THE SHIPPING LAW REVIEW

SEVENTH EDITION

Editors
George Eddings, Andrew Chamberlain and
Holly Colaço

THE LAWREVIEWS

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PREFACE

The seventh edition of this book aims to continue to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again 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.

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: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues and decommissioning. A new chapter on ship financing is also included, which seeks to demystify this interesting and fast-developing area of law.

Each jurisdictional chapter 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. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to 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 examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US$380 billion in terms of global freight rates, amounting to about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's MEPC 72 in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement has led to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

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.

George Eddings, Andrew Chamberlain and Holly Colaço
HFW
London
May 2020

Chapter 35

SINGAPORE

Kimarie Cheang, Wole Olufunwa, Magdalene Chew and Edwin Cai[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 'the top bunkering port in the world'.[2] As well as the business 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 4,500 vessels registered with the Singapore Registry of Ships.[4] The most recent figures for Singapore's seaborne cargo put the volume at 627.688 million tonnes,[5] with container throughput at a notable 33.667 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), the 1978 SOLAS Protocol, the 1988 SOLAS Protocol and the 1996 SOLAS Agreement;

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

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

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

e the International Convention for Safe Containers 1972 (the CSC Convention);

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

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1 Kimarie Cheang and Wole Olufunwa were senior associates at HFW. Magdalene Chew is a director and Edwin Cai is an associate director at AsiaLegal LLC. The authors would like to thank Nahin Mustafiz for his assistance with this chapter. The information in this chapter was accurate as at May 2019.

2 www.mpa.gov.sg/web/portal/home/maritime-singapore/introduction-to-maritime-singapore/facts-and-trivia.

3 www.mpa.gov.sg/web/portal/home/maritime-singapore/introduction-to-maritime-singapore/leading-international-maritime-centre-imc.

4 *Year Book of Statistics Singapore 2018*, Department of Statistics, Singapore at page 182.

5 id.

6 id.

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

h the Convention on the International Maritime Satellite Organisation 1976 (the INMARSAT Convention);

i the Convention on Facilitation of International Maritime Traffic 1965 (the FAL Convention);

j the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)) (Annex I to Annex V) and the 1997 MARPOL Protocol to the International Convention for the Prevention of Pollution from Ships (Annex VI);

k the 1976 and 1992 Protocols to the International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC Convention);

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

m the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976);

n the 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 Search and Rescue Convention);

q the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA) and the 1988 SUA Protocol;

r the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (the OPRC Convention) and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (the HNS-OPRC Protocol);

s the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunker Convention);

t the Maritime Labour Convention 2006 (MLC), as amended by Amendments of 2014;[8]

u the Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (the Ballast Water Management Convention); and

v the Nairobi International Convention on the Removal of Wrecks 2007 (the Nairobi WRC 2007).

Singapore's international obligations set out in these IMO conventions are administered by the MPA through seven 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, licensing, etc.;

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, 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 IMO convention.

8 Note: MLC 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 Production) Act, which considers liability for bunker oil pollution;

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

g 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 apex court, which is the Court of Appeal. The legal system has its roots in the English common law system, so English case law is viewed as having persuasive authority in the Singapore courts, although the right of appeal to the Privy Council was abolished in 1994. Likewise, case law from other Commonwealth jurisdictions, in particular Hong Kong, Australia, New Zealand and Canada, are regularly cited and viewed favourably as authorities in the Singapore courts.

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 High Court, which alone exercises admiralty jurisdiction by statute.

High Court trials and certain interlocutory applications are normally heard before a single judge (whereas other interlocutory applications are heard by an assistant registrar) and experts may be appointed to assist the court in various subject matters. Cases involving specialist areas of law are generally assigned to list or docket judges with experience in commercial matters. Disputes relating to shipbuilding, shipping and insurance, and tort claims are examples of areas that are heard by Supreme Court justices with experience within that commercial field. Proceedings of a maritime nature are assigned to the Admiralty bench.

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 to 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 16 international judges with a mixed common law and civil law background. The SICC is a division of the High Court and it is primarily designed to hear and try international commercial disputes.

