

References

The following sources were used in the preparation of this article:

The New Singapore Ship Sale Form: A commentary on the New Sale Form, *C. Debattista and F. Lorenzon* (University of Southampton, Institute of Maritime Law)
http://www.southampton.ac.uk/iml/news/SSF_Commentary.shtm;

Singapore Ship Sale Form: An Overview, *Ticy Veluvellet Thomas and B. T. G. Tan* (Centre for Maritime Studies, National University of Singapore) Academic Paper Series Paper Number CMS-2010-2;

Ship Sale and Purchase, Fifth Edition, *I. Goldrein QC., Matt Hannaford and P. Turner* (Lloyds Shipping Law Library) Informa Law.

The Singapore Sale Form

Soft copies of the Singapore Sale Form suitable for amending for use can be accessed at www.singforms.com.

Singapore
6 Battery Road #28-00
Singapore - 49909

Tel: +65 6551 5335

All references to ‘Watson, Farley & Williams’ and ‘the firm’ in this publication means Watson, Farley & Williams LLP and/or its affiliated undertakings. Any reference to a ‘partner’ means a member of Watson, Farley & Williams LLP, or a member or partner in an affiliated undertaking, or an employee or consultant with equivalent standing and qualification. The transactions and matters referred to in this publication represent the experience of our lawyers.

This publication is produced by Watson, Farley & Williams. It provides a summary of the legal issues, but is not intended to give specific legal advice. The situations described may not apply to your circumstances. If you require advice or have questions or comments on its subject, please speak to your usual contact at Watson, Farley & Williams.

This publication constitutes attorney advertising.

© Watson, Farley & Williams 2011



STANDARD BULLETIN

SETTING THE STANDARD FOR SERVICE AND SECURITY

November 2011

OFFSHORE SPECIAL EDITION



Samantha Lee: Claims Director
Telephone: +65 6506 2857
E-mail: samantha.lee@ctcplc.com



Chan Leng Sun, SC: Principal
Baker & McKenzie
Wong & Leow
Telephone: +65 6338 1888
E-mail: leng.sun.chan@bakermckenzie.com

SINGAPORE ARBITRATION

In the October 2009 offshore special edition of the *Standard Bulletin*, we reviewed one vehicle for settling disputes in Singapore, namely the Singapore Chamber of Maritime Arbitration (SCMA).

In this article, we review the developments that have helped to position Singapore as a regional leader in arbitration. A developed legal infrastructure, modern facilities and focused support from all branches of the government and arbitration practitioners (local and foreign) are some of the key factors in Singapore becoming a regional arbitration centre.

The international arbitration regime in Singapore is governed by the International Arbitration Act (IAA), which gives the force of law to the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) with some modifications. The IAA also gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

The domestic arbitration regime is governed by the Arbitration Act (AA). The AA was revised in 2002 so as to harmonise the laws on domestic and international arbitrations. The AA operates as the default regime if an arbitration in Singapore falls outside the reach of the IAA or parties opt out of the IAA. One difference between the IAA and the AA is that the AA permits referral of a question of law to be determined by the courts instead of the tribunal in the course of the arbitration.

Singapore demonstrates its support for arbitration in several ways, as illustrated by the tests developed on arbitration-related applications:

- stay of court actions for arbitration. This is compulsory for international arbitration. It is discretionary for domestic arbitration, but the burden is on the one resisting arbitration to demonstrate sufficient cause to disregard the arbitration agreement
- Singapore recognises the concept of 'kompetenz-kompetenz', i.e. the tribunal can rule on its own jurisdiction
- finality of the award. There is no right of appeal for international arbitration. There is a limited right of appeal in domestic arbitrations on a question of law, but the tribunal's decision must be obviously wrong or, on a point of general public importance, at least open to serious doubt. Setting aside or resisting enforcement is allowed only on specific grounds, consistent with international standards laid down in the Model Law and the New York Convention
- limited judicial intervention. The court will not usurp the role of the tribunal and will only intervene sparingly and in very narrow circumstances, for example where the arbitral tribunal has no jurisdiction to grant the relief sought (Court of Appeal decision in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] SGCA 5).

