

Specialist Accreditation Scheme

Maritime and Shipping Law 2017

Recommendations from the Specialist Accreditation Scheme, Maritime and Shipping Law Subcommittee on the specialist accreditation framework for Singapore Maritime and Shipping legal practitioners.

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1. Background

- 1.1. In his Opening of Legal Year 2017 response, Chief Justice Sundaresh Menon highlighted certain practice areas that may be added to the Singapore Academy of Law's Specialist Accreditation Scheme, one of which being Maritime and Shipping ("M&S").
- 1.2. Judge of Appeal Steven Chong ("Chong JA") was tasked to formulate the specialist accreditation framework for Singapore legal practitioners in this field.

A brief overview of the M&S industry and impending opportunities for the legal sector

- 1.3. The M&S industry has been facing challenging times in the face of weak global demands as a result of stagnating Chinese and US economies and the fall in oil and commodity prices. Bankruptcies and M&As are at unprecedented levels, such as the demise of former stalwarts Hanjin Shipping Company, Rickmers Maritime and Swiber Holdings, and the buyout of Neptune Orient Lines by CMA CGM, and symptomatic of the uncertainties plaguing global trade.¹
- 1.4. While the current economic slowdown may hit shipping hard, this presents growth opportunities. The One Belt, One Road ("OBOR") and the Partnership for Quality Infrastructure initiatives and the expanded Suez Canal and Panama Canal, in tandem with the fourth industrial revolution and e-commerce demands, will invigorate shipping and logistics networks.²
- 1.5. The impending growth opportunities can be translated into greater demand for legal services. While maritime restructuring and insolvency work has increased in the past year, legal practitioners can look forward to advising shipping firms looking to establish networks overseas, for example, PSA International's acquisition of Hong Kong-based Lucky Glory International to establish a foothold in China's rail container network.³
- 1.6. The OBOR initiative will see China's demand for raw materials prop up incomes of shipping firms as transporting goods by sea is still the cheaper option. E-commerce giants Alibaba and Amazon are rewriting the rules of freight forwarding by establishing inhouse shipping and logistics operations and partnerships with shipping lines.⁴ Legal practitioners will need to calibrate their expertise and services to meet the demands from new and existing clients.
- 1.7. Beyond the potential for greater seaborne trade, legal practitioners can look forward to more advisory work with the adoption of regulatory frameworks such as the International Convention for the Safety of Life at Sea amendments,⁵ which contribute to the stability and safety of ships and reducing the risk of maritime disasters,⁶ the IMO's International Convention for the Control

¹ Jacqueline Woo, "2016: A year of tumult for shipping", The Straits Times, 20 December 2016 <<http://www.straitstimes.com/business/companies-markets/2016-a-year-of-tumult-for-shipping>> (accessed 7 September 2017).

² UNCTAD, "Review of Maritime Transport 2016" at p x <http://unctad.org/en/PublicationsLibrary/rmt2016_en.pdf> (accessed 7 September 2017).

³ Jacqueline Woo, "PSA invests in China's rail container network", The Straits Times, 13 October 2016 <<http://www.straitstimes.com/business/psa-invests-in-chinas-rail-container-network>> (accessed 7 September 2017).

⁴ Calvin Hui, "Rough seas for Singapore shipping: What it will take to ride out the waves", Channel NewsAsia, 29 December 2016 <<http://www.channelnewsasia.com/news/business/rough-seas-for-singapore-shipping-what-it-will-take-to-ride-out-7656816>> (accessed 7 September 2017); Jacqueline Woo, "Staying afloat as industry changes", The Straits Times, 26 April 2017 <<http://www.straitstimes.com/business/companies-markets/singapore-maritime-week-staying-afloat-as-industry-changes>> (accessed 7 September 2017).

⁵ Effective 1 July 2016.

⁶ UNCTAD, "Review of Maritime Transport 2016" at p xi <http://unctad.org/en/PublicationsLibrary/rmt2016_en.pdf> (accessed 7 September 2017).

and Management of Ships' Ballast Water and Sediments,⁷ to "prevent, minimize and ultimately eliminate" the introduction and transfer of harmful aquatic organisms and pathogens from one region to another,⁸ and obligations under the International Convention for the Prevention of Pollution from Ships.⁹

- 1.8. The accreditation of highly skilled lawyers as specialists will boost Singapore's standing as a leading International Maritime Centre to complement specialist judges and a robust legal system.