The SICC has jurisdiction to hear claims or actions (1) that are international and commercial,[10] (2) in which the parties have expressly submitted to the jurisdiction of the SICC by a written jurisdiction agreement, and (3) in which the parties to the action do not

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

10 Rules of Court (Amendment No. 6), published on 26 December 2014, Order 110 Rule 1.

seek any relief in the form of a prerogative order. 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 where the parties in the SICC proceedings or the original arbitration appoint foreign lawyers.[11]

Civil trials and certain interlocutory applications in Singapore are conducted in open court, although the parties may apply for an order to seal the court documents or case file to keep the proceedings confidential. Decisions by a single judge of the High Court may be appealed to the Singapore Court of Appeal, subject to any written agreement between the parties to limit the right of appeal. SICC judgments are recognised as a national court judgment (Supreme Court of Singapore) and any enforcement is dependent on the recognition of foreign judgments in the relevant jurisdiction. Other key features include the possibility for parties to choose to apply alternative rules of evidence and to be represented by foreign lawyers in offshore cases, as defined in the SICC Practice Directions.[12]

ii Arbitration, mediation and ADR

The Singapore courts have incorporated 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. The state courts of Singapore (which comprise the magistrates' courts and the district courts), in particular, actively encourage and endorse the early use of the ADR process in civil claims. The state courts try civil matters where the subject matter in question does not exceed S$250,000 in monetary value. 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.

The four ADR options currently available in the state courts for civil claims (including non-*in rem* maritime claims) are (1) mediation at the State Courts Centre for Dispute Resolution (SCCDR), (2) neutral evaluation at the SCCDR, (3) mediation at the Singapore Mediation Centre (SMC), and (4) arbitration through the Singapore Law Society Arbitration Scheme. Mediation at the SCCDR is the most commonly used ADR option in the state courts and is generally regarded as the default ADR option, followed by neutral evaluation. Both processes are fully confidential (that is, the matters discussed at ADR will not be disclosed to the trial judge if the matter proceeds to trial) and non-binding (unless parties opt for a binding evaluation or reach a binding settlement following the ADR process). If the ADR process is successful, particularly at an early stage, it can result in substantial savings in time and costs for the parties.

11 Supreme Court of Judicature (Amendment) Bill No. 47/2017, read for the first time on 6 November 2017 and passed on 9 January 2018.

12 www.sicc.gov.sg/documents/docs/SICC_Practice_Directions.pdf.

The Supreme Court of Singapore has also adopted a more pro-ADR approach. The Supreme Court Practice Directions include a process for parties to consider using ADR at the earliest possible stage of the proceedings. As with civil proceedings and ADR in the state courts, potential adverse costs orders can be made against any party that unreasonably refuses to engage in the ADR. A party that wishes to attempt mediation or any other means of ADR (e.g., neutral evaluation, expert determination or conciliation) in proceedings before the High Court or Court of Appeal should file and serve an ADR offer on the other party. If within 14 days thereafter, the other party does not serve a response to the ADR offer, it would be deemed unwilling to attempt the ADR without providing any reasons, and may be subject to adverse costs orders in the proceedings.[13]

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, on the other hand, is a non-sector-specific arbitration organisation that was established in 1991.

The SCMA Rules were amended in October 2015 to extend the SCMA small claims procedure now extends to cover disputes where the aggregate amount in dispute (claim and counterclaim), excluding interest and costs, does not exceed US$150,000 (up from US$75,000 previously). Alternatively, parties can either adopt the small claims procedure, regardless of the amount in dispute, or exclude the application of this procedure, by agreement. Under the small claims procedure, a sole arbitrator is appointed to conduct the arbitration and the 2015 amendments have introduced a cap on the arbitrator's fees (US$5,000 or, where there is a counterclaim, US$8,000) and recoverable legal costs (US$7,000 or, where there is a counterclaim, US$10,000 in total for each party's lawyers). Timelines for the service of case statements were abridged to 14 days. Parties can expect the award to be issued within 21 days of either the date of the tribunal's receipt of all parties' statements of case or, if there is an oral hearing (which is not usually the case), the close of the oral hearing.[14] In 2017, the London Maritime Arbitrators Association (LMAA) amended its rules to emulate the SCMA's expedited process for the appointment of a sole arbitrator and dealing with concurrent arbitrations, as well as controlling costs.[15]

Rule 47 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 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.[16] 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,[17] which include directions on early termination and parties' submissions.

13 https://epd.supremecourt.gov.sg/# - Supreme Court Practice Direction 35C.

