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# Centre for Maritime Studies Academic Paper Series

Paper Number: CMS-2010-2

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## Singapore Ship Sale Form: An Overview

Ticy Veluvell Thomas<sup>a</sup>, B.T.G Tan<sup>a</sup>

<sup>a</sup>*Centre for Maritime Studies, National University of Singapore, Singapore*

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### 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

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### 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.<sup>i</sup>

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 account<sup>ii</sup> 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.<sup>iii</sup> 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*<sup>iv</sup> 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*.<sup>v</sup>

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.<sup>vi</sup> 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.<sup>vii</sup> 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) 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);
- (b) 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)<sup>viii</sup> 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*,<sup>x</sup> 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.<sup>x</sup> 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*<sup>xi</sup> 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.<sup>xii</sup>

#### **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<sup>xiii</sup> (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 undergone 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\\_3403\\_2073\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_3403_2073_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