THE SHIPPING LAW REVIEW

TENTH EDITION

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

Published in the United Kingdom
by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

www.thelawreviews.co.uk

ISBN 978-1-80449-172-0

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADAME GONZÁLEZ DE CASTILLA & BESIL

A KARITZIS & ASSOCIATES LLC

BLOOMFIELD LP

BOSE & MITRA & CO

BUDIDJAJA INTERNATIONAL LAWYERS

CHANDLER MHM LIMITED

CHOI & KIM

COSTA & ALBINO ADVOGADOS

DZUNGSRT & ASSOCIATES LLC

GAUCI-MAISTRE XYNOU

GORRISSEN FEDERSPIEL

HARRIS & CO MARITIME LAW OFFICE

HESKETH HENRY

HFW

JORQUIERA & ROZAS ABOGADOS (JJR LAW FIRM)

KACPRZAK LEGAL

MORGAN & MORGAN

PALACIOS, PRONO & TALAVERA

PPT LEGAL

SABATINO PIZZOLANTE ABOGADOS MARÍTIMOS & COMERCIALES

STUDIO LEGALE MORDIGLIA

TMI ASSOCIATES

VERALAW (DEL ROSARIO RABOCA GONZALES GRASPARIL)

VILLAGRAN LARA

PREFACE

The aim of the tenth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry, including international trade sanctions, ocean logistics, offshore, piracy, shipbuilding, ports and terminals, marine insurance, environmental and regulatory issues, decommissioning and ship finance.

We have invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

Each of these jurisdictional chapters gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered, as are the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims.

In addition, the authors address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included. The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are also examined. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction in the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development estimating that the operation of merchant ships contributes about US$380 billion in freight rates to the global economy, amounting to about 5 per cent of global trade overall. The significance of maritime logistics in facilitating trade and development has become increasingly apparent in the past year. Heightened and unstable freight rates, port closures, congestion and evolving shipping requirements as a result of covid-19 and the Ukraine conflict have all had far reaching effects beyond the shipping sector itself. As the international shipping industry is responsible for the carriage of over 80 per cent of world trade, with over 50,000 merchant ships trading internationally, the elevated shipping expenses and challenges to global logistics we have experienced this year have exacerbated inflation and supply chain disruptions, adding to the ongoing global crisis and hampering the maritime industry's covid-19 recovery. We have seen

global maritime trade, which plunged by approximately 4 per cent in 2020, recover at an estimated rate of 3.2 per cent. In 2021, shipments reached 11 billion tonnes, a value slightly below pre-pandemic levels.

The disruption caused by the pandemic and the war in Ukraine have brought to the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself, and the contributions to this book continue to reflect that.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon
HFW
London
May 2023

Chapter 36

SINGAPORE

Toby Stephens and Christopher Ong[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

With more than 130,000 vessels calling at the port of Singapore annually, Singapore is an extremely important global business centre, acting as a maritime gateway to Asia. According to the Maritime and Port Authority of Singapore (MPA), it is 'one of the largest and most important bunkering ports in the world'.[2] As well as the business that Singapore receives from the traffic passing through its ports, it is also home to more than 140 of the world's top international shipping groups[3] and has more than 4,400 vessels registered with the Singapore Registry of Ships.[4] The most recent figures for Singapore's seaborne cargo put the volume at 577.732 million tonnes for 2022,[5] with container throughput at a notable 37.289.6 million twenty-foot equivalent units.[6]

The scale of the maritime industry in Singapore, and its importance to Singapore and the rest of the world, explains its sophisticated maritime legal framework.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Singapore has incorporated the following International Maritime Organization (IMO) conventions into its legislative framework:

a the International Convention for the Safety of Life at Sea 1974 (SOLAS), 1978 SOLAS Protocol, 1988 SOLAS Protocol (HSSC) and 1996 SOLAS Agreement;

b the International Convention on Load Lines 1966 (the Load Lines Convention) and 1988 Protocol;

c the Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGs);

d the International Convention on Tonnage Measurement of Ships 1969 (the Tonnage Convention);

e the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the STCW Convention);

f the Operating Agreement on the International Maritime Satellite Organisation 1976;

---

1 Toby Stephens is a partner and Christopher Ong is an associate at HFW.

2 https://www.mpa.gov.sg/port-marine-ops/marine-services/bunkering.

3 https://www.mot.gov.sg/what-we-do/maritime/global-maritime-hub.

4 *Year Book of Statistics Singapore 2019*, Department of Statistics, Singapore at page 185 and https://www.mpa.gov.sg/singapore-registry-of-ships.

5 https://www.singstat.gov.sg/find-data/search-by-theme/industry/transport/latest-data.

6 https://www.singstat.gov.sg/find-data/search-by-theme/industry/transport/latest-data.

g the Convention on the International Maritime Satellite Organisation 1976;
h the Convention on Facilitation of International Maritime Traffic 1965 (the FAL Convention);
i the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) (Annexes I to V) and the 1997 Protocol to the International Convention for the Prevention of Pollution from Ships (Annex VI);
j the 1976 and 1992 Protocols to the International Convention on Civil Liability for Oil Pollution Damage (the CLC Convention);
k the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
l the Convention on the Limitation of Liability for Maritime Claims 1976 (the LLMC Convention);
m the Protocol of 1996 to amend the LLMC Convention;
n the International Cospas-Sarsat Programme Agreement 1988 (COS-SAR);[7]
o the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001 (the Anti-Fouling Convention);
p the International Convention on Maritime Search and Rescue 1979 (the SAR Convention);
q the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (the SUA Convention) and the 1988 SUA Protocol;
r the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (the OPRC Convention) and the 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (HNS-OPRC);
s the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunker Convention);
t the Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (the Ballast Water Management Convention);
u the Maritime Labour Convention 2006 (MLC), and Amendments of 2014;[8] and
v the Nairobi Convention on the Removal of Wrecks 2007 (the Nairobi Convention).

Singapore's international obligations with respect to the IMO conventions are administered by the Maritime and Port Authority of Singapore (MPA) through eight key Singapore statutes and regulations made thereunder:

a the Maritime and Port Authority of Singapore Act, which regulates the functions, duties, and powers of the MPA, the employment of seafarers, port regulation and licensing, among other things;
b the Merchant Shipping Act, which covers the registration of ships, manning and crew matters, and safety issues;
c the Prevention of Pollution of the Sea Act 1990, which empowers the MPA to take preventive measures against pollution;

7 Note: the 1988 Cospas-Sarsat Programme Agreement is a multinational agreement, rather than an International Maritime Organization (IMO) convention.

8 Note: the Maritime Labour Convention is an International Labour Organization convention, rather than an IMO convention.

d the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act 2008, which addresses liability for oil pollution;

e the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act, which considers liability for bunker oil pollution;

f the Merchant Shipping (Wreck Removal) Act 2017, which gives effect to the Nairobi International Convention on Wreck Removal, setting out the requirements for the removal of wrecks following upon a maritime casualty;

g the Maritime Offences Act, which incorporates certain conventions, such as the SUA Convention, that deal with criminal offences; and

h the Merchant Shipping (Maritime Labour Convention) Act 2014 (Act 6 of 2014), which safeguards the well-being and working conditions of seafarers aboard ships.[9]

III FORUM AND JURISDICTION

i Courts

The Supreme Court of Singapore consists of the High Court and the Court of Appeal.

On 5 December 2020, the High Court of Singapore was restructured into two divisions, namely the General Division and the Appellate Division.[10] The Court of Appeal of Singapore remains the apex court and appeals arising out of the General Division will be allocated between the Appellate Division and the Court of Appeal, with the Appellate Division having no criminal jurisdiction. Any appeals against the decisions of the Appellate Division shall only be allowed with leave of the Court of Appeal.

The General Division of the High Court exercises original jurisdiction in respect of criminal matters that are of particular gravity, as defined by statute law, and tries civil matters where the subject matter in question is in excess of S$250,000 in monetary value. All admiralty matters must be commenced in the General Division of the High Court, which alone exercises admiralty jurisdiction by statute.

The Singapore courts take an active role in case management, particularly through regular pretrial conferences, to advance litigation proceedings to resolution, whether by trial or mediated resolutions in as cost-effective a manner as possible. Currently, civil actions that are commenced in the High Court typically take 12–15 months from the commencement of the suit to completion of the trial.

As part of the plan to position Singapore as the leading dispute resolution hub in Asia, the Singapore International Commercial Court (SICC) was constituted on 5 January 2015, following a series of legislative amendments. The judges of the SICC are the existing Supreme Court justices and a panel of 17 international judges with a mixed common law and civil law background. The SICC constitutes a division of the General Division of the High Court and it is primarily designed to hear and try international commercial disputes.[11]

The SICC has jurisdiction to hear claims or actions:

a that are international and commercial;[12]

b in which the parties have expressly submitted to the jurisdiction of the SICC by a written jurisdiction agreement; and

9 www.mpa.gov.sg/web/portal/home/port-of-singapore/maritime-legislation-of-singapore.

10 Supreme Court of Judicature (Amendment) Act 2019.

11 https://www.sicc.gov.sg/about-the-sicc/judges.

12 Singapore International Commercial Court Rules 2021, Order 2, Rule 1.

c in which the parties to the action do not seek any relief in the form of a prerogative order.

In addition, the SICC can hear cases relating to insolvency, restructuring and dissolution that are international and commercial in nature, cases relating to international commercial arbitration, and applications for pre-action remedies (which are explained in further detail below).[13] It is possible for the High Court to transfer cases to the SICC, of its own motion, if the claim satisfies the criteria and the parties have submitted to the jurisdiction of the Singapore courts.

On 9 January 2018, the Parliament of Singapore passed the Supreme Court of Judicature (Amendment) Bill, which provides that the SICC (as a division of the High Court) has jurisdiction to hear matters under the International Arbitration Act (IAA), such as applications for interim reliefs under Section 12A of the IAA and applications to set aside an arbitral award made in Singapore. However, only Singapore-qualified lawyers practising in Singapore law practices are allowed to argue IAA-related matters before the SICC, even if foreign law governs the subject matter of the dispute or when the parties in the SICC proceedings or the original arbitration appoint foreign lawyers.[14]

ii Arbitration and ADR

The Singapore courts have incorporated alternative dispute resolution (ADR) options into the judicial process with the aim of creating a holistic judicial system that provides litigants with access to both modes of resolving disputes, namely the ADR process and the trial process. Since May 2012, the state courts have implemented a 'presumption of ADR' for civil matters (i.e., all civil disputes in the state courts are automatically referred to the most appropriate type of ADR, unless any party opts out of the ADR). There may be subsequent cost implications for a party who opts out of the ADR for unsatisfactory reasons.