14 Rule 46 of the SCMA Rules, Third Edition (October 2015).

15 LMAA Small Claims Procedure 2017.

16 Rule 47 of the SCMA Rules, Third Edition (October 2015).

17 Schedule B SCMA Rules, Third Edition (October 2015).

The SIAC continues to become an increasingly important global forum for international dispute resolution. The year 2017 saw SIAC set a new record for the highest number of new case filings and administered cases. SIAC's caseload has increased by more than five times in the past decade. The aggregate sum in dispute for all new case filings amounted to US$4.07 billion.[18] 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. While 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.

The 2016 SIAC Rules retain, with some amendments, an expedited procedure[19] for which any party to a SIAC arbitration desiring an expeditious arbitral process can apply. Now, disputes may be referred to arbitration under the expedited procedure in any of the following instances: (1) if the amount in dispute does not exceed the equivalent amount of S$6 million (representing the aggregate of the claim, counterclaim and any defence of set-off), (2) if all parties so agree, or (3) in cases of exceptional urgency. Parties can also agree beforehand to adopt this procedure, regardless of the amount in dispute, by incorporating the SIAC Expedited Procedure Model Clause in their contract. An arbitral award under the expedited procedure must be issued within six months of the date when the tribunal is constituted, although the Registrar of SIAC can extend the time in exceptional circumstances.

The president of SIAC retains the discretion not to apply the expedited procedure if the dispute is not suitable to be resolved in six months or where the procedure is generally not appropriate for the particular dispute. Equally, the tribunal may determine, in consultation with the parties, that an expedited procedure case shall be decided on documentary evidence alone.

Finally, any disparity between the parties' arbitration agreement and the Expedited Procedure will be resolved in favour of the latter.

Under the 2016 SIAC Rules, the parties may still appoint an emergency arbitrator in situations where a party is in need of emergency interim relief before a tribunal is constituted.[20] The types of emergency relief typically sought include preservation orders, freezing orders, orders permitting access to inspect property, *Mareva* injunctions and general injunctive relief. Cases in which applications for emergency relief are filed relate to disputes in a broad range of sectors, including shipping, international trade and general commercial agreements.

The emergency arbitrator will now be appointed within one calendar day, rather than one business day, of receipt of the application, fees and deposit. While emergency awards or orders have been passed in as little as two days, it generally takes between eight and 10 days on average (but within a maximum of 14 days) for the emergency arbitrator to render its award after hearing the parties' submissions. To ensure that emergency arbitration proceedings are cost-effective for any quantum, the fees for it are now fixed at S$25,000, unless otherwise determined by the Registrar.

18 www.siac.org.sg/69-siac-news/560-siac-announces-new-records-for-2017.

19 Rule 5 of the 2016 SIAC Rules.

20 Rule 30.2 of 2016 SIAC Rules.

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.[21]

Further changes have been brought in under the 2016 SIAC Rules.

a Multi-contract disputes can be brought to arbitration in one of two ways: (1) by filing separate notices of arbitration with an application for consolidation, or (2) simply by filing a single notice of arbitration in respect of all contracts. In both cases, the claimant will be deemed to have commenced multiple arbitrations. An application for consolidation can also be filed after the arbitration proceedings have commenced.[22]

b Parties and non-parties can apply to join a pending arbitration (either before or after the constitution of the tribunal).[23]

c An early dismissal procedure has been introduced in Rule 29 for claims or defences that are either wholly without legal merit or outside the scope of the tribunal.

d In recognising the international nature of the SIAC, there is no longer a predetermined location for the arbitration and this is left to the tribunal, unless otherwise agreed by the parties.

e All challenges to arbitrations will be issued with reasoned decisions for a fixed fee of S$8,000.[24]

Since 2013, Singapore has been a named arbitral forum to the BIMCO Standard Dispute Resolution Clause, besides London and New York, to reflect the global spread of maritime arbitration venues. Within the new SCMA BIMCO Arbitration Clause,[25] 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:[26]

a international arbitration proceedings;

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

c mediation proceedings arising out of or in any way connected with international arbitration proceedings;

d an application for a stay of proceedings referred to in Section 6 of the IAA and any other application for the enforcement of an arbitration agreement; and

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

Mediation is used in tandem with court proceedings in that the court can suggest that parties refer disputes to the 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