2. Recommendations

Working committee

- 2.1 A working committee,¹⁰ headed by Chong JA, was set up to obtain general feedback as to whether accrediting M&S legal practitioners would be beneficial to the profession.
- 2.2 The working committee met in April 2017 and the following conclusions were made:
 - a. The Scheme is designed to recognise and encourage specialisation and to give legal practitioners something to aspire to aside from Senior Counsel.
 - b. While the bulk of M&S clients are able to source for legal practitioners for sound legal advice, the Scheme would serve to enlighten sections of the public unfamiliar with the M&S professional legal terrain on who they could engage.
 - c. The working committee identified practitioners who could serve on the subcommittee comprising personnel from the legal profession – one of whom should be a young practitioner, shipping and insurance representatives and academia, with a mix of local and foreign practitioners from various commercial M&S entities.

Subcommittee

- 2.3 The subcommittee for M&S law, chaired by Chong JA, was constituted to study, discuss and recommend a specialist accreditation framework for this practice area.
- 2.4 Before reaching its recommendations, the subcommittee studied other M&S accreditations, specifically California and Florida.¹¹
- 2.5 The subcommittee met twice before agreement was reached on the recommendations.
- 2.6 There was much discussion where reaccreditation of Senior Accredited Specialists was concerned, in that the billable hours/amounts criteria may discourage them from referring matters to junior lawyers which would in turn adversely impact on grooming succession in the M&S practice area.
- 2.7 The subcommittee has recommended that the criteria for reaccreditation of Senior Accredited Specialists should be a combination of their billables plus their contributions to continuing legal

⁷ Effective 8 September 2017.

⁸ UNCTAD, "Review of Maritime Transport 2016" at p xi <http://unctad.org/en/PublicationsLibrary/rmt2016_en.pdf> (accessed 7 September 2017).

⁹ For example, the IMO's decision to implement a global sulphur limit of 0.50% m/m by 2020 which will push Singapore to bunker liquified natural gas to ships.

¹⁰ See Appendix A.

¹¹ See Appendix B.

education which may include delivering conference papers, teaching or tutoring and developing and grooming succession within the firm.

2.8 The following are the subcommittee's summarised recommendations:

- a. **Accreditation framework.** The M&S Law specialist accreditation scheme should, in most part, follow that of Building & Construction ("B&C"),¹² as much legwork has already been done and differing from it may result in confusion within the profession and scepticism as to purpose of adopting different standards for each practice area.
- b. **Reaccreditation of Senior Accredited Specialists.** The subcommittee was of the opinion that Senior Accredited Specialists should focus more on thought leadership and professional development rather than practice as seniors should delegate work to the juniors to give the latter more practice opportunities to hone their skills in that area. It is here that the recommended criteria for reaccreditation of M&S Senior Accredited Specialists differ from that of the B&C framework.¹³
- c. **Examination.** The subcommittee has also recommended topics¹⁴ that should be examined, with a complementary examination preparatory course to prepare candidates.

3. Moving Forward

3.1 If the recommendations are accepted, the subcommittee suggests to proceed as follows.

Timelines

3.2 The following is the tentative schedule for the M&S law specialist accreditation programme for 2018:

Date	Event
Beginning January	Accredited Specialist applications open at OLY 2018
14 February	Information evening
31 March	Accredited Specialist applications close 5pm
30 April	Accredited Specialist candidature confirmed
1 May	Exam preparatory course registration opens Exam registration opens
1 July	Senior Accredited Specialist applications open
7 July	Exam preparatory course registration closes
13, 14 July	Exam preparatory course
20, 21 July	Exam preparatory course
27, 28 July	Exam preparatory course

¹² See Appendix C. Specialist accreditation framework for Singapore Maritime and Shipping legal practitioners

¹³ See Appendix C. Specialist accreditation framework for Singapore Maritime and Shipping legal practitioners