Originally established in 2004 under the umbrella of the Singapore International Arbitration Centre (SIAC), the Singapore Chamber of Maritime Arbitration (SCMA) was reconstituted and became separate from the SIAC in May 2009 to meet the growing needs of the maritime community, which preferred a model similar to the London Maritime Arbitrators Association, whereby the arbitration body does not manage the arbitration process. The SCMA provides a framework for maritime arbitration. The SIAC is a non-sector-specific arbitration organisation that was established in 1991.

The SCMA released the fourth edition of their rules on 1 December 2021, which govern any SCMA arbitration commenced on or after 1 January 2022. The new rules make changes to the procedure throughout the arbitration process starting with the service of documents. Under Rule 3.1, any notice or communication sent by email with proof of delivery or receipt is deemed to have been effectively served and received. Service in person, by courier or post is still permitted but no longer essential. Rule 44 introduces an expedited procedure for claims and counterclaims that do not exceed US$300,000 in value. This replaces the small claims procedure, which had a lower claim and counterclaim value of US$150,000. The expedited procedure aims, where no oral hearing is required, for the sole arbitrator to issue their award within 21 days.

Rule 45 of the SCMA Rules sets out the SCMA Expedited Arbitral Determination of Collision Claims (SEADOCC), a procedure that provides a fair, timely and cost-effective

13 ibid.

14 Singapore International Commercial Court Rules 2021, Order 3, Rule 1 read with Order 3, Rule 3.

means of determining liability for a collision through mediation in circumstances where it has not been possible or appropriate to reach such an apportionment of liability using other means of dispute resolution.[15] The purpose of arbitration under the SEADOCC procedure is to provide a binding decision on liability for a collision between two or more ships by a single arbitrator. The procedure is governed by the SEADOCC Terms, which include directions on early termination and parties' submissions.

The SCMA ARB-MED

The SIAC continues to become an increasingly important global forum for international dispute resolution. In 2020, SIAC's caseload crossed the 1,000-case threshold for the first time, with 1,005 new cases as at 30 October 2020. SIAC also opened a new representative office in New York, US; it is the first office outside Asia.[16] The keys to success appear to be Singapore's logistical and cultural connectivity with the region and the world, the lack of corruption, a sophisticated legal industry and a developed economy.

The SIAC's primary rules of arbitration are the SIAC Rules but parties can also choose to adopt the UNCITRAL Arbitration Rules for the conduct of arbitration at the SIAC. Although the UNCITRAL Rules are generally designed for ad hoc forms of arbitration, parties can still elect for institutional administration of the arbitration by the SIAC. These are both consensual regimes that respect the principle of party autonomy.

Following amendments made to the IAA in 2012, awards issued by emergency arbitrators in arbitrations seated within and outside Singapore are enforceable under Singapore law.[17]

Since 2013, Singapore has been a named arbitral forum to the BIMCO[18] Standard Dispute Resolution Clause, in addition to London and New York, to reflect the global spread of maritime arbitration venues. Within the new SCMA BIMCO Arbitration Clause,[19] disputes would be resolved under the IAA and conducted in accordance with the SCMA Rules in force at the time the arbitration proceedings are commenced, offering parties the choice of applying Singapore or English law as the governing law of the contract.

Third-party funding of international arbitration became available in March 2017. In particular, a funder who carries on the principal business of funding dispute resolution proceedings and has a paid-up share capital or has managed assets of not less than S$5 million (or the equivalent amount in foreign currency) is permitted to fund the following:[20]

a international arbitration proceedings;

b court proceedings arising from or out of or in any way connected with international arbitration proceedings;

c SICC proceedings for as long as those proceedings remain in the SICC;

d mediation proceedings arising out of or in any way connected with international arbitration proceedings, or arising out of SICC proceedings;

15 SCMA Rules (Fourth Edition, January 2022), Rule 45.

16 https://www.siac.org.sg/our-rules/69-siac-news/684-siac-opens-office-in-new-york-and-announces-new-record-caseload.

17 International Arbitration (Amendment) Act 2012 (Singapore), Section 2(a).

18 The Baltic and International Maritime Council.

19 https://www.scma.org.sg/Default.aspx?sname=scma&sid=126&pageid=2969&catid=4185&catname=Model-Clauses.

20 Regulations 3 and 4 of the Civil Law (Third-Party Funding) Regulations 2017.

e an application for a stay of proceedings referred to in Section 6 of the IAA (Chapter 143A) and any other application for the enforcement of an arbitration agreement; and

f proceedings for or in connection with the enforcement of an award or a foreign award under the IAA.

It bears noting that the Honourable Justice Aedit Abdullah, in *In Re Fan Kow Hin*,[21] clarified that the 2017 amendments allowing for third-party funding for international arbitration and related proceedings were not exhaustive and did not preclude common law developments.

Mediation is used in tandem with court proceedings in that the court can suggest that parties refer disputes to the Singapore Mediation Centre (SMC). Mediation is voluntary and would only be adopted with the consent of all parties involved. On 20 December 2018, the United Nations General Assembly (UNGA), at its 73rd session in New York, passed a resolution to adopt the United Nations Convention on International Settlement Agreements Resulting from Mediation, and to name it after Singapore – the Singapore Convention on Mediation. The Convention has entered into force in Singapore.[22] The Convention will provide for the cross-border enforcement of mediated settlement agreements. This will give business greater certainty that mediated settlement agreements can be relied on to resolve the cross-border commercial disputes.

The SMC offers mediation schemes such as the commercial mediation scheme, which is particularly suitable for large complex commercial disputes, and the med–arb scheme, which is a hybrid dispute resolution process that brings together the elements of both mediation and arbitration, and is overseen by the SMC in collaboration with the SIAC. The mediation services offered by the SMC, where the panel of mediators largely comprises local mediators, generally focus on domestic disputes. A maritime panel, which comprises professionals from the maritime industry, is also available for mediation of maritime-related disputes referred to the SMC.

Since November 2014, mediation has also been available under the auspices of the Singapore International Mediation Centre (SIMC). The SIMC administers mediation under the SIAC–SIMC Arb–Med–Arb (AMA) Protocol (when disputes have been submitted to the SIAC for resolution under the Singapore Arb–Med–Arb Clause or other similar clause, or where parties have agreed that the AMA Protocol shall apply) or the SIMC Mediation Rules (i.e., in cases where the AMA Protocol does not apply).

iii Enforcement of foreign judgments and arbitral awards

The Reciprocal Enforcement of Foreign Judgments Act 1959 (REFJA) allows the enforcement of certain specified court judgments of Australia, Brunei, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka, the United Kingdom (which are Commonwealth countries) and Hong Kong. The types of judgment that may be enforced under the REFJA include monetary judgments, non-money judgments, interlocutory judgments and consent judgments.

To enhance Singapore's position as an international dispute resolution hub, Parliament enacted the Choice of Court Agreements Act (CCAA) on 14 April 2016. The CCAA applies

21 [2018] SGHC 257.

22 https://sso.agc.gov.sg/Act/SCMA2020.

only to international civil or commercial disputes and not matters such as insolvency, consumer matters, most maritime claims, tortious claims not arising from contracts, antitrust and intellectual property (other than copyright).

The CCAA implements the 2005 Hague Convention on Choice of Courts Agreements (HCCCA) to which Singapore is a signatory. Where a Singapore court is the chosen court under an exclusive choice of court agreement, the courts of other contracting states will be obliged to suspend or dismiss parallel proceedings brought in their jurisdiction, in favour of the Singapore court, and the Singapore court judgment must be recognised and enforced by all other contracting states. Singapore will similarly have reciprocal obligations to afford the same treatment to exclusive choice of court agreements in favour of the courts of other contracting states and to the judgment of their courts.

There may be instances where a foreign judgment falls within the scope of both the CCAA and the REFJA (e.g., judgments of the superior UK courts). In instances of overlap, the CCAA overrides the REFJA. For the avoidance of doubt, the REFJA have been amended to make them inapplicable to judgments falling under the CCAA. Notably, Clause 2(2) of the CCAA provides that where the 'High Court' is designated in an exclusive choice of court agreement, the designation is to be construed as including the SICC unless a contrary intention appears in the agreement. Hence, a party specifying the Singapore High Court as the chosen forum would be taken to have included the SICC as a chosen court. This evidently bolsters the services offered by the SICC and the enforceability of SICC judgments.

Judgments from other countries that are not gazetted under the CCAA or the REFJA may be enforced under common law. This requires an action on the foreign judgment (i.e., the foreign judgment creditor commences a suit in a Singapore court, suing on the original cause of action, and using the foreign judgment as evidence of the defendant's *in personam* liability on the claim). Typically, a summary judgment application is possible on a common law enforcement action.

On 2 September 2019, the Reciprocal Enforcement of Foreign Judgments (Amendment) Bill 2019[23] and the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Bill[24] were passed by Parliament to consolidate the reciprocal recognition and enforcement of foreign judgments (i.e., REFJA and RECJA) under a single statutory regime, by (1) repealing the RECJA and (2) amending the REFJA and the IAA. The Reciprocal Enforcement of Foreign Judgments (Amendment) Bill 2019 was intended to expand on the types of judgments that can be reciprocally recognised and enforced in Singapore beyond the current monetary judgments, to include, inter alia:

a non-money judgment;
b interlocutory judgments;
c judgments from lower courts in foreign jurisdictions; and
d consent judgments.

Where enforcement of foreign arbitral awards is concerned, the centrepiece avenue under Singapore law is that of the New York Convention, to which Singapore is a signatory. The approach of the Singapore courts and, uniformly, the Commonwealth jurisdictions that are

23 Reciprocal Enforcement of Foreign Judgments (Amendment) Bill No. 19/2019, read for the first time on 5 August 2019 and passed on 2 September 2019.

24 Reciprocal Enforcement of Commonwealth Judgments (Repeal) Bill No. 18/2019, read for the first time on 5 August 2019 and passed on 2 September 2019.

party to the New York Convention, is to be pro-enforcement when asked to enforce foreign arbitral awards under the Convention.[25] The pro-enforcement purpose of the Convention is underscored by the exclusive and exhaustive grounds, under Section 31 of the IAA, by which enforcement of a Convention award may be refused.[26] Consistent with the legislative objective, the Singapore court has endorsed and applied a mechanistic approach to the process of enforcing foreign awards under the Convention insofar as the first stage of enforcement, which pertains to the initial grant of leave to enforce, is concerned. At the second stage of the two-stage process of enforcement, which is invoked when a party against whom an award is made resists enforcement on the grounds set out in the IAA, that party must prove the grounds on which it relies on a balance of probabilities.

In *CDI v. CDJ*,[27] wherein AsiaLegal acted for the plaintiff, the Singapore High Court confirmed that the same grounds for resisting enforcement of a foreign arbitration award under Article 36(1) of the UNCITRAL Model Law on International Commercial Arbitration are equally applicable to a party seeking to resist the enforcement of a domestic international arbitral award under the IAA. The Singapore court's approach is 'undergirded by the overarching principles of limited curial intervention and recognition of the autonomy of the arbitration process'. The High Court summarised the Singapore court's overall approach when a challenge is mounted on an alleged breach of natural justice and reiterated the heavy burden and high threshold that an applicant must cross. Furthermore, the approach in *Glaziers Engineering Pte Ltd v. WCS Engineering Construction Pte Ltd (Glaziers Engineering)* [28] was adopted in analysing whether an issue or finding was foreseeable to the parties. It was emphasised that a party cannot seek to challenge an award on its merits 'in the guise of a complaint dressed up as a breach of natural justice'.