21 Section 2(a) of the International Arbitration (Amendment) Act 2012 (Singapore).

22 Rules 6 and 8 of 2016 SIAC Rules.

23 Rules 7 of 2016 SIAC Rules.

24 Rules 15 and Schedule of Fees of 2016 SIAC Rules.

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

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

(UN) Convention on International Settlement Agreements Resulting from Mediation, and to name it after Singapore. The Convention will be known as the 'Singapore Convention on Mediation'. It is the first treaty to be named after Singapore among the treaties concluded under the auspices of the United Nations organisation. At the session, UNGA also agreed that the signing ceremony for the Convention will be held in Singapore on 7 August 2019. Singapore is expected to be among the first signatories of the Convention. 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 upon 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 is comprised of experienced maritime lawyers, in-house counsel and other 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). Under the AMA Protocol between the SIAC and the SIMC, settlement agreements may be recorded as consent awards. The SIMC has an international panel of mediators and an international panel of experts from various industry sectors who can assist the mediator in complex commercial disputes involving technical questions. Although the mediation services offered by the SIMC focus largely on international commercial disputes, parties are free to choose whether they prefer to mediate at the SMC or the SIMC. For ad hoc mediations not administered by the SIMC in accordance with the SIMC Rules, the SIMC can serve as an appointing authority for mediators or experts, subject to the parties' agreement and for a prescribed fee.

iii Enforcement of foreign judgments and arbitral awards

Foreign court judgments of a Commonwealth origin readily find enforcement in Singapore, under the statutory regime of the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA). This prescribes a registration method to a judgment from a gazetted Commonwealth jurisdiction whereby the applicant for registration applies *ex parte* to the High Court to obtain, first, leave to register the foreign judgment. The notice of registration of the foreign judgment is then served on the judgment debtor. The judgment debtor is given the opportunity to contest the registration of the foreign judgment, failing which that judgment can be entered as a judgment of the Singapore High Court. Under the RECJA, a time limit of 12 months from the date of the foreign judgment applies, within which that judgment may be registered under the RECJA, or a longer period as may be allowed by the High Court on application.

In a similar vein, the Reciprocal Enforcement of Foreign Judgments Act (REFJA) allows the enforcement of a superior court judgment of any gazetted non-Commonwealth foreign country (which currently only comprises the Hong Kong Special Administrative Region of the People's Republic of China).

The REFJA prescribes a six-year limitation period within which the enforcement application must be brought. Both the RECJA and the REFJA permit challenges to the registration of foreign judgments on narrow, specific grounds that are spelled out by statute.

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 only applies to international civil or commercial disputes and not matters such as family, matrimonial, insolvency, consumer matters, tortious claims not arising from contracts, antitrust and intellectual property.

The CCAA implements the 2005 Hague Convention on Choice of Courts Agreements (HCCCA) to which Singapore is a signatory. The HCCCA establishes an international legal regime that requires contracting states to, inter alia, uphold exclusive choice of court agreements designating the courts of contracting states in international civil or commercial cases, and recognise and enforce judgments of the courts of other contracting states designated in exclusive choice of court agreements. 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 likewise 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 are currently 28 countries that are party to the HCCCA, namely Mexico and all European Union states except Denmark. As Mexico and the EU states are not covered under the current reciprocal enforcement regimes in Singapore under the RECJA and REFJA, the CCAA significantly extends the enforceability of Singapore court judgments.

There may be instances where a foreign judgment falls within the scope of both the CCAA and either RECJA or REFJA (e.g., judgments of the superior UK courts). In instances of overlap, the CCAA overrides RECJA and REFJA. For the avoidance of doubt, the RECJA and 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, RECJA or the REFJA may be enforced under common law. This requires an action upon the foreign judgment (i.e., the foreign judgment creditor commences a suit in a Singapore court, suing upon 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.

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 party to the New York Convention, is to be pro-enforcement when asked to enforce foreign arbitral awards under the Convention.[27] 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.[28] 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 this first stage, the enforcement process does not require judicial investigation by the court in the jurisdiction where enforcement is sought and the party seeking leave to enforce the award must merely comply with the formalistic procedural requirements under Order 69A of the Rules of Court.[29] The applicant must nevertheless give full and frank disclosure of the relevant facts, including the existence of any pending applications for setting aside the award or leave to appeal on a question of law, as the application for leave to enforce is made on an *ex parte* basis.[30] 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 it relies upon on a balance of probabilities.

