

Opening Remarks for SCMA-SAL Mock Arbitration on 23 September 2019 delivered by Justice Belinda Ang Saw Ean

Ladies and gentlemen, a good afternoon.

Thank you SCMA and SAL for the opportunity to speak this afternoon.

Shipping is the lifeblood of the global economy given its importance in the bulk transport of raw materials, import and export of affordable goods and manufactured goods. Many years ago, someone said to me that it is foolish to think of shipping as a sunset industry. Where did the loaf of bread you had for breakfast come from? We have to look beyond the bakery round the corner to the flour mills to the wheat farms. How did the wheat farms in Australia send the wheat to the flour mills in Sri Lanka and how did the flour mills export the flour in bags overseas? There are other ingredients to be added to baking bread. These ingredients have to be transported by sea to various parts of the world. I have truncated the whole transportation and logistics flow but I believe you have a fair idea of where I'm coming from.

We must remember that Singapore had its beginnings as a port and our Government took a conscious decision to establish Singapore as a maritime hub by attracting key players from all sectors of the maritime industry to situate themselves in Singapore. Current US-China trade tensions have already hurt confidence worldwide, and Singapore's economy and growth as a city state port will be affected. Yet, our Prime Minister, Mr Lee Hsien Loong, in his recent National Day Rally 2019 announced with measured confidence that Singapore's mega port in Tuas will start operating in 2021 and by the 2040's will be fully operational. By then, the Tuas port is expected to handle some 64 million 20 ft equivalent units of cargo a year compared to the current 30 million TEUs handled by the Pasir Panjang port.

How does Singapore continue to strive to maintain and enhance its standing as a world class city state port? Here are some examples. In 2011, we developed and published our own Singapore Ship Sale Form to cater to the needs of the Asian maritime community. Then in 2012, the Baltic and International Maritime Council ("BIMCO") recognised Singapore as one of the three official seats of arbitration to represent Asia alongside London and New York. In 2015, the New York Produce Exchange ("NYPE") form which is the norm for time chartering dry bulk vessels was substantially revised to align it to current industry practices and recent

legal changes. In particular, Clause 54 on Law & Arbitration allows a choice of US law and New York arbitration; English law and London LMAA Terms arbitration; or Singapore or English law and SCMA arbitration. US law and New York arbitration apply in the absence of an express choice and English law applies to a Singapore arbitration unless Singapore law is expressly chosen.

The Singapore War Risks Mutual, a class within The Standard Club Asia Ltd, was also established in 2015, allowing shipowners and managers in Singapore as well as ships registered in Singapore greater control over war risks insurance cover and prices.¹ Its establishment also increases Singapore's insurance expertise and enhances our reputation as a leading global maritime cluster, qualities which go towards our standing as a leading maritime capital. The Singapore War Risks Mutual has achieved considerable momentum and support from notable local and international owners in its nascent years and as of the first half of 2019, had over 750 ships on risk.

This year, Singapore again bagged the top spot in the Leading Maritime Capitals of the World 2019 report released biennially by Menon Economics and DNV GL, a spot it has maintained since 2012.² The report aims to provide insights as to which maritime capitals provide the best support in terms of soft and hard infrastructure and world-class talent which allow maritime businesses and people to connect and thrive. The report evaluates and ranks the relevant cities in each of the following areas in order to benchmark the overall rankings: shipping centre, ports and logistics services, attractiveness and competitiveness, maritime finance and law and maritime technology.³ Each city's ranking in each area is then assessed based on criteria specific to that area – for example, when evaluating a city's ranking within the maritime finance and law sector, the report looks at, among others, the aggregate market value and number of listed companies in that city, shipping finance book running activity out of that city, legal experts and knowledge centres within the city and that city's market place for insurance coverage. For this sector in particular, the report recognized the Singapore Maritime Foundation's efforts to develop the Singapore Ship Sale Form and the development of a

¹ <https://www.asiainsurancereview.com/Magazine/ReadMagazineArticle?aid=36497> (accessed 17 July 2019).

² By DNV GL and Menon Economics, "Singapore tops list of leading maritime capitals for fourth time" *The Straits Times* (11 April 2019) <<https://www.straitstimes.com/singapore/transport/singapore-tops-list-of-leading-maritime-capitals-for-fourth-time>> (accessed 30 July 2019).

³ <https://www.menon.no/wp-content/uploads/Press-release-April-2019.pdf>

modern charterparty form together with BIMCO, as well as our efforts to increase our marine insurance activities which resulted in us achieving an overall third for the marine insurance indicator.