Where the dispute is an admiralty claim within the High Court (Admiralty Jurisdiction) Act, a ship arrest is permitted for the purpose of obtaining security for an arbitration, wherever the arbitration is seated. The plaintiff is entitled to such amount of security that would cover his reasonably best arguable case: *The Arktis Fighter* [2001] 3 SLR 394. A recent and comprehensive review of Singapore law on ship arrest can be found in the judgment of Belinda Ang J in *The Bunga Melati 5* [2011] SGHC 195.

In terms of supporting infrastructure, a dedicated arbitration centre was opened in 2010. Maxwell Chambers is an integrated dispute resolution centre with fully equipped hearing facilities. It is home to the major arbitration dispute and resolution institutions such as the Singapore International Arbitration Centre (SIAC) and the Singapore Chamber of Maritime Arbitration (SCMA) as well as organisations such as the Singapore Institute of Arbitrators (SIArb). Some leading London sets of counsel have also established Singapore offices at Maxwell Chambers.

The SIAC was established in 1991 and provides an institutional model for arbitration. A SIAC arbitration is an administered arbitration, similar to an ICC arbitration. As an institution helping to administer arbitrations, SIAC helps parties to appoint arbitrators when they cannot agree on an appointment and manage the financial and other practical aspects of the arbitration. The arbitrators' fees are fixed on a scale based on the sums in dispute. The Queen Mary survey has identified a shift in preference towards SIAC over other international institutions.

The SCMA was established in 2004 and is modelled on party autonomy. A SCMA arbitration is a non-administered arbitration (similar to a LMAA arbitration). It does not manage the arbitration so there is no management fee payable and parties are free to appoint whom they want to be arbitrators and to agree on the arbitrators' fees. Since our previous article on the SCMA in the 2009 *Offshore Bulletin*, the SCMA has seen growth in the volume and types of cases registered with the chamber, ranging from shipping to commodity disputes, with a significant proportion of cases involving non-Singapore claimants and/or respondents. Its panel of arbitrators has also grown and features many prominent local and international practitioners who have had to demonstrate their specialty, experience and expertise in the maritime sector before being granted admission. The SCMA has also reported a growing number of enquiries for applications by established overseas practitioners.

In conclusion, the arbitration scene in Singapore has seen significant and exciting developments in recent years. A recent and ground-breaking initiative was the introduction in January 2011 by the Singapore Maritime Foundation of the Singapore Sale Form (SSF) as an alternative to the widely used Norwegian Sale Form. An important feature of the SSF is the refinement and incorporation of many of the essential rider clauses to older printed forms into formal clauses within the SSF. A key aspect of the SSF is the inclusion of SCMA arbitration as the default arbitration clause with an option for contracting parties to choose other seats or models of arbitration. In May 2011, the Asian Shipowners Forum formally adopted the SSF as its official Sale and Purchase document for its members and usage of the SSF is on the

rise. Developments such as this and the continued efforts and initiatives in the public and private sectors in Singapore to provide an arbitration-friendly jurisdiction have established and will continue to position Singapore as a premier centre for international arbitration.

AUTHORS' PROFILES

SAMANTHA LEE

Claims Director
Samantha Lee is a claims director for Standard Asia. Samantha has a LLB from University of North London and a PhD (Economics) from University of Sydney. She was called to the Bar of England & Wales and is qualified in Singapore as advocate and solicitor. Samantha has worked for a number of P&I clubs in Hong Kong and Singapore and joined the club in 2009.

CHAN LENG SUN

Principal, Baker & McKenzie. Wong & Leow
Chan Leng Sun, SC co-heads the Dispute Resolution practice in Baker & McKenzie. Wong & Leow. He is qualified in Malaysia, Singapore and England. Leng Sun was appointed Senior Counsel in January 2011. Apart from being counsel, Leng Sun is an arbitrator and adjudicator on the panel of leading dispute resolution bodies in Singapore, Malaysia and China, such as SIAC, SCMA, KLRCA, CIETAC and CMAC. He also sits in ICC, LMAA as well as ad hoc arbitrations. Leng Sun is Chairman of the Singapore Law Society ADR Committee and Vice-President of the Singapore Institute of Arbitrators (SIArb). Leng Sun had taught at the SMU School of Law and the NUS Law Faculty. He served with the United Nations Compensation Commission in Geneva and was also a CIAC-SIAC Observer to the UNCITRAL Working Group on Arbitration.