IV SHIPPING CONTRACTS

i Shipbuilding

Singapore has long been a leading centre for ship repair and building. Singapore corporations Keppel Corp 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. There are a number of commonly used standard-form shipbuilding contracts, including SAJ (Shipbuilders' Association of Japan), AWES (Association of West European Shipbuilders) and BIMCO's NEWBUILDCON.

Shipbuilding disputes usually involve issues of whether the ship complies with the description and contractual specifications.[31] 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 upon the progress of the construction or at certain stages or milestones. Generally, in the absence of any provisions to the contrary, the risk will pass with the title.

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

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

28 ibid.

29 ibid., at [42], and more recently endorsed in *Denmark Skibstekniske Konsulenter A/S I Likvidation (formerly known as Knud E Hansen A/S) v. Ultrapolis 3000 Investments Ltd (formerly known as Ultrapolis 3000 Theme Park Investments Ltd)* [2010] 3 SLR 661 and clarified in *Galsworthy Ltd of the Republic of Liberia v. Glory Wealth Shipping Pte Ltd* [2011] 1 SLR 727. Endorsed by the Supreme Court of Victoria in *Altain Khuder LLC v. IMC Mining Inc & Anor* [2011] VSC 1 at [68].

30 *AUF v. AUG* [2016] 1 SLR 859.

31 E.g., *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.

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. In *Master Marine AS v. Labroy Offshore Ltd and others*,[32] the yard failed to deliver a rig by the agreed delivery date. The buyer rescinded the contract and called on the refund guarantees furnished by the seller's banks. The yard applied *ex parte* for an injunction preventing the banks from paying out the monies or Master Marine receiving the same. The Singapore Court of Appeal held that on the true construction of the refund guarantees, the guarantees were on-demand guarantees, and having satisfied the conditions for payment under the guarantees, the buyer was entitled to payment under the refund guarantees.

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*[33] (*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). While the Singapore High Court in *China Taiping Insurance (Singapore) Pte Ltd (formerly known as China Insurance Co (Singapore) Pte Ltd) v. Teoh Cheng Leong*[34] (*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 – that is, fraud and unconscionability.[35] The fraud exception is meant to safeguard the account party from a dishonest call being made upon the guarantee by the beneficiary.[36] The unconscionability exception, on the other hand, 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.[37] 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.

It is, however, 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 recently considered the issue of whether parties could contractually restrict the right of the obligor under a

32 [2012] 3 SLR 125.

33 [2005] 1 WLR 2497.

34 [2012] SGHC 2.

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

36 ibid., at [60].

37 ibid., at [104].

performance bond to apply for an injunction (which is an equitable remedy) to restrain the beneficiary from calling on the bond.[38] 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 on any ground, except in the case of fraud.[39] 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*).[40]

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 the yard to construct or complete the ship in accordance with the terms of the contract may entitle the 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 enacted 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 UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) does not apply. Singapore has not acceded to or ratified the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (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.

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

39 ibid., at [5].

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

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 should have been delivered.

In respect of contracts of carriage of goods by sea, the relevant liens applicable are (1) 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,[41] or under contract for amounts payable to the shipowner under the contract of carriage, (2) 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 (3) 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*[42] 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[43] 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 of the CA. 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. Further, given the large number of charter parties concluded every day, imposing a registration requirement will 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' 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

41 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.

42 [2017] SGHC 172.

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

these will only be considered registrable 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 upon 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,[44] in which the Court of Appeal declined to follow the English court decision in *The 'Imvros'*[45] 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*[46] 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'*.[47]

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 CP was formed notwithstanding the presence of a 'subject to review' clause.[48]

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

44 [2004] 1 SLR(R) 171.

45 [1999] 1 Lloyd's Rep 848.

46 [2002] 2 SLR(R) 1119.

47 [2002] 1 Lloyd's Rep 113.