Thus, Singapore's gradual ascent into a leading maritime hub can also be attributed to our investment in developing maritime law and the dispute resolution landscape locally, with bodies such as the SCMA. According to the White & Case and Queen Mary University of London's International Arbitration Survey in 2018 ("QMU Survey"), Singapore and the Singapore International Arbitration Centre were ranked as the third most preferred arbitration seat and arbitral institution in the world respectively, and first in Asia. Our International Arbitration Act is undergoing further amendment, to amongst other things, introduce a new default mode in the appointment of arbitrators in multi-party situations commonly found in shipping arbitrations. Last month we saw the fanfare surrounding the launch of Maxwell Chambers Suites and the Singapore Convention on Mediation which has an encouraging 46 signatories,⁴ including important trading partners like China and the US.

Yet, the reality is that for a long time, not many young lawyers have been interested in the practice area of shipping. This impacts Singapore's ability to continue to provide competent maritime legal services and the development of maritime law in the future. While Singapore may have overall emerged as the Leading Maritime Capital, she lost out to London in maritime finance and law, as London is home to Lloyd's and English law is the most widely used in shipping disputes. This dearth of legal talent will further impact Singapore's competitiveness as a maritime hub. Shipping law is intellectually rigorous and it is no coincidence that many of the developments in law have emanated from shipping cases which form the backbone of contract law (*The Hong Kong Fir*, *The Moorcock*), tort (*The Aliakmon*, *The Wagon Mound*) and conflicts (*Spiliada Maritime Corporation*). In Singapore, there is *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd* [2018] 2 SLR 588 ("*NTUC Foodfare*") where the Court of Appeal rejected *The Aliakmon* and held that the legal requirement of proving ownership of or a possessory interest to the cargo in order to bring a claim in negligence for loss flowing from the damage no longer applies in Singapore. The principle in *NTUC Foodfare* was applied in a recent shipping case *Wilmar Trading Pte Ltd v Heroic Warrior Inc* [2019] SGHC 143. In that case, risk had passed to the buyer but proprietary interest in the cargo

<https://www.straitstimes.com/singapore/key-facts-about-the-singapore-convention-on-mediation>

remained with the seller. Nonetheless, the claimant buyer could pursue a claim in respect of pure economic loss as a matter of Singapore law.

Shipping lawyers are specialists who have to navigate through a maze of different conventions, laws and regulations which apply to different areas of shipping work as well as keep abreast of legislation relating to the different forms of transport and different aspects of maritime law, for example, oil pollution, limitation, salvage, etc. There is also the need to familiarize with a wide range of contractual documentation relating to the carriage of goods, the charter of vessels, banking and insurance and of course, the technical understanding of the workings of a vessel and packing of cargo comes in handy.

In 2017, Chief Justice Sundaresh Menon launched SAL's Specialist Accreditation Scheme, to accredit and recognise lawyers who have proven themselves in their area of practice.⁵ There is currently a directory of specialists from Shipping and Maritime as well as Building and Construction law. It is hoped that through this accreditation, young legal practitioners will be encouraged to pursue a career in maritime law. This accreditation will also promote continued development and improvement of standards, quality and delivery of legal services, thus providing the public with a reliable means of identifying and accessing legal practitioners who have proven themselves as possessing the requisite skills and knowledge in a practice area.⁶

The shipping fraternity does its part to encourage and generate interest in this traditional yet very relevant and important area of legal practice. One example is the International Maritime Law Arbitration Moots which is open to law students worldwide. Now into its twentieth year, this has been a very successful annual competition which rotates its venue among Europe, Asia and Australia and is well supported by shipping academics and sponsors from the marine industry and shipping law firms. This competition attracts a large number of universities from all over the world and students argue their case before a tribunal made up of experienced maritime arbitrators, members of the maritime industry as well as commercial and maritime lawyers. SMU will host next year's competition. I recently met a young Singaporean lawyer who reminded me that he had participated in the IMLA Moot competition held in HK. I was one of three sitting judges invited to judge the moot finals. Although this young man's moot

⁵ <https://www.channelnewsasia.com/news/singapore/new-accreditation-scheme-for-singapore-lawyers-7546710>

⁶ <https://www.sal.org.sg/Services/Appointments/Specialist-Accreditation/Overview>

team lost at one of the earlier rounds, the competition piqued his interest and he is now practising shipping law in one of our local law firms.

I am confident that like the IMLA Moots, the SCMA Moots will play an important part in encouraging young lawyers to pursue a career in maritime law. With that, enjoy this moot competition and I hope you appreciate the benefits of these forms of dispute resolution over traditional litigation.