The Standard Bulletin is published by the managers' London agents:

Charles Taylor & Co. Limited

Standard House, 12/13 Essex Street,
London, WC2R 3AA, England

Telephone: +44 20 3320 8888
Fax: +44 20 3320 8800
Emergency mobile: +44 7932 113573
E-mail: p&i.london@ctcplc.com
Website: www.standard-club.com

Please send any comments to the editor:
Michael Steer

E-mail: michael.steer@ctcplc.com
Telephone: +44 20 3320 8833

The information and commentary herein are not intended to amount to legal or technical advice to any person in general or about a specific case. Every effort is made to make them accurate and up to date. However, no responsibility is assumed for their accuracy nor for the views or opinions expressed, nor for any consequence of or reliance on them. You are advised to seek specific legal or technical advice from your usual advisers about any specific matter.

Charles Taylor Consulting is a leading global provider of management and consultancy services to insurers and insureds across a wide spectrum of industries and activities.



Follow us on Twitter
#StandardPandi



SHIPPING

THE SINGAPORE SHIP SALE FORM

The Singapore Ship Sale Form 2011 (“SSF”) was launched with much fanfare at the Singapore Maritime Foundation’s New Year Cocktail Reception 2011 on 6 January 2011. The SMF has been spear-heading the development of the SSF, the preparation of which has taken just under two years to complete.

The SSF – for use by those intending to sell/purchase second-hand tonnage – is the product of a drafting committee, consisting of luminaries from Singapore law firms, the English Bar, the local university and shipbrokers.

The SSF aims to set itself apart from existing saleforms, from providing a useful table on the first page that gives a bird’s-eye view of the entire transaction to peppering useful definitions throughout the Agreement; from providing that the Buyers can/should take photographs when physically inspecting the vessel¹, to acknowledging that some documents just cannot be ready until the delivery date²; from reminding parties that sufficient daylight hours are required for underwater inspection³ to specifying that header tanks are not to be considered designated storage tanks⁴.

Some discernible differences between the SSF and the commonly used Norwegian Sale Form 93 are set out below:

- > The guarantor (if one exists) can be made a party to the SSF, and a party can commence a single arbitration against the defaulting party and the guarantor⁵.
- > Under the SSF, the last chance that Buyers have to nominate their nominee is upon receipt of the 15-day notice by the Sellers of the estimated date of the vessel’s arrival at the Delivery Place. It is a formal requirement that an addendum records the terms of the nomination, the legal effect of which is expressed to be a novation⁶.
- > The Deposit must be deposited with a “value date” no later than that specified in Box 8(i) of the SSF⁷. The Buyers are nevertheless to be treated as having fulfilled their obligation to pay the Deposit⁸ although it might be received net of bank charges⁹.
- > It is Sellers’ responsibility to open a joint escrow account two banking days prior to the Value Date (at the latest) to hold the Deposit¹⁰.

1 Footnote 2 to Clause 3

2 Clause 5(b)

3 Line 86

4 Lines 140-141

5 Page 1 of the SSF; footnote 1 of page 1 of the SSF; Clause 15

6 Footnote 2 of page 1 of the SSF

7 Line 6

8 Lines 7-9

9 Clause 1

10 Lines 11-12

The Buyers are required to arrange for bank-to-bank confirmation from the remitting bank to the Sellers’ bank of the Buyers’ credentials and of the source of funds¹¹.

Where the Buyers have not paid the Deposit or provided the Clause 1 bank-to-bank transfer confirmation, it is expressly provided that the Sellers’ right to compensation is not an automatic right to what would have been the amount of the deposit¹².

The Purchase Price has to be paid for “same day value”¹³.

The SSF has tried to avoid the problem which arose in *The Aktor*¹⁴ by providing that the Deposit be released to the Sellers “as part of the Purchase Price”¹⁵.

The SSF expressly puts the burden of proof on the Buyers to show what the condition of the vessel was at the time of inspection¹⁶. “Physical Inspection” includes the taking of photographs¹⁷.

The choice of the port, anchorage or berth for the underwater inspection of the Vessel is made at the same time as the execution of the Agreement¹⁸.

Where defects discovered after an underwater inspection can be deferred to the vessel’s next scheduled drydocking as agreed by Class, the Buyers’ “sole remedy” is the payment by Sellers of the estimated cost of repair which is deducted from the Purchase Price. The Buyers and Sellers are to provide one quote each from the place of repair which is to be “in the delivery area”, and the average of those quotes will be taken in determining the estimated cost of repair¹⁹.