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

b a person with possession of the bill 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 a person with possession of the bill 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.[49] 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 in *APL Co Pte Ltd v. Voss Peer*[50] 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 recent High Court decision of *The 'Star Quest'*,[51] the plaintiffs sold bunkers to buyers (two subsidiaries of OW Bunkers A/S), which were loaded onto several bunker barges owned or demise-chartered by the defendants. The terminal at which the bunkers were loaded, prepared and furnished various bills of lading naming the plaintiffs as shipper and made out to its order. By the time the plaintiffs invoiced the buyers for the price of the bunkers, the bunkers had already been supplied to other vessels and expended for consumption without production of the original bills of lading, which the plaintiffs still possessed. The buyers subsequently went insolvent and the plaintiffs, having not been paid for the bunkers, demanded delivery of the same from the defendants on the basis that they still held the bills of lading.

The plaintiffs then applied for summary judgment but failed in their application, with the High Court giving the defendants unconditional leave to defend the action. In arriving at this decision, the High Court held, among other things, that it was at least arguable that the bills of lading could not be relied upon as contractual documents, and that their express terms indicated 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. Further, 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.

49 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.

50 [2002] 2 SLR(R) 1119.

51 [2016] 3 SLR 1280.

Apart from bringing a claim in contract, Singapore law, again as exemplified by recent decisions at the High Court, also recognises and applies common law principles of bailment and tortious duties of conversion 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]

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 upon 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.

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. The Merchant Shipping Act of Singapore, as amended in 2004, contains various provisions that either operate in tandem with or modify the provisions of the 1976 Convention. These provisions are found in Sections 136 to 142 of the Act.

Singapore is, however, not a party to the LLMC Protocol 1996 or the 2012 Amendments to the 1996 Protocol, and the increase in the limits of liability under the 1996 Protocol and the 2012 Amendments are therefore not applicable under Singapore law.

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. These 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;

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

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;
d in respect of the removal, destruction or the rendering harmless of the cargo of the ship (but not if under contract with the person liable); and
e 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.

The limits of liability for loss of life or personal injury are:
a 166,667 special drawing rights (SDRs) for ships below 300 tonnes; and
b 333,000 SDRs for ships not exceeding 500 tonnes.

For larger ships, the following amounts are used in addition to 333,000 SDRs:
a between 501 and 3,000 tonnes: 500 SDRs per tonne;
b between 3,001 and 30,000 tonnes: 333 SDRs per tonne;
c between 30,001 and 70,000 tonnes: 250 SDRs per tonne; and
d 70,001 tonnes and above: 167 SDRs per tonne.

The limits of liability for any other claims are:
a 83,333 SDRs for ships below 300 tonnes; and
b 167,000 SDRs for ships not exceeding 500 tonnes.

For larger ships, the following amounts are used in addition to 167,000 SDRs:
a between 501 and 30,000 tonnes: 167 SDRs per tonne;
b between 30,001 and 70,000 tonnes: 125 SDRs per tonne; and
c 70,001 tonnes and above: 83 SDRs per tonne.

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 1976 Convention, following practical instances where this has been done in Singapore, and the approach in the English Court of Appeal decision in *Kairos Shipping Ltd v. Enka & Co LLC (The 'Atlantik Confidence')*.[53]

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

53 [2014] EWCA Civ 217.

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.[54]

On the other hand, where 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 that foreign jurisdiction. The existence of different limitation regimes is not considered a personal or juridical advantage under the *Spiliada*[55] principles that the Singapore courts apply when considering a stay application.[56]

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 International Convention Relating to the Arrest of Sea-Going Ships 1952 or the International Convention on Arrest of Ships 1999 (the Arrest Convention 1999), neither is it a signatory to the International Convention on Salvage 1989 (the 1989 Salvage Convention), under which an expanded jurisdiction for arrest for salvage claims is now available to signatory countries, such as the United Kingdom.

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

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

Section 3(1)(h) of the HCAJA, for example, provides that the High Court has admiralty jurisdiction over 'any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship'. The High Court held in *Lipkin International Ltd v. Swiber Holdings Ltd and another*[57] that the term 'relating to' should be 'narrowly construed to exclude a collateral or separate agreement independent of the charter party or bill of lading unless it is "intrinsically related to the use or hire of a vessel"'. In this case, it was held that an agreement to procure a charter party does not fall within the ambit of Section 3(1)(h).

In a decision by the High Court in 2016, it was held that Section 3(1)(o) of the HCAJA, which allows for 'any claim by a master, shipper, charterer or agent in respect of

54 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.