IV SHIPPING CONTRACTS

i Shipbuilding

Singapore has long been a leading centre for ship repair and building. Singapore corporations Keppel Corporation and Sembcorp Marine are among the world's top offshore rig builders.

A shipbuilding contract is regarded both as a contract for sale and purchase as well as a contract for the supply of workmanship and materials.

Shipbuilding disputes usually involve issues of whether the ship complies with the description and contractual specifications.[29] The conditions and implied warranties under the Sale of Goods Act 1979 apply if the shipbuilding contract is governed by Singapore law (e.g., there is an implied condition that the ship will correspond with the description and be reasonably fit for its intended purpose).

The parties may contract for title to pass gradually as the construction progresses or at certain stages or milestones. Generally, in the absence of any provisions to the contrary, the risk will pass with the title.

25 See *Aloe Vera of America v. Asianic Food (S) Pte Ltd* [2006] 3 SLR 174 at [41] to [46].

26 id.

27 [2020] SGHC 118.

28 [2018] 2 SLR 1311.

29 For example, *Pacific Marine & Shipbuilding Pte Ltd v. Xin Ming Hua Pte Ltd* [2014] SGHC 102, in which the issue in dispute was whether the propulsion units contracted for were defective.

Typically, payment of the purchase price is made in instalments before delivery and, in return, a performance guarantee or refund guarantee will be furnished by the yard under the shipbuilding contract. Provided that the guarantee is an on-demand guarantee, the buyer would be entitled to call on the guarantee immediately without having to establish liability of the seller, provided that other conditions that entitle the buyer to call on the guarantee are satisfied.

The Singapore courts have not had the opportunity to consider, in any reported decision thus far, the presumption applied by the English Court of Appeal in *Marubeni Hong Kong and South China Ltd v. Mongolian Government*[30] *(Marubeni)* that in construing a guarantee given outside the context of a banking instrument or by a non-financial institution, the absence of language appropriate to a performance bond or something having similar legal effect creates a strong presumption against the parties' intention to create a performance bond or on-demand guarantee (the *Marubeni* presumption). Although the Singapore High Court in *China Taiping Insurance (Singapore) Pte Ltd (formerly known as China Insurance Co (Singapore) Pte Ltd) v. Teoh Cheng Leong*[31] *(China Taiping)* briefly referred to *Marubeni* as support for the general principles on the construction of guarantees and on-demand guarantees or performance bonds, on the facts of that case, the Singapore court did not have to consider application of the *Marubeni* presumption. It therefore remains to be seen whether the *Marubeni* presumption will gain judicial support locally, bearing in mind that the English court's decision is persuasive authority in the Singapore courts.

Under Singapore law, there are two separate and distinct exceptions to a guarantor's obligations to pay promptly upon a demand being made by the beneficiary within the terms of the guarantee, irrespective of any dispute between the account party and the beneficiary – namely, fraud and unconscionability.[32] The fraud exception is meant to safeguard the account party from a dishonest call being made upon the guarantee by the beneficiary.[33] Conversely, the unconscionability exception was developed as it was recognised that in certain circumstances, even where the account party cannot show that the beneficiary had been fraudulent in calling on the bond, it would nevertheless be unfair for the beneficiary to realise its security pending resolution of the substantive dispute.[34] Therefore, under Singapore law, where a beneficiary acts fraudulently or unconscionably when calling on an on-demand guarantee or performance bond, the court can grant injunctive relief to restrain a call on or payment out under such a guarantee or performance bond.

However, it is now possible under Singapore law for parties to incorporate a carefully worded clause in their contract to restrict the grounds on which an obligor may object to a beneficiary's call on a performance bond. The Singapore Court of Appeal considered the issue of whether parties could contractually restrict the right of the obligor under a performance bond to apply for an injunction (which is an equitable remedy) to restrain the beneficiary from calling on the bond.[35] Under the subject clause in the main contract in *CKR Contract Services*, the obligor was not entitled to restrain the beneficiary from calling on the performance bond

30 [2005] 1 WLR 2497.

31 [2012] SGHC 2.

32 *Arab Banking Corp (B.S.C.) v. Boustead Singapore Ltd* [2016] SGCA 26 at [51].

33 ibid., at [60].

34 ibid., at [104].

35 *CKR Contract Services Pte Ltd v. Asplenium Land Pte Ltd* [2015] 3 SLR 1041 (*CKR Contract Services*).

on any ground, except in the case of fraud.[36] The obligor applied for an injunction, on the ground of unconscionability, to restrain payment from being made to the beneficiary. The Court of Appeal ruled that the clause merely sought to limit the obligor's right to an equitable remedy and was not an ouster of the jurisdiction of the court or void and unenforceable for being contrary to public policy, and therefore dismissed the obligor's appeal against the decision of the judge at first instance, refusing to grant the injunction (albeit on slightly different grounds). The Court of Appeal nevertheless stressed that it may still be open to the obligor to rely on the usual doctrines or principles at common law or the relevant provisions under the Unfair Contract Terms Act to argue that such a clause is unenforceable (since these issues did not arise or were not raised in *CKR Contract Services*).[37]

To allocate the risks of delays in completion, it is also usual for shipbuilding contracts to provide for liquidated damages in the event of delay. Such liquidated damages provisions are enforceable, provided that the agreed level of compensation is a genuine estimate of loss. Otherwise, the provision will be treated as a penalty clause and will be struck out.

Failure by a yard to construct or complete a ship in accordance with the terms of the contract may entitle a buyer to claim damages from the yard, which is the usual remedy. Specific performance may be ordered whereby the buyer can prove that damages will not be an adequate remedy.

ii Contracts of carriage

Singapore is a state party to the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules), which was introduced into domestic legislation by the Singapore Carriage of Goods by Sea Act (1998 edition), without variation.

These Rules apply by force of law to shipments of goods under a bill of lading when the port of shipment is a port in Singapore or when the requirements of Article X of the Rules otherwise apply. Under the Singapore Carriage of Goods by Sea Act (COGSA), the Rules can be contractually applied to the carriage of goods by sea under a sea waybill or straight (non-negotiable) bill of lading. The Hamburg Rules do not apply. Singapore has not acceded to or ratified the Rotterdam Rules. Cabotage is not applicable in Singapore. The Convention on the Contract for the International Carriage of Goods by Road 1956 (the CMR Convention) has not been ratified in Singapore and the liability of carriers of goods by road is governed by common law principles.

Importantly, in terms of legislation, Singapore has enacted by statute its Bills of Lading Act, which is in *pari materia* with the UK COGSA 1992. Under the Singapore Bills of Lading Act, title to sue and transfer of liabilities can be effected by mere endorsement of a negotiable bill of lading, without the requirement under the old English Bills of Lading Act 1855, which linked transfer of title to sue to transfer of property in the cargo.

Where contracts of carriage subject to the Hague-Visby Rules are concerned, the carrier's limitation of liability for any loss of or damage to or in connection with the cargo is statutorily defined as S$1,563.65 per package or unit, or S$4.69 per kilogram of gross weight of the goods lost or damaged, whichever is higher. The time bar for cargo claims under the Hague-Visby Rules is one year from the date of delivery or from the date when the goods

36 ibid., at [5].

37 ibid., at [20] to [24].

should have been delivered. In the recent case of *The Navios Koyo*,[38] the Singapore courts reiterated that, in deciding whether to make a stay of proceedings in favour of arbitration conditional on a waiver of this time bar, they would consider two factors:

a whether the plaintiff's own conduct in not commencing arbitration, before the claim was time-barred, was reasonable; and

b whether the defendant should be faulted for the plaintiff's failure to commence arbitration before the claim became time-barred.

The Singapore courts would generally be slow to condition a stay of proceedings on a waiver of this time bar. Therefore, cargo owners would be well advised to ascertain the applicable jurisdiction or arbitration clause and commence proceedings in the chosen forum.

In respect of contracts of carriage of goods by sea, the relevant liens applicable are as follows:

a the shipowner's lien on cargo, which is a possessory lien that can arise at common law in respect of freight, or in a bailee of necessity context,[39] or under contract for amounts payable to the shipowner under the contract of carriage;

b the shipowner's lien on sub-freight or sub-hire, which is a contractual lien under a contract of carriage validly incorporating a charter party lien clause; and

c liens on the ship exercisable by an action *in rem* following arrest of the vessel.

This is the claimant's statutory right of action against the ship if the claim is listed as falling within the subject matter of Admiralty jurisdiction in the High Court (Admiralty Jurisdiction) Act.

Under the Companies Act (CA), charges have to be registered under Section 131 of the CA, failing which they are unenforceable against a liquidator in a winding up or against any secured creditor of the company. In July 2017, the Singapore High Court, in *Duncan, Cameron Lindsay v. Diablo Fortune Inc*,[40] considered for the first time the issue of whether a shipowner's lien is a charge on the company's property and whether it is registrable under Section 131 of the CA. The Court of Appeal affirmed the High Court's decision[41] that a shipowner's lien is a security in the form of a charge over the company's book debts or as a floating charge, and is therefore registrable under Section 131. From a practical perspective registering a shipowner's lien is difficult because vessels are typically subject to a continual series of charter parties, each entered into as quickly as possible to ensure the vessel is gainfully employed. As charter periods can be short, it would mean that the charter party could be completed even before the 30-day registration period is up. Furthermore, given the large number of charter parties concluded every day, imposing a registration requirement would mean significant administrative burden and additional costs for shipping companies.

In light of industry concerns and feedback, the Singapore government amended the CA on 3 September 2018. The Companies (Amendment) Act 2018 exempts shipowners'

38 [2022] 1 SLR 413.

39 See *Liu Wing Ngai v. Lui Kok Wai* [1996] 3 SLR(R) 508, citing *The 'Winson'* [1981] AC 939, that where a bailor fails to take delivery of the bailed goods from a bailee, a bailment for reward can become a gratuitous bailment. Even then, the duty of care is still owed, although what is required to discharge it may be less onerous. From this relationship giving rise to a duty of care, a correlative right is vested in the gratuitous bailee to reimbursement of expenses incurred in taking measures to preserve the property.

40 [2017] SGHC 172.

41 *Diablo Fortune Inc v. Cameron Lindsay Duncan and Anor* [2018] SGCA 26.

liens from registration under Section 131 of the CA. Under the amendments, a shipowner's lien is exempted from registration but still retains its essential nature as a security (charge). Therefore, notwithstanding that it is not registrable, it remains a security and will take priority over unsecured creditors and other secured creditors whose security was created after the relevant shipowner's lien was created.