The vessel has to be delivered with all cargo spaces clean and free of cargo subject only to immovable residues²⁰.

The SSF provides that the Buyers can reject the vessel only if the difference in the vessel’s condition from the time of inspection until delivery would result in “a substantial impact

11 Lines 12-15

12 Clause 12(a)

13 Line 23

14 *PT Berlian Laju Tanker TBK v. Nuse Shipping Ltd (The Aktor)* [2008] 2 Lloyd’s Rep 246. See Ince & Co’s Shipping E-Brief 2008 for a commentary on this case.

15 Line 10

16 Line 61

17 Footnote 2 to Clause 3

18 Page 1 of the SSF; Line 82

19 Clause 6(a)(i)

20 Line 57

upon the Buyers’ ability to trade the Vessel”²¹, failing which the Buyers can only claim damages.

Sellers must provide the Buyers with 30, 15, seven and three days advance written notice of the estimated date and port of delivery of the vessel (the actual number of days is left open in the NSF93). Sellers are also to take reasonable steps not to hinder delivery by the date set out in the notice²².

Sellers can only tender Notice of Actual Readiness when the vessel is physically ready in accordance with Clause 4 for delivery and Sellers have ready all their documents required by Clause 8 (subject to certain provisos)²³.

An elaborate list of delivery documents is enumerated in Clause 8 of the SSF, and includes the content of the notarial certificate. Buyers are also to present documents at delivery.

Clause 8(d) codifies the common practice where Sellers and Buyers exchange drafts of their respective delivery documents for each other’s review and comments in advance of the closing meeting. Lines 214 and 215 require the parties to circulate executed versions of their documents in “strict conformity” to the drafts at least 3 days prior to delivery.

The SSF makes clear that it is a condition, and not merely a warranty, that the Vessel must be free from all “encumbrances..” at the time of delivery. A breach of a condition expressly entitles the Buyers to reject the vessel as opposed to being confined to a claim for damages only²⁴. However, even if writs are issued against the vessel, the Buyers are obliged to take delivery if security is provided.

Under NSF93, where the Sellers fail to give Notice of Readiness by the Cancelling Date or is not able to provide the delivery documents required, the NSF93 places the burden on the Buyers to prove that such failure has arisen from the Sellers’ negligence. The SSF, on the other hand, places the burden on the Sellers to show that their failure to tender Notice of Actual Readiness and have ready all their Clause 8 documents was caused by matters outside their reasonable control.

Clauses 12 and 13 clarify the onus of proof of proving loss and expense in relation to Buyers’ and Sellers’ default respectively.

Unlike NSF93, there is no express provision in the SSF that the Buyers’ representatives onboard the vessel are there at Buyers’ “sole risk and expense”²⁵.

21 Line 54

22 Clause 5(a)

23 Clause 5(b)

24 Clause 9(a)

25 NSF93 line 257

Parties can choose either Singapore or English law to govern the SSF, and the SSF provides for arbitration to take place in Singapore under the auspices of the Singapore Chamber of Maritime Arbitration. Parties are, however, free to choose other governing law and/or the arbitral rules of another institution²⁶.

Confidentiality and Entire Agreement clauses are found at Clauses 16 and 17 of the SSF.

It is understood that the main impetus for the development of the SSF is to make Singapore the default seat of arbitration in the event that disputes arise out of a sale and purchase transaction. Clause 15, described as the “prized marlin”²⁷, provides that any disputes are to be submitted to arbitration in Singapore in accordance with the Rules of the Singapore Chamber of Maritime Arbitration (“SCMA”). The SCMA was reconstituted in May 2009²⁸ and since then, 20 arbitrations have commenced under its auspices²⁹. Singapore is establishing itself as an arbitration hub for the region as most lately evidenced by the setting up of Maxwell Chambers³⁰ in the heart of Singapore’s business district to provide one-stop, best of class facilities and services for the conduct of alternative dispute resolution activities in Singapore. Time will tell whether the SSF will contribute towards the statistics of the SCMA.

The Singapore Maritime Foundation is to be commended for providing an alternative to NSF93 which is tailored towards Asian owners, and incorporates sensible practice and procedure. The sale and purchase of a ship is an extremely complex transaction and one that can give rise to many legal disputes. It remains to be seen whether the SSF can go some way to reducing such claims.