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

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

57 [2016] SLR 1079.

disbursements made on account of a ship' to be brought, did not apply to bookkeeping and administrative fees incurred by a vessel's managers or agents as such fees were incurred on behalf of the shipowner and not the ship. Neither did Section 3(1)(o) of the HCAJA apply to management fees, as the provision did not cover any remunerative elements, whether by way of commission or fee.[58]

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.[59]

The doctrine of agency by estoppel was recently examined by the Court of Appeal in *The Bunga Melati 5*,[60] in which the defendant was alleged to be a party to the contract for the supply of bunkers via the agency of the defendant's purported agent and was, therefore, contractually liable to the plaintiff for the bunkers supplied (i.e., liable *in personam*). There, Chief Justice Menon (delivering the judgment of the court) held that estoppel would operate if the following elements are satisfied: (1) a representation by a person against whom the estoppel was sought to be raised; (2) reliance on that representation by the person seeking to raise the estoppel; and (3) detriment. In particular, representation can only be established by silence or inaction if there was a legal or equitable (and not merely moral) duty owed by the silent party to the party seeking to raise the estoppel to make a disclosure. This duty would only arise if the silent party knew that the party seeking to raise the estoppel and was acting based on the 'mistaken belief which the silent party acquiesced in'. The plaintiff argued that the court ought to infer, from the email exchange between the defendant and the plaintiff, that the defendant knew of the plaintiff's misunderstanding regarding the purported agent's position. However, this argument was promptly rejected by the Court of Appeal on the basis of the well-established rule that an inference may only be drawn if it is the sole inference flowing from the proven facts.

In proving ownership of a vessel for the purposes of an arrest, ship registers serve as records upon 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'*,[61] 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 said 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.

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.[62] It is not possible to arrest

58 *The 'PWM Supply' ex 'Crest Supply 1'* [2016] 4 SLR 407.

59 Section 4(4)(i) HCAJA.

60 [2016] 2 SLR 1114.

61 [2016] 5 SLR 667.

62 Section 4(4)(ii) HCAJA.

ships in associated ownership in the same way that is permitted under, say, South African law. 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. Presently, there is no statutory provision in Singapore empowering the courts to arrest property or retain arrested property for the satisfaction of foreign court proceedings.[63]

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, at its discretion, extend the validity 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 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. In any given case, if circumstances are not clear as to, for instance, the *in personam* liability of the shipowner for the claim, or proof of ownership of the vessel to be proceeded against, the arresting party has to be careful to address and explain any such weaknesses in its case.

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.[64] 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 18 Rule 19 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 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.[65]

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

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

65 ibid. at [96].

The recent case of *The 'Chem Orchid' and another matter*[66] 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, however, be conclusive if the latter approach is taken.

The duty to make full and frank disclosure is to disclose all material facts. The test of materiality for an arrest application is also the same as that required in other *ex parte* civil remedies. The mere disclosure of material facts without more or devoid of the proper context is in itself insufficient to constitute full and frank disclosure. Unless the document is presented to the judge, it has not been disclosed. The test of materiality is whether the fact is relevant to the making of the decision whether to issue the warrant of arrest, that is, a fact that should properly be taken into consideration when weighing all the circumstances of the case, though it need not have the effect of leading to a different decision being made. Examples of material facts that have to be disclosed to the court include:

a facts that affect the invocation of admiralty jurisdiction (e.g., the identity of the person liable *in personam*, whether the person liable *in personam* is the owner or charterer of the offending vessel when the cause of action arose or the registered owner of the offending ship at the time the writ is issued, whether the requirement for externality under Section 3(1)(d) of the HCAJA is satisfied);

b defences that will result in the arresting party's claim being determined summarily, and regarded as frivolous, vexatious and an abuse of process; and

c facts that would assist the court in adequately and accurately understanding the arresting party's claim and surrounding circumstances to make an informed and fair decision.

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. Practically speaking, a plaintiff will only face exposure for liabilities following an arrest 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.[67]

In Singapore, a ship can only be arrested if it comes within the territorial waters as well as 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. After a vessel is arrested, it comes under the custody of the Sheriff of the Supreme Court of Singapore.

66 [2016] 2 SLR 50.