With regard to shipowners' liens that are already in existence or that were created before the implementation of the amendments, the new Section 131(3AC) of the CA provides that these will be considered registrable only if, as at the effective date of the amendments, the company has been wound up, or a creditor has acquired a proprietary right or interest in the subject matter of the lien.

The shipper has a duty to properly identify and to pack the goods shipped. Pursuant to Article III(5) of the Hague-Visby Rules, the shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by it, and the shipper must indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in the particulars. The shipper has a strict liability at common law for shipment of dangerous goods without notice to the carrier. This strict liability regime is extended by the indemnity regime of Article IV(6) of the Hague-Visby Rules, which imposes broad liability on the shipper for all damages and expenses directly or indirectly arising out of or resulting from the shipment of any cargo that causes or threatens to cause loss of life, damage to the ship or other cargo, delay or expense to the carrier.

The Singapore courts have handed down decisions on principle in relation to the interpretation of the Hague-Visby Rules. Notable examples are the decision in *Sunlight Mercantile Pte Ltd v. Every Lucky Shipping Co Ltd* on the carriage of deck cargo,[42] in which the Court of Appeal declined to follow the English court decision in *The 'Imvros'*[43] on the effectiveness of a contractual exclusion of the carrier's liability for unseaworthiness, and the reasoning of the Singapore Court of Appeal in *APL Co Pte Ltd v. Voss Peer*[44] on the role of a straight consigned bill of lading and the carrier's delivery obligations thereunder, which has been followed by the English Court of Appeal in *The 'Rafaela S'*.[45]

In *Toptip Holding Pte Ltd v. Mercuria Energy Trading Pte Ltd*, the plaintiff sent an email enquiry to the defendant (through a broker), which contained, inter alia, a term incorporating the *pro forma* charter party of Vale SA. The defendant later amended this term to reject the Vale SA charter party and incorporate a previous charter party, which shall be subject to the defendant's further review (the draft charter party). Thereafter, the defendant rejected the amended draft charter party, which the plaintiff claimed to be a repudiatory breach of the charter party by the defendant. The Singapore High Court was of the opinion that no valid charter party was concluded. The Singapore Court of Appeal reversed the Singapore High Court decision and held that a binding charter party was formed notwithstanding the presence of a 'subject to review' clause.[46]

In *The Luna*[47], the defendants were the demise charterers of *Luna*, a bunker barge used for the delivery of bunkers to ocean-going vessels that would then be on-sold to the

42 [2004] 1 SLR(R) 171.

43 [1999] 1 Lloyd's Rep 848.

44 [2002] 2 SLR(R) 1119.

45 [2002] 1 Lloyd's Rep 113.

46 *Toptip Holding Pte Ltd v. Mercuria Energy Trading Pte Ltd* [2017] SGCA 64.

47 [2021] SGHC 84.

claimants' customers. The claimants were leasing fuel oil storage tanks from Vopak Terminal Pte Ltd and selling bunkers, mostly on fob terms, for delivery through bunker barges like the *Luna*. Upon the loading of the bunkers onto vessels at Vopak Terminal, the Terminal issued documents including one issued in triplicate and titled 'bills of lading' (the Vopak BLs). The bunker barges supplied various vessels with bunkers without the production of the original Vopak BLs, and the claimants commenced proceedings against the barge owners. The Singapore Court of Appeal, in ascertaining the parties' intentions behind the issuance of the Vopak BLs, held that, despite the documents being labelled as bills of lading, they were not true bills of lading as they were not intended to operate as such. Despite being independent, the bills of lading worked in tandem with the underlying sale contracts, which were critical in determining the actual function of the documents in question.

iii Cargo claims

Pursuant to Section 2(1) of the Singapore Bills of Lading Act, a person who becomes the lawful holder of a bill of lading shall have transferred to and vested in him or her all rights of suit under the contract of carriage as if that person had been a party to that contract. Section 5(2) of the Act defines a holder of a bill of lading as a person with possession of the bill:

a who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;

b as a result of the completion, by delivery of the bill, of any endorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill; or

c as a result of any transaction by virtue of which he or she would have become a holder falling within point (a) or (b), above, had the transaction not been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates.

Importantly, the Bills of Lading Act also provides for the transfer of liabilities under a bill of lading or any carriage document to which the Act applies. The Bills of Lading Act covers not just the transfer of rights or liabilities of bills of lading but also sea waybills and ship's delivery orders. In Singapore, the transfer of bill of lading rights and liabilities is regulated by this Act; it is essentially a re-enactment of the UK Carriage of Goods by Sea Act 1992. The Singapore courts take a stringent view of the principle of the bill of lading being a document of title. There is very little scope for the carrier to defend a misdelivery claim under Singapore law, as exemplified in decisions at the High Court and Court of Appeal levels.[48] Examples in which misdelivery claims have been successfully defended usually centre around the claimant's failure to prove title to sue. For completeness, the *Singapore Court of Appeal APL Co Pte Ltd v. Voss Peer*[49] has extended the presentation rule to straight bills of lading as well.

However, there may be rare instances where a bill of lading may not be considered a document of title or a contract of carriage. In the 2016 High Court decision of *The 'Star Quest'*,[50] the High Court held, among other things, that it was at least arguable that the bills of lading could not be relied on as contractual documents, and that their express terms indicated

48 See *Bandung Shipping Pte Ltd v. Keppel TatLee Bank Ltd* [2003] 1 SLR(R) 295, *BNP Paribas v. Bandung Shipping Pte Ltd* [2003] 3 SLR(R) 611, and *The 'Jian He'* [1999] 3 SLR(R) 432.

49 [2002] 2 SLR(R) 1119.

50 [2016] 3 SLR 1280.

that they did not operate as documents of title required for the delivery of the bunkers. The bills of lading stated that the bunkers were 'bound for bunkers for ocean-going vessels'. As no destination or range of destinations was specified, the High Court's view was that the contract of carriage would be too uncertain to be enforceable. Furthermore, notwithstanding that the bills of lading bore the common notation 'one of which is accomplished, the others to stand void', they specifically contemplated delivery of the bunkers to multiple ocean-going vessels, and it would have been unworkable to have expected delivery of each sub-parcel to be accomplished only against production of a single set of the bills of lading.

In *The 'Yue You 902' and another matter*, the Singapore High Court had the opportunity to consider the defence of whether the plaintiff had consented to the carrier discharging the cargo without presentation of the bills of lading in a misdelivery claim.[51] On the facts, the High Court found that the act of delivery against a letter of indemnity to a person who is not entitled to delivery under the bill of lading does not cause the bill to be spent. Furthermore, the Court held that even if the bills of lading were considered spent, the plaintiff bank would have obtained the rights of suit as the loan from the plaintiff was 'a transaction in pursuance of the sale contract' within the ambit of Section 2(2) of the Singapore Bills of Lading Act.

Apart from bringing a claim in contract, Singapore law, again as exemplified by decisions at the High Court, also recognises and applies common law principles of bailment and tortious duties of negligence and conversion (as the case may be) to supplement a cargo claimant's rights to claim. This can be crucial when, in a given case, the cargo claimant is unable to prove title to sue in contract under a bill of lading.[52] The Singapore High Court visited this issue in *Wilmar Trading Pte Ltd v. Heroic Warrior Inc*, in which it was held that although there was no contract of carriage between the shipowner and the cargo interests (as the bills of lading to be issued were the charterer's bills of lading), the plaintiff cargo interests could sue the defendant shipowners under the tort of negligence as a free-on-board buyer of the palm oil products, following the decision of the Singapore Court of Appeal in *NTUC Foodfare Co-operative Ltd v. SIA Engineering Co Ltd and another*,[53] which had rejected the decision in *Leigh and Sillavan Ltd v. Aliakmon Shipping Co*,[54] and held that there was no legal requirement of proving ownership or possessory interest in cargo to bring a claim in negligence for loss flowing from the damage. The Court also found that the defendant owed the plaintiff a duty of care as carriers.

Where incorporation of charter terms into bill of lading contracts is concerned, Singapore law generally follows English law principles on contractual incorporation of terms. General words of incorporation will suffice to incorporate terms linked to the carriage or delivery of the goods, provided that the incorporating document identifies, either expressly or implicitly, the charter party to be incorporated. Specific words of incorporation are required to incorporate 'collateral' or 'ancillary' clauses, such as law and jurisdiction or arbitration clauses. As long as the law and jurisdiction (or arbitration) clause in the charter party is validly incorporated in the bill of lading, it is binding on a third-party lawful holder of the bill of lading. A demise clause providing that the parties to the contract evidenced by the bill of lading are the shipper and the shipowner is generally upheld and valid.

51 [2019] SGHC 106.

52 See *The 'Dolphina'* [2012] 1 SLR 992 and *Antariksa Logistics Pte Ltd v. McTrans Cargo (S) Pte Ltd* [2012] 4 SLR 250.

53 [2018] 2 SLR 588.

54 [1986] AC 785.

iv Limitation of liability

Singapore is party to the LLMC Convention 1976, which came into force on 1 May 2005 pursuant to Part VIII of the Merchant Shipping (Amendment) Act 2004 and the 1996 Protocol (as amended in 2012) to the LLMC Convention 1976 pursuant to the partial commencement of the Merchant Shipping (Miscellaneous Amendment) Act 2019 on 29 December 2019. The Singapore Merchant Shipping Act contains various provisions that either operate in tandem with or modify the provisions of the LLMC Convention 1976, as amended by the 1996 LLMC Protocol. These provisions are found in Sections 134 to 144 of the Act.

A ship, for the purpose of limitation, is any kind of vessel used in navigation by water and includes barges, hovercraft and offshore industry mobile units. The persons entitled to limit their liability are as per Article 1 of the LLMC Convention wording, which is unamended, and include:

a shipowners;
b demise, time, voyage and slot-charterers;
c managers or operators of a seagoing ship;
d salvors;
e any person for whose act, neglect or default the parties listed above are responsible; and
f an insurer for claims subject to limitation can limit to the same extent as its assured.

The following claims are subject to limitation of liability:

a in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
b in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
c in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations; and
d of a person other than the person liable in respect of measures taken to avert or minimise loss for which the person liable may limit his or her liability (but not if under contract with the person liable).

The claims are subject to limitation even if brought by way of recourse or indemnity under contract.