¹⁴ See Appendix D. Examinations

26 July	Exam registration closes
25 August	Examination
31 August	Senior Accredited Specialist applications close 5pm
30 September	Senior Accredited Specialist candidature confirmed
October	Selection panel interviews for all candidates
December/January	Results released to all candidates

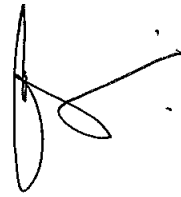
***Pro tempore* selection panel**

- 3.3 As with the B&C scheme, a *pro tempore* selection panel (“panel”) will be constituted for the first year that the M&S programme is offered under the Scheme.
- 3.4 The panel will be responsible for reviewing applications from legal practitioners, interviewing all candidates and recommending to the Specialist Accreditation Board (“SAB”) candidates who should be accredited.
- 3.5 This panel will comprise of non-legal practitioners to avoid conflicts of interest.

4. Conclusion

- 4.1. The subcommittee would like to thank the SAB for the opportunity to present its recommendations and will be happy to consider any comments or suggestions that the SAB may have.

Maritime and Shipping Law Subcommittee



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Supreme Court of Singapore



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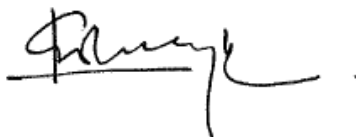
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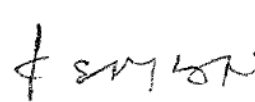
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Appendix A. Working committee

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Appendix B. Specialist accreditation schemes in M&S law in other jurisdictions

California*

Pre-accreditation criteria	Accreditation	Reaccreditation criteria
<ul style="list-style-type: none"> • At least 5 years' PQE • Immediate 5 years prior to application: <ul style="list-style-type: none"> - substantial involvement based on tasks performed: <ul style="list-style-type: none"> ◦ tasks are allotted points[†] ◦ applicant must accumulate 300 points in the prior 5 years to application - at least 45 hours of legal specialist education (CLE) in the 3 years prior to application or LLM in maritime law within 5 years prior to application • 3 favourable references • Clean disciplinary record • Pass an exam (exempted if more task-related points have been accumulated + performance of certain CLE activities[‡]) • Informal conference (interview) if concerns raised as regards the application 	<p>Designation: "Certified by The State Bar of California Board of Legal Specialization"</p> <p>Valid for 5 years</p>	<ul style="list-style-type: none"> • Same substantial involvement as pre-accreditation criteria • At least 60 hours of legal specialist approved education or an LLM in maritime law

*The certification programme is in Admiralty and Maritime Law.

[†]Examples of tasks and their allotted points:

- Serve as principal attorney in a potentially dispositive hearing, arbitration or a trial that determines: Legal liability for the loss of or damage to cargo transported under an ocean bill of lading: 25 points per matter; max 75 points
- Preparing and drafting a brief, contract, pleading or other legal document or report: Providing substantive written legal advice or analysis to a client: 5 points per matter; max 45 points
- Acting as principal attorney in any of the following vessel transactions: Representing a shipowner or charterer in negotiation and drafting a charter party: 15 points per matter; max 45 points
- Other tasks: Acting as a judge, arbitrator, special master or mediator in any litigation or formal mediation: 15 points per mediation; max 90 points

[‡]Examples:

- Authored articles of a certain length published in a journal, law review, maritime trade publication or similar with a circulation of at least 250
- Authored or co-authored a chapter of a certain length in a book
- Presented on at least two occasions for at least 4 hours in total of approved CLE OR presented before maritime industry or trade organisations for a total of not less than eight hours
- Taught a two/three-unit class at least twice at an accredited institution of higher education

Florida*

Pre-accreditation criteria	Accreditation	Reaccreditation criteria
<ul style="list-style-type: none"> • At least 5 years' PQE or 4 years with LLM in admiralty law or related field • Immediate 3 years prior to application: <ul style="list-style-type: none"> - substantial involvement based on: <ul style="list-style-type: none"> ◦ at least 35% of practice dedicated to the specialisation (receipt of LLM may substitute 1 year of substantial involvement) - at least 50 hours of legal specialist education • 5 favourable references[†] • Clean disciplinary record • Pass an exam 	<p>Designation: "Board Certified Admiralty and Maritime Lawyer"</p> <p>Valid for 5 years</p>	<ul style="list-style-type: none"> • At least 35% of practice dedicated to the specialisation • At least 55 hours of legal specialist approved education • 3 favourable references • Pass an exam if applicant does not meet the standards for admiralty law recertification

*The certification programme is in Admiralty and Maritime Law.