Tricia Tong
Executive Director
Incisive Law LLC
tricia.tong@incisivelaw.com



Paul Herring
Partner
Ince & Co
paul.herring@incelaw.com

26 Clause 15

27 The Business Times, Singapore, January 5, 2011, “Singapore has form on its side to battle London”

Ince & Co is an international commercial law firm which practises in seven broad strands:

Aviation Business & Finance Commercial Disputes Energy & Offshore Insurance & Reinsurance
International Trade Shipping

E: firstname.lastname@incelaw.com E: firstname.lastname@incisivelaw.com
24 Hour International Emergency Response Tel: + 44 (0)20 7283 6999

incelaw.com incisivelaw.com

Ince & Co Tel: +65 6538 6660 Incisive Law LLC Tel: +65 6505 0160

Dubai Hamburg Hong Kong Le Havre London Monaco Paris Piraeus Shanghai Singapore

LEGAL ADVICE TO BUSINESSES GLOBALLY FOR OVER 140 YEARS

The information and commentary herein do not and are not intended to amount to legal advice to any person on a specific matter. They are furnished for information purposes only and free of charge. Every reasonable effort is made to make them accurate and up to date but no responsibility for their accuracy or correctness, nor for any consequences of reliance on them, is assumed by the firm. Readers are firmly advised to obtain specific legal advice about any matter affecting them and are welcome to speak to their usual contact at the firm.

©Ince & Co 2012

THE SINGAPORE SHIP
SALE FORM
- A POSITIVE STEP FORWARD

The Singapore Maritime Foundation’s New Year Cocktail Reception held on 6 January 2011 saw the widely awaited launch of the new Singapore Ship Sale Form 2011 (SSF).

Designed as a viable alternative to the existing standard templates for the sale and purchase of second-hand ships, namely Norwegian Sale Form 1993 (NSF) and Nipponsale 1999, SSF has been drafted following a review of standard ship sale forms commissioned by the Singapore Maritime Foundation (SMF) and undertaken by the Centre for Maritime Studies of the National University of Singapore in conjunction with local and regional industry professionals and trade associations such as the Singapore Shipping Association and the Asian Shipowners’ Forum.

In view of Asia’s increasing dominance in world shipping and with about 50% of the world’s fleet now controlled directly or indirectly from the Asian region, SSF was conceived in response to the Singaporean and Asian maritime community’s call for an alternative sale form designed specifically with Asian shipping in mind (usage of Nipponsale 1999 being more limited to transactions involving one or more Japanese counterparts).

Given Singapore’s increasing role as a strategic centre for the Asian maritime industry and as the home to over 5,000 shipping companies and maritime ancillary service providers, it is perhaps natural that Singapore has

taken the lead in this process. It also evidences the desire of both the SMF and the Singapore government to further develop Singapore as a regional centre of maritime law and as the regional jurisdiction of choice for the arbitration of maritime disputes.

In terms of the new SSF itself, its authors have sought to better balance the interests of both the buyers and the sellers and have in addition, attempted to address lessons learned from recent ship sale and purchase practices and to standardise provisions which are frequent points of negotiation in both NSF and Nipponsale 1999, including:

Guarantor

- provision for each party to have a guarantor

Nominee

- provision for buyers to nominate an alternative buyer prior to delivery

Deposit

- duty imposed on seller to open joint escrow account in nominated bank within a specified time
- provision that the 10% deposit be held in a joint escrow account and that parties comply with latest banking rules re: anti-money laundering laws and “know your client” requirements
- deduction of bank remittance charges from amount of deposit is contractually accepted by seller
- deposit must be deposited with a “value date”
- deposit will be released to seller as part of the purchase price
- buyer to arrange bank-to-bank confirmation from remitting bank

Payment

- purchase price must be paid “for same day value”
- liquidated damages for the seller in certain situations where buyer fails to take delivery of the vessel
- written notice includes modern means of communication like email

Notices

- new NOR concept of “physical” and “legal” readiness
- gives buyers a right to delay delivery for up to 7 days after service of NOR upon written notice and payment of agreed day rate
- standardises the number of notices to be given and interval between each
- duty to give written notices not limited to time and place of expected delivery and extends to vessel’s itinerary
- seller under positive duty to take reasonable steps not to hinder delivery by dates given in notices
- clause 5(c) additional wording that “sellers incur no liability” under the agreement

Inspection

- seeks to clarify buyers’ inspection rights

Delivery

- new condition of delivery wording

Documentation

- extended list of documentation to be provided by parties at completion

Encumbrances

- broadened “freedom of encumbrances” clause

Arbitration

- pro-Asia arbitration provisions.