A person is not entitled to limit his or her liability if it is proven that the loss resulted from his or her personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Limitation proceedings can be brought by a party seeking to establish its right to limit. A party can also rely on its right to limit as a form of defence for claims brought against it that are subject to limitation. It is not necessary to constitute a limitation fund until the court has determined whether a party has the right to limit its liability. A limitation fund can be constituted by way of a cash payment into court, or bank guarantee. The likelihood is that an International Group of P&I Clubs letter of undertaking will also be acceptable to a Singapore court for the purposes of Article 11(2) of the LLMC Convention, following practical instances where this has been done in Singapore, and the approach in the England and Wales Court of Appeal decision in *Kairos Shipping Ltd v. Enka & Co LLC (The 'Atlantik*

Confidence').[55] In the case of *AS Fortuna Opco BV & anor v. Sea Consortium Private Limited & 3 anors*, in which a limitation fund had been constituted by way of a letter of undertaking from a P&I Club, the Singapore High Court considered the issue of the applicable interest rate to be provided for in respect of the period after the constitution of the limitation fund. In this regard, the Court held that for a letter of undertaking to be adequate or acceptable, it should place the claimant in a position no worse than if the limitation fund had been constituted by payment into court.[56]

In *Thoresen Shipping Singapore Pte Ltd and others v Global Symphony SA and others*,[57] the plaintiffs applied for the return and cancellation of the letter of undertaking from a P&I Club previously deposited in court to constitute the limitation funds as well as a declaration that the limitation fund be deemed exhausted and that no further claims be brought against the plaintiffs. The Court found that a declaration that the limitation fund 'be deemed exhausted' as opposed to 'is exhausted' was not appropriate, as such a declaration did not appear to be a concrete finding and was of uncertain legal and practical effect. Instead, the Court was prepared to make an order in addition to ordering the return of the letter of undertaking for cancellation since the letter of undertaking provides that it 'shall continue and be in place until further Order of the Court', and as a function of the court's authority over the limitation fund, it would be open to the court, by order, to discharge the letter of undertaking.

If a shipowner has obtained a limitation decree in Singapore and a claimant commences an action in a foreign jurisdiction where higher limits of liability apply, without challenging the Singapore limitation decree or participating in the distribution of the limitation fund constituted under the Singapore limitation decree, the Singapore courts can grant an anti-suit injunction to restrain the claimant from proceeding with its action in the foreign jurisdiction on account of the claimant's vexatious or oppressive conduct in effectively compelling the shipowner to set up another limitation fund when there already exists a properly constituted limitation fund in Singapore. The right to claim limitation in any particular forum is a right that belongs to the shipowner alone, and a claimant cannot pre-empt the shipowner's choice of forum or dictate the limitation forum, even in circumstances where the appropriate forum on the adjudication of liability was elsewhere.[58]

However, when the Singapore courts are asked to stay proceedings commenced in Singapore on the grounds of *forum non conveniens* in actions to determine liability on collision claims, the Singapore courts take the view that the fact that the law in the alternative foreign forum may be less favourable to the plaintiff because lower limits of liability apply in that jurisdiction does not *per se* necessarily justify dismissing the stay application, if the claim bears greater jurisdictional connections to the foreign jurisdiction. The existence of different limitation regimes is not considered a personal or juridical advantage under the *Spiliada*[59] principles that the Singapore courts apply when considering a stay application.[60]

55 [2014] EWCA Civ 217.

56 [2020] SGHC 72.

57 [2020] SGHC 153.

58 See *Evergreen International SA v. Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457, applying *The Volvox Hollandia* [1988] 2 Lloyd's Rep 361.

59 *Spiliada Maritime Corporation v. Cansulex Ltd* [1987] AC 460.

60 See *The 'Reecon Wolf'* [2012] 2 SLR 289.

V REMEDIES

i Ship arrest

The Singapore courts have developed their own jurisprudence in relation to the law of ship arrest, which is now clearly divergent from English law. Singapore has not acceded to either the 1952 or 1999 Arrest Conventions, neither is it a signatory to the International Convention on Salvage 1989, under which an expanded jurisdiction for arrest for salvage claims is now available to signatory countries, such as the United Kingdom, although Singapore had passed the Merchant Shipping (Miscellaneous Amendments) Bill on 14 January 2019 providing for the implementation of the Salvage Convention on a date to be stipulated.[61]

The statutory provisions for ship arrest in Singapore are primarily set out in the High Court (Admiralty Jurisdiction) Act (HCAJA) and Order 33 of the Rules of Court 2021, which flesh out the procedural aspects.

Section 3(1) of the HCAJA, which was modelled on equivalent provisions in the English Supreme Court Act 1981, provides an exhaustive list of claims for which a claimant may invoke admiralty jurisdiction of the General Division of the High Court.

Arrest can only be made against a ship that is owned by or demise-chartered to a person who is liable for an *in personam* claim and who was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the same ship that gave rise to the claim.[62]

In proving ownership of a vessel for the purposes of an arrest, ship registers serve as records on which *prima facie* inferences of ownership can be made, but these inferences can be displaced by evidence that another party is the beneficial owner. In *The 'Min Rui'*,[63] the plaintiffs arrested a vessel that they alleged belonged to the defendants at the time the admiralty writ was filed, as the defendants were named as the vessel's registered owner under the Hong Kong Shipping Register. The defendants argued that they had sold the vessel to a *bona fide* purchaser for value before the writ was filed and were no longer the owners, even though they were still named as such in the Register. Examining the facts, the High Court found that the defendants were no longer the owners as the sale was genuine and title and risk in the vessel had passed a few days before the writ was filed. The defendants retained no beneficial interest in the vessel thereafter and, pending deregistration from the Hong Kong Shipping Register, the defendants essentially held the Hong Kong-registered title over the vessel on trust for the buyer. The writ and the arrest were thus both set aside.

The case of *The 'Echo Star' ex 'Gas Infinity'*[64] considered the issue of whether the proper party to enter appearance as defendant in the context of a maritime lien (specifically a damage lien) was the owner of the colliding vessel at the time of issuance of an *in rem* writ or the owner at the time of the collision. The High Court held that even in there was a change of ownership, the offending ship could be validly arrested to obtain security for the injured party's claim and to compel the wrongdoer to enter appearance. This is on the basis that a maritime lien travelled secretively and unconditionally with the *res*, surviving changes of ownership (otherwise than via a judicial sale), even if the *res* was transferred to a *bona fide* purchaser without notice. In the context of an *in rem* writ issued in respect of a claim for

61 Merchant Shipping (Miscellaneous Amendments) Bill No. 49/2018, read for the first time on 19 November 2018 and passed on 14 January 2019.

62 High Court (Admiralty Jurisdiction) Act [HCAJA], Section 4(4)(i).

63 [2016] 5 SLR 667.

64 [2020] SGHC 200.

collision damage, the damage maritime lien was premised on fault and the only party that could bear personal liability in respect of the collision damage was the owner at the time of the collision. Therefore, the *in rem* writ should be addressed to the owner (or the demise charterer) of the ship at the time of the collision, even when the ownership of the offending ship had changed between the date of the collision and the issuance of the writ. The proper *in personam* defendant should be the owner of the offending ship at the time of the collision.

Sister ship arrest is possible in Singapore in circumstances where the *in personam* defendant owner of the ship that gave rise to the claim is also the beneficial owner of another vessel, so that the other vessel may be arrested for the claim.[65] It is not possible to arrest ships in associated ownership. Maritime liens are recognised for limited categories of priority claims, such as claims for salvage, damage done by a ship (typically in collisions), crew wages, bottomry and master's disbursements. Cargo may exceptionally be arrested for priority claims, such as maritime liens.

Critically, a ship should not be arrested in aid of legal proceedings in a foreign court. As yet, there is no statutory provision in Singapore empowering the courts to arrest property or retain arrested property for the satisfaction of foreign court proceedings.[66]

Procedure, documents and costs

An admiralty action *in rem* is commenced by the court issuing a writ *in rem*. This needs to be endorsed with a statement of claim, or at least a statement of the nature of the claim. The court fee for issuing a writ is between S$500 and S$1,500 depending on the size of the claim. The validity of the writ is 12 months from the date on which it was issued. The court may extend the validity, at its discretion, if there is, for instance, no opportunity to serve it on the ship (because it has not called at Singapore).

The documents required to be filed in court on an application for a warrant of arrest include the writ of summons (*in rem*), warrant of arrest, request to issue a warrant of arrest, supporting *affidavit* of the arresting party, *caveat* searches confirming that there are no subsisting *caveats* against the arrest of the vessel, an undertaking to indemnify the Sheriff and a letter of authority or the particulars of the person effecting service of the warrant of arrest and writ. If all documents are in place, a warrant of arrest order can be obtained within about half a day.

The Singapore Court of Appeal has clarified that although the Singapore courts will not consider the merits of a plaintiff's claim in deciding whether the plaintiff has properly invoked admiralty jurisdiction, the plaintiff must satisfy the various steps and relevant standards of proof for invoking admiralty jurisdiction in Singapore under Sections 3 and 4 of the HCAJA.[67] In this respect, a plaintiff need not prove who 'the person who would be liable on the claim in an action *in personam*' is for the purposes of establishing admiralty jurisdiction (until and unless the defendant subsequently challenges the plaintiff's action by applying to strike out the action under Order 9, Rule 16, of the Rules of Court or the inherent jurisdiction of the court), but the plaintiff must identify in its supporting *affidavit* for a warrant of arrest, without having to show in argument, the person who would be liable on the claim in an action *in personam*. In the event that a plaintiff's invocation of admiralty

65 HCAJA, Section 4(4)(ii).

66 *The 'Eurohope'* [2017] 5 SLR 934 at [27] to [30].

67 *The 'Bunga Melati 5'* [2012] 4 SLR 546 at [112].

jurisdiction or its arrest of the defendant's vessel is subsequently challenged, the plaintiff would need to show, in addition to the requirements under Sections 3 and 4 of the HCAJA, a good arguable case on the merits of its claim.[68]

The case of *The 'Chem Orchid' and another matter*[69] clarifies that a shipowner who wishes to set aside an *in rem* writ and a warrant of arrest on the ground of a factual issue (which determines whether the court's admiralty jurisdiction was validly invoked) has the option of relying solely on *affidavit* evidence or proceeding with a full hearing on the same (i.e., with oral testimonies and cross-examination of the shipowner's witnesses). If the former approach is adopted, the court will make an interlocutory decision, which means that the jurisdictional issue could be raised again at trial (albeit on a different standard of proof of balance of probabilities). The court's findings on admiralty jurisdiction will be conclusive, however, if the latter approach is taken.

The arresting party has a duty to make full and frank disclosure to the court of all material facts in the supporting *affidavit* filed in its application for a warrant of arrest.

The duty to make full and frank disclosure is to disclose all material facts, even if these facts are prejudicial to the plaintiff's claim.

If material facts were not disclosed, the warrant of arrest may be set aside. Furthermore, in *The 'Miracle Hope'*,[70] a sub-voyage charterer was given leave to intervene and was found to have *locus standi* to apply to set aside the warrant of the arrest based on material non-disclosure by the applicant of the warrant of arrest. The High Court confirmed that a person who was not a party to an *in rem* action but has an interest in the arrested vessel or the proceeds of sale in court, or whose interests are affected by an order made in the *in rem* action, may be permitted to intervene in the action to protect that interest.