†Two of which must be from certified specialists in the specialisation.

Appendix C. Specialist accreditation framework for Singapore Maritime and Shipping legal practitioners

Accreditation

- C.1 As with the B&C specialist accreditation framework, applicants must satisfy the following baseline eligibility criteria:
- a. Admitted to the Singapore Bar as an Advocate and Solicitor of the Supreme Court of Singapore
 - b. Hold a currently valid practising certificate
 - c. Have a minimum full-time post-qualification experience (PQE)
 - d. Have not been subject to professional disciplinary proceedings or charged and convicted of a serious crime
 - e. Have been substantially involved in the full-time practice of M&S law
 - f. Have been engaged in continuing professional development (CPD) in this area of practice
 - g. Provide favourable reference statements
 - h. Successfully completed an assessment programme comprising an examination and/or a selection panel interview

Accredited Specialist

- C.2 **Post-qualification experience.** Legal practitioners have at least **5 years** of full-time PQE.
- C.3 **Substantial involvement.** Applicants must show that, in the immediate 3 years prior to application, they have been engaged in full-time practice in M&S law by having dedicated a **minimum billable amount of S\$200,000 or 450 billable hours** a year to the said area of practice.
- C.4 **Continuing professional development.** In the immediate 3 years prior to application, applicants must have accumulated at least **6 public and/or private CPD points** a year in this specialisation.
- C.5 **References.** Applicants shall be required to submit two favourable reference statements from M&S legal practitioners, in-house counsel, arbitrators or adjudicators who can attest to the applicants' involvement and competence in the specialisation, and character.
- C.6 **Examination.** Candidates must sit for and pass an open-book examination which shall test their knowledge on all aspects of M&S law and processes.
- C.7 **Selection panel interview.** Candidates, who achieve a satisfactory examination grade, are required to undergo a selection panel interview.

Senior Accredited Specialist

- C.8 **Post-qualification experience (PQE).** Legal practitioners with at least **10 years** of full-time PQE.
- C.9 **Substantial involvement.** Applicants must show that, in the immediate 5 years prior to application, they have been engaged in full-time practice in M&S law by having dedicated a **minimum billable amount of S\$500,000 or 600 billable hours** a year to the said practice area.

- C.10 **Continuing professional development (CPD).** In the immediate 5 years prior to application, applicants must have accumulated at least **6 public and/or private CPD points** a year in this specialisation.
- C.11 **References.** Applicants shall be required to submit two favourable reference statements from M&S legal practitioners, in-house counsel or adjudicators who can attest to the applicants' involvement and competence in the specialisation, and character.
- C.12 **Selection panel interview.** Candidates are required to undergo a selection panel interview.
- C.13 Candidates who are accredited may include the following post-nominals:
Acc. Spec. (Maritime & Shipping), Singapore Academy of Law
or
Snr. Acc. Spec. (Maritime & Shipping), Singapore Academy of Law
- C.14 The validity of specialist accreditation for M&S law is two years, after which specialists must apply for reaccreditation.

Reaccreditation

Accredited Specialist

- C.15 Applicants must show that, in the 2 years as specialists, they have been engaged in full-time practice in M&S law by having dedicated a minimum billable amount of **S\$200,000** or **450 billable hours** plus **6 public and/or private CPD points** a year, with the possibility of a panel interview if required.