Whilst the basic format of SSF will be broadly familiar to those who have used NSF or Nipponsale 1999 before, as with any legal contract, the “devil is in the detail” and the precise wording of many clauses will no doubt be fiercely negotiated. Taking legal advice at an early stage in negotiations is therefore advisable.

Perhaps in response to the development of SSF, the Norwegian Shipbrokers’ Association have instructed BIMCO to carry out a review of NSF with a view to consider those issues which most need addressing in the current contract in order to bring it up to date with current law and practice. A drafting committee has been established and an industry consultation was held in Singapore in the last quarter of 2011. We believe the Japan Shipping Exchange is keeping a close eye on developments and may, in due course, consider revising Nipponsale 1999.

Does SSF signal the death knell for NSF or Nipponsale 1999 in Asia? SSF takes a positive step in addressing some of the commercial issues that arise time and time again in the negotiation of these agreements, and addresses some of the ambiguities in the provisions of the existing forms. Whether SSF overtakes NSF or Nipponsale 1999 as the sale form of choice in the future remains to be seen and will depend on the content of any revised editions of NSF or Nipponsale 1999 and on market take-up of SSF by shipowners and importantly, by the shipbroking community in Asia and beyond. Our bet is the SSF will rapidly gain traction in the marketplace!

Clara Tan
Florence Ong

ACKNOWLEDGEMENT AND CONTACT US

The Singapore Maritime Foundation would like to thank our partners for their kind support during the production of this publication. While every care and effort has been made to ensure the accuracy of the publication, any error or omission is regretted.

Our heartfelt thanks to the following individuals and organisations:

Mrs Gina Lee-Wan, Partner, Allen & Gledhill LLP

Mr Henry C. Mytton-Mills, Managing Director, Aries Shipbroking (Asia) Pte Ltd

Mr Yuichi Sonoda, Secretary General, Asian Shipowners' Forum

Mr Chan Leng Sun, Principal, Baker & McKenzie Wong & Leow, Singapore

Ms Samantha Lee, Claims Director, Charles Taylor Mutual Management (Asia) Pte Ltd

Mr Christopher Lau, Senior Counsel, Chartered Arbitrator, Christopher Lau SC (Singapore)

Prof Bernard Tan, Director, Centre for Maritime Studies, National University of Singapore

Ms Ticy Velluvel Thomas, Research Associate, Centre for Maritime Studies, National University of Singapore

Tan Sri Frank Tsao, Founder & Senior Chairman, IMC Group

Mr Paul Herring, Partner, Ince & Co

Ms Tricia Tong, Executive Director, Incisive Law LLC

Dato' Jude P. Benny, Managing Partner, Joseph Tan Jude Benny LLP

Mr Cedric Foo, Group Deputy President and Chief Financial Officer, Neptune Orient Lines Ltd

Mr S.S. Teo, Managing Director, Pacific International Lines (Pte) Ltd

Ms Clara Tan, Director, Pan Asia Wikborg Rein LLC, Singapore

Mr Daniel Tan, Executive Director, Singapore Shipping Association

Ms Marianne Choo, General Manager, Singapore Shipping Association

Avv. Filippo Lorenzon, Director, Institute of Maritime Law, Senior Lecturer in Maritime and Commercial Law, University of Southampton

Mr Charles Debattista, Arbitrator and Associate Member, Stone Chambers, London, Middle Temple, Formerly Professor of Commercial Law, University of Southampton

Mr Daniel Saunders, Solicitor, Watson, Farley & Williams LLP

Ms Florence Ong, Partner, Wikborg Rein, Singapore

Mr Johnson W Sutjipto, Former Chairman, Indonesian National Shipowners' Association (INSA) and Asian Shipowners' Forum (ASF)

To find out more about the Singapore Ship Sale Form (SSF), please visit www.singforms.com.

You can also email singforms@sgmf.com.sg or contact us at **+65 6325 0225**.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the written permission of the publisher. All rights reserved.

Published by

Singapore Maritime Foundation
120 Cantonment Road
#02-01 Maritime House
Singapore 089760