The arrest warrant is issued by the High Court on the application of the plaintiff. Civil liability will not arise should the arrest turn out to be unjustified and set aside later, unless it can be shown that the plaintiff acted with bad faith or with gross negligence implying malice. A mistake in itself would not make an arrest wrongful, neither would a weak case for the plaintiff: actions for wrongful arrests are rare and seldom succeed. In practical terms, a plaintiff will face exposure for liabilities following an arrest only if it can be shown that it had no reason to believe it had an arguable claim or that the ship was owned by the defendant, or was intent on abusing the court process. It should be noted, however, that a failure to make full and frank disclosure of all material facts is a ground for awarding damages for wrongful arrest if the non-disclosure was deliberate, calculated to mislead, or if it was caused by gross negligence or recklessness.[71]

A ship can be arrested only if it comes within the territorial waters or within the port limits of Singapore. The ship is arrested when the warrant of arrest is affixed for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure. Owing to covid-19, it was permitted from 22 January 2021 to 28 March 2022 to serve a warrant of arrest or a writ of summons in an admiralty *in rem* action on the agent of the ship instead.[72] Based on the Covid-19 (Temporary Measures) (Control Order) (Amendment

68 ibid., at [96].

69 [2016] 2 SLR 50.

70 [2020] SGHCR 3.

71 *The 'Xin Chang Shu'* [2016] 1 SLR 1096.

72 Order 70, Rule 10A of the Rules of Court, introduced by the Rules of Court (Amendment) Rules 2021. See also the Supreme Court Practice Directions Amendment No. 1 of 2021.

No. 4) Regulations 2022, Paragraph 3(b), this measure no longer seems to be applicable.[73] After a vessel is arrested, it comes under the custody of the Sheriff of the Supreme Court of Singapore.

An undertaking to indemnify the Sheriff of the Supreme Court for costs of maintenance of the vessel under arrest is required, which includes the cost of a guard service. In practice, a deposit of S$10,000 is usually required on account of the costs of the Sheriff.[74] In addition, a local law firm employed to prepare and file the arrest papers and carry out the arrest usually requires a cross-undertaking from the arresting client, or funds sufficient to secure the firm's undertaking to the Sheriff. Since it will be responsible to the Sheriff, the practice is for the local law firm to ask for a payment on account of its fees and disbursements, including the Sheriff's costs.

Security

A plaintiff arresting party need not furnish any counter security to the defendant shipowner when applying to arrest.

The defendant can apply to the court, at a later stage of the court action, to require the plaintiff to furnish security for the defendant's costs, which is the same general rule as for all civil litigants. The court has discretion to require security for costs of the defendant if the plaintiff is ordinarily resident out of the jurisdiction, or is shown to be financially unsound so as to be unable to meet an adverse order of costs if ordered against it. The type of security if ordered is for costs only and does not cover damage suffered in other forms, for which the plaintiff will not be required to provide counter security.

To avoid an arrest or to release a vessel under arrest, a defendant can provide security for the underlying claim. This typically includes bail bonds (effectively a cash deposit with the court) and guarantees or letters of undertaking from a first-class bank or underwriter, such as an International Group P&I Club. Additionally, a defendant shipowner who apprehends an arrest of its vessel calling into Singapore can file a *caveat* against arrest via a local law firm with the High Court, provided that the shipowner or his or her solicitors provide an undertaking to enter an appearance in any action that may be brought against that vessel, and furnish satisfactory security in the action to the plaintiff within three days of being notified that an action has been commenced.

ii Court orders for sale of a vessel

As a corollary to an arrest in an *in rem* action, the High Court has the power to order a judicial sale *pendente lite* of an arrested vessel, if the shipowner fails to furnish security in exchange for a release. The High Court would typically permit the plaintiff arresting party to apply for a judicial sale order should the shipowner fail or refuse to provide security within, say, three weeks of the arrest. A key justification for allowing a judicial sale *pendente lite* is that, otherwise, the value of the *res* as security will diminish as expenses on the upkeep of the vessel under arrest are incurred, and the condition of the vessel deteriorates.

73 Maritime and Port of Authority Singapore (Port) Regulations, Regulations 61A, 61B and 61C, and Covid-19 (Temporary Measures) (Control Order) (Amendment No. 4) Regulations 2022.

74 Supreme Court Practice Directions 2013, Part XVI, Paragraph 124(4).

From the time of arrest, the main steps (in chronological order) following a successful application for judicial sale order, culminating in an actual sale to a buyer, are broadly as follows:

a surveying and appraising the vessel;
b advertising the sale of the vessel;
c time for sealed bids to be made; and
d acceptance of the bid to completion of sale.

A judicial sale is typically carried out by closed tender or public auction by the Sheriff of the Supreme Court, who is commissioned in all cases to undertake the appraisal and judicial sale of the arrested ship. A key guiding principle is that the court will scrutinise judicial sale applications carefully to ensure due process to best realise the market value of the arrested ship to be judicially sold. This is why the High Court has ruled in recent cases that applications for direct private sale of the arrested ship will generally not be allowed in Singapore.

In *The 'Turtle Bay'*,[75] the mortgagee bank arrested two vessels and commenced *in rem* proceedings against the defendant shipowner, later obtaining default judgment. It filed applications seeking the court's approval of a private direct sale of each vessel on terms of contract entered into with named purchasers for a specified price each. The prices were above, but not significantly higher than, the court valuation. The court emphasised that it has to strike a balance between the two competing concerns in a judicial sale to benefit all persons interested in the *res*: that of accepting the highest bid price at a fairly conducted Sheriff's sale on the one hand, and weighing that concern against the purpose to be achieved by a judicial sale, on the other hand. Where a party seeks to enter into a private direct sale, there is a divergence in its own interest to obtain benefits for itself, and the interest of the Sheriff acting pursuant to a commission for appraisal and sale. As a result, the court has to be circumspect when dealing with such a sale application and has to carefully scrutinise each application. The court will not allow a direct sale unless there exist 'powerful special features' or 'special circumstances', and these were lacking on the facts of the case. In *The 'Sea Urchin'*,[76] a similar situation arose, though the named buyer tabled an offer price above the value of the vessel, and had agreed to allow the vessel to sail with its cargo, then on board for delivery to the sub-charterer of the vessel. The court reaffirmed the position set out in *The 'Turtle Bay'* and held that the costs of discharging the cargo where a vessel is under arrest is not a relevant factor in allowing a direct sale. Furthermore, the alleged special circumstance as to the impossibility of landing the cargo in Singapore and that transshipping would be slow and costly are, in reality, typical consequences of an arrest of a cargo-laden vessel. As such, powerful special features or special circumstances justifying an order for a direct sale were lacking on the facts of this case as well.

In the case of *The Swiber Concorde*,[77] the High Court held that where an arrested vessel is sold successfully by the Sheriff following an earlier abortive sale, the deposit forfeited by the Sheriff in the earlier abortive sale shall be treated as part of the proceeds of sale of the vessel and be paid out to claimants with the proceeds of sale.

75 [2013] 4 SLR 615.
76 [2014] SGHC 24.
77 [2018] SGHC 197.

In another High Court decision, *The Long Bright*,[78] it was held that an order for sale would have to be discharged before the vessel might be released. In a judicial sale, the Sheriff was required to act for the benefit of all interested parties. The plaintiff was not entitled to unilaterally stop such a sale, thus preventing the Sheriff from carrying out the sale order, without first seeking a discharge of the order of sale from the court. In considering whether to discharge a sale order, the court had a duty to protect the interests of all persons with *in rem* claims against the vessel, including the defendant shipowner. Therefore, even if the plaintiff's claim had been extinguished, the court retained the power to let a judicial sale proceed to completion. The proceeds of the sale might be paid out to any intervener who had obtained judgment in its own *in rem* action.

In the distribution of sale proceeds following a judicial sale of the vessel, the Singapore Admiralty Court generally ranks the priority of claims as follows:

a port dues and Sheriff's commission and expenses of arrest, appraising and sale of the vessel;

b arresting party's legal costs of arrest, appraising and sale being costs of the producer of the fund;

c maritime lien claims (e.g., crew wages, collision and salvage claims, save for prior accruing possessory liens);

d possessory lien claims (i.e., shipyards in possession of a vessel after effecting repairs or conversion); and

e mortgagee claims.

All other maritime claims rank *pari passu* (for example, charter party, cargo and necessaries claims).

Although the established order of priorities is well recognised and not readily departed from, the court is entitled to depart from the usual order of priorities when warranted by the demands of justice. For example, an alteration of the general order of priorities would be justified if the mortgagee allows the bunker arrangements to proceed despite being fully aware that the mortgagors were insolvent and where the mortgagee would, in some manner, benefit from the supplies at the expense of the bunker supplier. However, the court in *The 'Posidon' and another matter*[79] refused to subordinate the mortgagee's claim to the claim of the bunker supplier for a few reasons. In particular, the court found the argument that the mortgagee's security could be maintained by providing motive power to the vessel to be too simplistic, as a highly mobile vessel could, in fact, expose itself to a wider spectrum of risks as a trading asset. Furthermore, there was no evidence that the mortgagor was liquidated or subject to winding-up proceedings or that the mortgagee was in *de facto* control and management of the finances for vessel's operations and, hence, aware of the mortgagor's purported insolvency at the material time. The mortgagee must also be 'fully aware, in advance' of the arrangements made by a bunker supplier to alter the general order of priorities. The fact that a vessel would require bunker fuel for motive power is insufficient to show that the mortgagee has satisfied the requisite level of knowledge.

It is accepted that, in general, in actions against the proceeds of sale of property arrest *in rem*, costs have the same priority as the claim in respect of which they have been incurred.

78 [2018] SGHC 216.

79 *The 'Posidon' and another matter* [2017] SGHC 138.

In *The 'Songa Venus'*,[80] the court held that the existence of a possessory lien in respect of a claim would affect the priority to be given to the costs incurred in enforcing that claim in an admiralty action *in rem*. The possessory lien holder surrendered the vessel to the admiralty court in return for an undertaking from the admiralty court to put him in the same position as if he had not surrendered the vessel. Once the possessory lien holder surrendered the vessel, he would have to commence an *in rem* action against the vessel to obtain a judgment so that he could participate in the distribution of the proceeds of the judicial sale of the vessel. To make good its undertaking to the possessory lien holder, the admiralty court ought to protect the possessory lien holder's costs incurred in the *in rem* action to the same extent as the possessory lien itself.

iii Interim relief

The Singapore court is empowered to grant interim relief in the form of injunctions under Section 4(10) of the Civil Law Act, including but not limited to the following:

a prohibitory and mandatory injunctions;

b *Mareva* injunctions; and

c anti-suit injunctions.

Under Order 13, Rule 1, of the Rules of Court, a party may apply for an injunction by way of a summons and supporting affidavit. In an urgent situation, the application may be made *ex parte*, subject to the Singapore Supreme Court Practice Directions and the requirement of full and frank disclosure of all material facts.