Senior Accredited Specialist

- C.16 **Substantial involvement.** Specialists must declare the same billable hours/amounts as Accredited Specialists, ie, **S\$200,000** or **450 billable hours** a year in the specialisation.
- C.17 **Continuing professional development.** Because specialists are not required to maintain their substantial involvement at the same level prior to accreditation and focus is on CLE, they must have accumulated at least 10 public and/or private CPD points a year in the specialised area where at least one of the following activities must be undertaken per year:
- presented a paper for at least 1 hour at a conference, seminar or workshop pertaining to topics on M&S law
 - taught a class for at least 1 hour on M&S law at an institution of higher learning
 - served as a member on at least two panels that discussed topics relating to M&S law
 - served on a committee of a government, professional and/or industry organisation for a term of at least 3 months or an accumulation thereof whose aim is to promote thought leadership in M&S law
 - authored or co-authored an article in M&S law for a journal, law review, maritime trade publication or similar periodical
 - authored or co-authored a chapter relating to M&S law in a book, treatise or similar publication

Content of the papers, class syllabi, panel discussions, articles and chapters must be submitted to the selection panel for review.

C.18 **Panel interview.** If the selection panel deems it necessary, specialists may be required to attend a panel interview.

Appendix D. Examinations

- D.1 Candidates who have applied to be Accredited Specialists must sit for an examination. The examination may be conducted on the last Saturday of August.
- D.2 They will be examined on the following topics:

Module 1. International Sale of Goods and Finance

- a. Domestic sales (Sale of Goods Act 1979, cap 393) and international sales framework (INCOTERMS)
- b. Terms / implied terms (quality; fitness; description; quantity)
- c. f.o.b. contracts: nature; readiness to load; port of shipment; shipment; rejection of documents and goods
- d. c.i.f. contracts: nature; declaration of shipment/appropriation; tender of documents (bills of lading / insurance documents; arrival of the ship; rejection of documents and goods)
- e. passing of property: timing of transfer; duty to transfer
- f. transfer of risk: loss after acceptance of documents; after tender of documents before acceptance; loss after contract and shipment and before tender of documents; loss after shipment but before contract
- g. trade financing: cash against documents; letters of credit (outline); presentation and documentary compliance
- h. Example Standard Forms: GAFTA 100 (c.i.f.); FOSFA 53 (f.o.b.); SCoTA

Module 2. Carriage of Goods by Sea

- a. Functions of carriage documents (1): receipt
- b. Functions of carriage documents (2): evidence
- c. Functions of carriage documents (3): document of title (the Bills of Lading Act 1992, cap 384)
- d. Functions of carriage documents (4): electronic bills of lading
- e. Delivery obligation
- f. Terms of carriage (1): actual/performing carriers; express/implied terms
- g. Terms of carriage (2) Hague (and Hague-Visby) Rules (the Carriage of Goods by Sea Act 1972, cap 33)
- h. Incorporation of charterparty terms
- i. Documents of carriage in the hands of the charterer
- j. Freight: advance and lump sum freight; payment of freight
- k. Multimodal and intermodal contracts: legal role of freight forwarders; other unimodal law; multimodal contracts
- l. Example Standard Forms: Conlinebill; Congenbill

Module 3. Charterparties

- a. Charterparties overview: voyage and time; hybrids (consecutive voyage, time trip); slot; offshore; COAs
- b. Voyage charterparties (1): preliminary voyage; loading voyage; loading operation; the carrying voyage; discharging operation
- c. Voyage charterparties (2): principles of laytime and demurrage
- d. Time charterparties (1): description and condition of the vessel; delivery; period of hire; payment for hire; off-hire
- e. Time charterparties (2): deductions from hire; withdrawal for non-payment; employment and agency; contractual liens; redelivery
- f. Bareboat/demise charterparties

- g. Pooling arrangements and conference lines
- h. Example Standard Forms: Gencon 1994, NYPE 1946/93/2015; Barecon 2001

Module 4. Marine Insurance

- a. Marine Insurance Act 1906, cap 387/ (UK) Insurance Act 2015
- b. Types of policies: valued; unvalued; voyage; time; formation
- c. Disclosure (utmost good faith): pre/post-contractual
- d. Warranties: express and implied
- e. Marine perils: hull / cargo
- f. War risks
- g. Proximate cause
- h. P & I insurance: nature; calls and Club cover; International Group
- i. Losses: actual total loss; constructive total loss; partial loss
- j. Averting and minimizing loss: sue and labour expenses; general average; salvage
- k. Example Standard Forms: Institute Time Clauses Hulls (01/11/95); Institute Voyage Clauses Hulls (01/11/95); Institute Voyage Clauses Freight (01/11/95); Institute Cargo Clauses 2009 (A) (B) (C)