In respect of international arbitrations, the Singapore courts are empowered to grant interim injunctions in aid of arbitral proceedings under Section 12A of the IAA.

VI THE HCAJA IN THE CONTEXT OF CROSS-BORDER INSOLVENCIES

The UNCITRAL Model Law on Cross-Border Insolvency has come into force in Singapore (the Model Law).[81] In broad terms, the Singapore courts will be bound to recognise foreign insolvency proceedings if the conditions listed at Article 17.1 of the Model Law are satisfied. Once these foreign insolvency proceedings are recognised in Singapore, there will then be an automatic and mandatory moratorium against commencement and continuation of all proceedings and a stay of execution against the debtor company's property.

If *in rem* proceedings are commenced before the insolvency proceedings are recognised in Singapore, this will generally not be a problem. In particular, an *in rem* proceeding would be unaffected by the debtor company's liquidation if the *in rem* writ was filed and served before the commencement of insolvency proceedings. Similarly, Singapore courts are generally inclined to grant leave to proceed with an *in rem* action if the *in rem* writ was filed – but not served – before insolvency proceedings commenced. In contrast, *in rem* proceedings are likely to be stayed by the Singapore courts if the writ was issued after the application for winding up.

However, the statutory automatic moratorium that comes into effect upon an application for a scheme of arrangement might result in some tension with the HCAJA.

80 [2020] SGHC 74.

81 Insolvency, Restructuring and Dissolution Act 2018, Third Schedule.

Section 211B of the CA imposes an automatic moratorium of 30 days from the application date whereas previously it was discretionary. How the automatic moratorium provisions can be reconciled with the rights of *in rem* claimants was previously an open question.

This interaction between insolvency law and admiralty law, including, in particular, the extent to which the protections afforded to the statutory moratoria for schemes of arrangement conflict with the ability of maritime claimants to protect their interests was discussed in the case of *The 'Ocean Winner' and other matters*.[82] PetroChina International (Singapore) Pte Ltd (PetroChina) was the 'owner of and/or shipper and/or consignee and/or lawful holder' of certain bills of lading in respect of cargo shipped on board four vessels demise-chartered by Ocean Tankers (Pte) Ltd (OTPL). OTPL initially applied for moratorium relief pursuant to Section 211B of the CA but later withdrew the application and filed for judicial management instead, which was allowed. During the time there was a subsisting automatic moratorium pursuant to OTPL's application under Section 211B of the CA, PetroChina filed four writs against the four demise-chartered vessels. In the suit, the judicial managers of OTPL applied to set aside or strike out the four writs on the basis that there was a subsisting automatic moratorium at the time the writs were filed. The Singapore High Court was of the view that there were two main issues to be determined:

a whether the filing of the admiralty *in rem* writs constituted commencement of 'proceedings' against 'the company', OTPL, under Section 211B(8)(c) of the CA; and

b whether the filing of the admiralty *in rem* writs was an 'execution, distress or other legal process' against 'property' of OTPL under Section 211B(8)(d) of the CA.

If the answer in either case were in the affirmative, that would mean that the writs were filed without leave of court as required under Section 211B(8), Paragraphs (c) and (d) of the CA. After considering the two issues, the High Court found that the mere filing of the writs did not come within the meaning of Section 211B(8), Paragraphs (c) and (d) of the CA (although it did hold that a demise (or bareboat) charter interest comes within the meaning of 'property' under Section 211B(8)(d)). As such, no leave of court was required to file the writs. Consequently, there was no basis to set aside or strike out the writs. For completeness, the Court also opined that the filing of the writs did not come within the meaning of Section 211B(8)(e) of the CA as the mere filing of the admiralty writs only created security interest in the form of statutory liens over the vessels and was not a step taken to enforce that security (which would not have existed without the filing of the writs).

Given that Section 211B of the CA has since been repealed and re-enacted as Section 64 of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) as of 30 July 2020, the holding in *The 'Ocean Winner'* should similarly apply to *in rem* writs filed where there is an automatic statutory moratorium in place pursuant to Section 64 of the IRDA. However, it remains to be seen whether service of an *in rem* writ when there is an automatic statutory moratorium in place would necessitate leave of court, although the Court in *The 'Ocean Winner'* did opine *obiter* that leave was needed to serve the *in rem* writs.

82 [2021] SGHC 8.

VII REGULATION

i Safety

Being a major port and flag state, Singapore is a white-list country. It is party to all major IMO conventions, including the four pillar conventions: MARPOL (73/78), the STCW Convention, SOLAS and the MLC.

In the Singapore Straits, a mandatory ship reporting system (STRAITREP) has been adopted by the IMO. STRAITREP, together with the operation of a vessel traffic information system, enhances the navigational safety for ships in transit and facilitates the movements of vessels in the Singapore Straits.

In terms of security, the International Ship and Port Facility Security Code 2004 (the ISPS Code) was introduced and adopted by amendments to SOLAS; it entered into force on 1 July 2004. The ISPS Code was implemented by using the wide powers of the MPA given under the Maritime and Port Authority Act and the Merchant Shipping Act to give effect to the provisions of any international conventions in relation to shipping to which Singapore is a party.

ii Port state control

The MPA is the government agency responsible for implementing all IMO conventions. It was established by the Maritime and Port Authority of Singapore Act in 1996.

Singapore is a founding member of the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region 1994, which is a regional port state control organisation consisting of 20 members in the Asia-Pacific region.[83]

The MPA performs all regulatory and administrative functions in respect of merchant shipping, marine and port, including port state control inspections. Between April 2017 and February 2018, 10 ships were detained by the MPA for various deficiencies and non-conformities.[84]

The MPA has wide-ranging powers. The port master may board any ship in port and issue orders and directions to ships within the port and Singapore territorial waters. Port clearance may be refused for ships that do not comply with the port master's directions.

iii Registration and classification

In recent years, the Singapore Registry of Ships, which is an open registry, has introduced several tax benefits and, as a result, has attracted a large number of foreign shipowners.[85] It is currently ranked in the top 10 registries in the world in terms of registered tonnage, with more than 4,400 registered vessels, totalling in excess of 96 million gross tonnage (GT). It also has one of the youngest fleets.[86]

83 http://www.tokyo-mou.org/.

84 http://www.tokyo-mou.org/inspections_detentions/detention_list.php.

85 https://www.mpa.gov.sg/web/portal/home/singapore-registry-of-ships/about-srs-and-what-new/benefits-of-srs.

86 https://www.mpa.gov.sg/web/portal/home/singapore-registry-of-ships/about-srs-and-what-new.

The Singapore Registry of Ships is administered by the MPA. Eight internationally recognised classification societies[87] are authorised to survey and issue tonnage, safety and pollution prevention certificates to Singapore-flagged ships.

The requirements and conditions for registration of ships are set out in Part II of the Merchant Shipping Act and the Merchant Shipping (Registration of Ships) Regulations 1996.[88]

The MPA also maintains the register of ship mortgages, which can be recorded as soon as a vessel has been entered into the Registry.

iv Environmental regulation

The Singapore Straits is one of the busiest shipping routes in the world and collisions occur frequently. Collisions can have a detrimental effect on the environment if a cargo or bunkers are spilled into the sea. Having the necessary legislation and administrative bodies to deal with any environmental impact is vital.

Singapore is party to the following international conventions relating to pollution:

a MARPOL (73/78) (Annexes I to VI);

b the CLC Convention;

c the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the Oil Pollution Fund Convention);

d the Bunker Convention;

e the OPRC Convention;

f the Ballast Water Management Convention; and

g the 2020 Regulations to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL).

These international conventions are given effect by domestic legislation, as follows:

a the Prevention of Pollution of the Sea Act, as amended, gives effect to MARPOL (73/78) and the Ballast Water Convention,[89] and to other international agreements relating to the prevention, reduction and control of pollution of the sea and from ships;

b the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act gives effect to the CLC Convention and the Oil Pollution Fund Convention; and

c the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008 covers the liability of ships that cause bunker oil pollution in Singapore. This Act gives effect to the Bunker Convention.

87 https://www.mpa.gov.sg/web/portal/home/singapore-registry-of-ships/register-with-srs/additional-information: American Bureau of Shipping, Bureau Veritas, China Classification Society, DNV, Korean Register of Shipping, Lloyd's Register of Shipping, Nippon Kaiji Kyokai and Registro Italiano Navale.

88 https://www.mpa.gov.sg/web/wcm/connect/www/c7290236-12d8-4a2e-b396-552ebca1fc50/english-version.pdf?MOD=AJPERES.

89 The following national legislation also plays a part in implementing the Ballast Water Convention in Singapore: Prevention of Pollution of the Sea (Ballast Water Management) Regulations 2017; and Prevention of Pollution of the Sea (Reception Facilities and Garbage Facilities) (Amendment) Regulations 2017.

v Collisions, salvage and wrecks

Collisions

Singapore is party to the COLREGs, the regulations of which are incorporated as a Schedule to the Merchant Shipping (Prevention of Collisions at Sea) Regulations. The legal regime for collisions is governed by the Maritime Conventions Act 1911 and the Merchant Shipping Act. The Maritime Conventions Act 1911 gives effect to the International Convention for the Unification of Certain Rules Relating to Collisions between Vessels 1910, to which Singapore had acceded. Section 8 of the Maritime Conventions Act 1911 provides a two-year time bar in relation to collision and salvage claims, though the limitation period may be extended by agreement between the parties, or pursuant to Section 8(3)(b) if there has been no reasonable opportunity to arrest an offending vessel within the limitation period, or at the court's discretion under Section 8(3)(a).[90]

In the decision of *The 'Dream Star'*,[91] which is the first written judgment by the Singapore courts involving a collision between two vessels since 1979, the Singapore High Court considered whether there was a crossing situation within the meaning of Rule 15 of the COLREGs or an overtaking situation within the meaning of Rule 13 of the COLREGs. The case involved a collision between the *Meghna Princess* and the *Dream Star*. Although the High Court held that this was a crossing situation at least from 12.25 onwards and not an overtaking situation (as alleged by the owners of the *Dream Star* (the defendants)), the Court held that the owners of the *Meghna Princess* (despite being the stand-on vessel) were more to blame and apportioned liability 70:30 in the defendants' favour. First, the Court took issue with the incorrect use by the *Meghna Princess* of the VHF communications to give contradictory directions to the *Dream Star*. Second, the Court held that the *Meghna Princess* ought not to have transited through the Eastern Boarding Ground B, which was exacerbated by her decision to increase speed instead of reducing it in breach of Rules 6 and 8 of the COLREGs, requiring her to maintain a safe speed and avoid any risk of collision.

This is an interesting decision that is potentially useful in avoiding a possible loophole whereby one vessel can force another into a less favourable situation by making a short manoeuvre to alter the relative bearings of two vessels. At the time of writing, the case is being appealed and is one to watch.

Subsequently, the High Court of Singapore in *The 'Mount Apo'*[92] discussed the applicability of Rule 15 of the COLREGs. Two vessels collided with each other in the westbound lane of the Traffic Separation Scheme (TSS) in the Singapore Straits. *Hanjin Ras Laffan* was transiting from east to west, navigating to overtake another vessel, *Dalian Venture*, while *Mount Apo* was attempting to cross the westbound lane of the TSS to enter the eastbound lane to continue its journey eastward. The Court adopted the conditions as set out in *Alcoa Rambler*[93] that to constitute a crossing situation, the essential conditions are that the vessels must be (1) crossing vessels (2) in a manner that involves a risk of collision. Since there are two conditions to be fulfilled, it follows that a situation that fulfils only one would not be a crossing situation. Thus, the fact that there is a risk of collision would not give rise to a crossing situation if the vessels were not crossing vessels. The Court clarified that even though the two-step approach in *Alcoa Rambler* may at first appear to be inconsistent with

90 See *The 'Orinoco Star'* [2014] SGHCR 19 at [11] and [24].

91 [2017] SGHC 220.

92 [2019] SGHC 57.

93 [1949] 1 AC 236.

the approach adopted in *The 'Dream Star'*, in which the enquiry on the existence of a crossing situation focused on when the risk of collision materialised, in fact there is no inconsistency. In *The 'Dream Star'*, it was clear that the vessels were on a crossing course, as the stand-on vessel had been on a steady course for quite some time and there was no uncertainty as to her intention. Thus, the first condition in *Alcoa Rambler* – that of determining whether the two vessels were on a crossing course – was not at issue in *The 'Dream Star'*. Consequently, it is also not anomalous that risk of collision could arise before there was a crossing situation – *Alcoa Rambler* being a case in point. Furthermore, the Court observed that even when Rule 15 of the COLREGs is inapplicable, vessels are subject to the duty to maintain a proper lookout, to proceed at a safe speed, and to generally take precautions required by the duty of good seamanship. This case is also on appeal, and is another case to watch.

In the Singapore High Court case of *The 'Tian E Zuo'*,[94] HFW London, HFW Singapore and AsiaLegal LLC worked collaboratively for the plaintiff, the owner of *Arctic Bridge*. The action arose out of two related collisions on 12 June 2014 involving an anchored vessel, *Stena Provence*, *Tian E Zuo* and *Arctic Bridge*, at the Western Petroleum B Anchorage in Singapore.

Justice Belinda Ang apportioned liability between *Arctic Bridge* and *Tian E Zuo* at 50:50. She held that although *Arctic Bridge* was dredging her anchor, she was a vessel under way. In contrast, *Tian E Zuo* was a vessel at anchor until the time the involuntary towage started. In the Singapore High Court's opinion, *Arctic Bridge* was at fault, inter alia, in drifting into close quarters with *Tian E Zuo*, passing ahead and crossing *Tian E Zuo*'s bow at close quarters, increasing the risk of fouling and picking up the anchor chains of both vessels, failing to stop at any point in time as she proceeded towards *Stena Provence*, failing to maintain a proper lookout that resulted in the failure to appreciate the risk of commencing and continuing the involuntary towage, maintaining the speed and direction of *Arctic Bridge*, which set *Tian E Zuo* on a collision course and failing to appreciate a further risk of collision after the first contacts. *Tian E Zuo* was held to be at fault, inter alia, for failing to keep a proper lookout and in failing to alert *Arctic Bridge* of the entanglement and the involuntary towage, and for the decision of the master to stop her engines, causing him to have no control over *Tian E Zuo*, which resulted in the collision with *Stena Provence*.

In *The 'Caraka Jaya Niaga III-11'*,[95] the High Court considered the application of the single liability principle when the claim of one shipowner against another is time-barred. When two vessels are involved in a collision and both are to blame for the collision occurring, the loss and damage suffered by the owners (which reference includes demise charterers) of the respective vessels will ordinarily give rise to claims and cross-claims by one owner against the other. The general rule is that liability is apportioned according to the degree to which each vessel was at fault. Depending on the apportionment of liability and the recoverable quantum of each shipowner's loss and damage based on that liability apportionment, one shipowner may be either the net payor (i.e., net paying party) or the net payee (i.e., net receiving party). This is because, in practice, the quantum of the smaller recoverable claim is deducted from the quantum of the larger recoverable claim, leaving only one net balance to be paid by the net payor to the net payee. This outcome is the result of applying what is known as the single liability principle. In the event that a shipowner's claim against another is time-barred, the single liability principle was held not to apply, as the principle was found to presuppose that both the claim and cross-claim or counterclaim were not time-barred.

94 [2018] SGHC 93.

95 [2021] SGHC 43.

Salvage and wreck removal

Singapore is not a party to the 1989 Salvage Convention. The legal regime governing salvage and wreck removal is set out in the Merchant Shipping Act, the Maritime and Port Authority of Singapore Act and the Merchant Shipping (Wreck Removal) Act 2017. The MPA has general supervision over all wrecks in Singapore.

The Nairobi International Convention on the Removal of Wrecks 2007 (the Nairobi WRC 2007) came into force in Singapore on 8 September 2017. The Nairobi WRC recognises the potential danger that wrecks pose to safe navigation at sea and to the marine environment, and seeks to provide a legal basis for the prompt and effective removal of wrecks from exclusive economic zones of Member States and for the payment of compensation associated with the costs involved.

The Nairobi WRC 2007 requires owners of all seagoing vessels of more than 300 GT to take out insurance or provide other financial security to cover the costs of wreck removal to the limits of liability under the applicable national or international limitation regime. All Singapore-registered ships and those calling at the port of Singapore are required to carry on board a Wreck Removal Convention Certificate to attest that insurance or other financial security to cover liability for wrecks is in place.

vi Passengers' rights

Singapore is not a signatory to the Athens Convention or any of its protocols.

The LLMC Convention 1976 provides the limitation regime for passenger claims. Article 7 of the LLMC Convention addresses claims for loss of life and personal injury to passengers. The limitation of liability of a shipowner is 46,666 special drawing rights (SDRs) multiplied by the number of passengers that the ship is authorised to carry according to the ship's certificate, subject to a maximum limit of 25 million SDRs. On 14 January 2019, Parliament passed the Merchant Shipping (Miscellaneous Amendments) Bill to implement the 1996 LLMC Protocol in Singapore. When the amendments come into force, the limitation of liability for claims for loss of life and personal injury will increase to 175,000 SDRs multiplied by the number of passengers the ship is authorised to carry. The absolute maximum will be abolished.

vii Seafarers' rights

Singapore has ratified the MLC and accepted the subsequent amendments. The Merchant Shipping (Maritime Labour Convention) Act (the MLC Act) came into force with effect from 1 April 2014, thus implementing Singapore's obligations under the MLC. There are specific regulations in place dealing with matters relating to, inter alia, health and safety protection, repatriation, seafarer recruitment and placement services, seafarers' employment agreements, crew list and discharge of seafarers, training and certification of cooks and catering staff, and wages.

The MLC Act generally applies to all Singapore-flagged ships. Any ship of 500 gross registered tonnage and above is also required to carry and maintain a maritime labour certificate and a declaration of maritime labour compliance.

Port state control extends to any ship in Singapore (not being a Singapore ship) engaged in commercial activities. Similar to most international conventions, certificates issued by the flag state administration are accepted as *prima facie* evidence of a ship's compliance with the requirements under the MLC. Similarly, under the MLC Act, port state inspections in Singapore will be limited to verifying that a valid maritime labour certificate and a valid

declaration of maritime labour compliance are carried on board the ship.[96] This limitation, however, is fairly arbitrary as Section 58(4) of the MLC Act sets out a significant list of situations in which the port state control surveyor is permitted to inspect beyond the certificates. In particular, detailed port state inspection will be carried out in the following situations, among others:

a when the maritime labour certificate and the declaration of maritime labour compliance are not produced or are falsely maintained; or

b there are clear grounds for believing that the living conditions on board the ship do not conform to the requirements of the MLC Act or the MLC, or the working and living conditions of the ship constitute a clear hazard to the safety, health or security of the seafarers.[97]

The MLC Act implements the MLC requirements for the shipowner to have in place financial security to meet any liabilities that may arise from, inter alia, repatriation of a seafarer, medical and other expenses incurred in connection with a seafarer's injury or sickness, and burial or cremation of a seafarer.[98] Although neither the MLC nor the implementing legislation has defined 'financial security' (in respect of repatriation, death or long-term disability), Singapore has produced a list of accepted providers, which includes the International Group of P&I Clubs and certain fixed premium and other P&I insurers.[99] Certificate of entry from these clubs will be acceptable as evidence of financial security.

Ships that do not conform to the requirements of the MLC Act or the MLC may be detained, for example, when the conditions on board are 'clearly hazardous' to the safety, health or security of seafarers or if it constitutes a serious or repeated breach of the seafarers' rights under the Act.

To date, there have been no known detentions in Singapore for non-conformity with the MLC. With the implementing legislation in place, there is no doubt Singapore will enforce the provisions of the MLC through, inter alia, port state control and flag state control.

VIII OUTLOOK

In recent years, Singapore has positioned itself as the jurisdiction and forum of choice for resolution of maritime disputes, and cross-border disputes generally.

In tandem with the overall growth in maritime activity and trade, Singapore has made great strides in establishing itself as a key hub for maritime and trade-related arbitrations alongside London and Hong Kong. This is evident from statistical data showing a record number of disputes being arbitrated in Singapore.[100]

In a statement issued in March 2018, the MPA said it will strengthen the connectivity and inter-linkages of Singapore's maritime cluster, build a vibrant innovation ecosystem and develop a future-ready and skilled maritime workforce to continue to grow the maritime

96 Merchant Shipping (Maritime Labour Convention) Act [MLC Act], Section 58(2).

97 See MLC Act, Section 58(4) for further details.

98 ibid., Section 34.

99 https://www.mpa.gov.sg/web/wcm/connect/www/e3a258eb-3847-452f-a734-49f4a4f4791b/List+of+MPA+approved+MLC+financial+security+providers+%28caa+June+2017%29.pdf?MOD=AJPERES.

100 www.siac.org.sg/.

cluster and to capture new opportunities. The MPA will enhance and top up the Maritime Cluster Fund by S$100 million in support of its vision for maritime Singapore to be a 'global maritime hub for connectivity, innovation and talent'.[101]

In terms of jurisprudence, Singapore case law in the context of maritime law has continued to gain traction as a sound authority cited in other common law courts. During the past 10–15 years, the decisions reached by the Singapore High Court and the Court of Appeal have regularly featured in English law reports, such as Lloyd's Law Reports, on an array of legal issues that are of topical interest to the industry, such as principles concerning bills of lading, cargo misdelivery claims and the exercise of admiralty jurisdiction.

101 Dr Lam Pin Min, Senior Minister of State for the Ministry of Transport and Ministry of Health speaking at the annual Singapore Maritime Foundation reception in January 2018.