Module 5. Ship Sale and Purchase

- a. The nature of the market: S & P / newbuilds (overview)
- b. Underlying legal principles: contract; sale of goods; joint venture (overview)
- c. Newbuild market and contracts: contract price; payment; trials; delivery; default; remedies; shipbuilding contracts and refund guarantees
- d. S & P market and contracts: description; purchase price and payment; inspections; documentation; encumbrances; condition on delivery; default
- e. Ship registration: function/flag; types of ship registers
- f. The Singapore Registry of Ships (SRS): eligibility; types of registration; ownership; contents of register; certificate of registry
- g. Ship management: overview; types of services; responsibility and liability
- h. Example Standard Forms: SAJ form; Saleform 2012; SSF 2011

Module 6. Ship Finance

- a. Equity finance / joint ventures
- b. Debt finance and the bond market
- c. Financing (1): secured lending; leasing; sale & leaseback
- d. Financing (2): ship finance documents: term sheet; loan agreements (syndication and bilateral); security documents
- e. Loan facility: loan; repayment and prepayment; representations and warranties; default; indemnity; vessel covenants and related defaults
- f. Security interests: ship mortgages (Merchant Shipping Act 1995, cap 179, Part II); charges; pledge; lien

Module 7. Admiralty Claims

- a. High Court (Admiralty Jurisdiction) Act, cap 123; Rules of Court, Order 70 (Admiralty Proceedings); Order 18 Rule 19; Order 29; Supreme Court Practice Directions, Part XVI
- b. Nature of maritime claims: claims in rem and in personam
- c. Maritime and possessory liens
- d. Limitations on the exercise of admiralty jurisdiction (1): insolvency (Companies Act, cap 50, Part X)

- e. Limitations on the exercise of admiralty jurisdiction (2): sovereign immunity Government Proceedings Act 1947, cap 121; State Immunity Act 1978, cap 313
- f. Enforcement of claims (1): issue/ service of writ
- g. Enforcement of claims (2): arrest; wrongful arrest
- h. Procedure: provision of security; release from arrest; applications relating to property; interveners; appraisalment and sale
- i. Ship mortgages: registration and scope; rights and liabilities of mortgagor/mortgagee; enforcement
- j. Priorities
- k. Merchant Shipping Act 1995, cap 179 / Maritime Conventions Act 1911 / Maritime & Port Authority of Singapore Act, cap 170A
- l. Limitation of liability: MSA 1995, cap 179, Part VIII; LLMC 1976/ LLMC 1996

Module 8. Maritime Conflict of Laws

- a. Jurisdiction (1): choice of forum / forum non conveniens
- b. Jurisdiction (2): security arrests; parallel proceedings and anti-suit injunctions
- c. Jurisdiction (3): arbitration; seat of arbitration; party autonomy and limits (International Arbitration Act, cap 143A)
- d. Applicable law (1): choice of law in maritime contracts (Choice of Court Agreements Act 2016, No 14)
- e. Applicable law (2): mandatory statutes and conventions (Carriage of Goods by Sea Act 1971, cap 33)
- f. Recognition and enforcement of foreign maritime judgments and arbitral awards (Choice of Court Agreements Act 2016, No 14)

D.3 The overall pass mark is 60%. Candidates must attain this pass mark for both parts before they are considered to have passed the examination.

Examination Preparatory Course

- D.4 SAL will offer a preparatory course for candidates required to sit for the examination.
- D.5 Course attendance is not compulsory.
- D.6 The course comprises 27 contact hours of classroom instruction, conducted over three weekends: Friday (full day) and Saturday (morning) half-day.
- D.7 It is assumed that candidates who undertake this course have knowledge in M&S law expected of a 5-year PQE legal practitioner.

END