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

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, an initial deposit of between S$5,000 and S$10,000 is usually required on account of the costs of the Sheriff. 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, at a later stage of the court action, apply to the court 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. Such 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 will deteriorate.

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'*,[68] 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: 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, which is to benefit all persons interested in the *res*. 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'*,[69] 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 a recent High Court case of *The Swiber Concorde*,[70] it was 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 together with the proceeds of sale.

In another recent High Court decision of *The Long Bright*,[71] 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.

68 [2013] 4 SLR 615.

69 [2014] SGHC 24.

70 [2018] SGHC 197.

71 [2018] SGHC 216.

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).

While 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 where the demands of justice warrant the same. For example, an alteration of the general order of priorities would be justified where 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*[72] 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. Further, there was no evidence that the mortgagor was liquidated or subjected 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 in order 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.

VI THE HCAJA IN THE CONTEXT OF CROSS-BORDER INSOLVENCIES

The UNCITRAL Model Law on Cross-Border Insolvency has recently come into force in Singapore (the Model Law).[73] Broadly speaking, 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. Likewise, Singapore courts are generally inclined to grant leave to proceed with an *in rem* action if the *in rem* writ

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

73 Tenth Schedule of the Companies Act.

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 new Section 211B of the Companies Act in relation to Schemes of Arrangement might result in some tension with the HCAJA. Section 211B imposes an automatic moratorium period 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 remains to be seen. It appears that *in rem* actions may fall outside the purview of the moratorium under Section 211B(c) of the Companies Act, which refers only to 'the commencement or continuation of any proceedings . . . against the company' and not against the vessel itself.[74] Likewise, the moratorium under Section 211B(d) of the Companies Act applies only to the 'execution, distress or other legal process against any property of the company'. While 'any property of the company' could presumably cover a vessel owned by the debtor company, an argument can be made that the phrase 'other legal process' refers only to legal processes similar to execution and distress, which does not include an *in rem* action.[75] It has been held, in the case of *The Daien Maru No.18*,[76] that an arrest and sale of a vessel cannot be classified as an execution process. Earlier cases, such as *Lim Bok Lai v. Selco (Singapore) Pte Ltd*,[77] dealt with a situation in which a company was in liquidation. Although it is arguable that the same principles would extend to a situation in which a company was under a judicial management order, the same is unlikely to apply in the case of a scheme of arrangement.

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', which include 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. The MPA was established by the Maritime and Port Authority of Singapore Act in 1996.

74 www.supremecourt.gov.sg/Data/Editor/Documents/Speech%20at%20Maritime%20Law%20Conference%202017%20.pdf.

75 ibid.

76 [1983-1984] SLR(R) 787.

77 [1987] SLR(R) 466.

Singapore is a founding member of the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region 1994 (the Tokyo MOU), which is a regional port state control organisation consisting of 20 members in the Asia-Pacific region.[78]

The MPA performs all regulatory and administrative functions in respect of merchant shipping, marine and port, including port state control inspections. The MPA is responsible for, inter alia, port state control to ensure that ships leaving the port meet the international safety, security and pollution prevention standards. Inspections are carried out by port state control and ships that do not meet the requisite international standards may be detained. Between April 2017 and February 2018, 10 ships were detained by the MPA for various deficiencies and non-conformities.[79]

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.[80] It is currently ranked in the top 10 registries in the world in terms of registered tonnage, with more than 4,700 registered vessels, totalling in excess of 88 million gross tonnage. It also has one of the youngest fleets.[81]

The Singapore Registry of Ships is administered by the MPA. Eight internationally recognised classification societies[82] 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. The conditions for registration are relatively straightforward.

a Vessels that are more than 17 years old will generally not be considered for registration; see Section 8 of the Merchant Shipping (Registration of Ships) Regulations 1996.

b The registered owner must be a Singapore citizen or permanent resident or a Singapore incorporated company, which can be either locally or foreign owned.

c For any foreign-owned company (defined as a company incorporated in Singapore with more than 50 per cent of the equity owned by foreign interests), the company is required to have a minimum paid-up capital of S$50,000. The vessel must be self-propelled and have a gross tonnage of at least 1,600. The minimum paid-up capital and tonnage requirements may be waived at the discretion of the Registry.[83]

78 www.tokyo-mou.org/.

79 www.tokyo-mou.org/inspections_detentions/detention_list.php.

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

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

82 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 GL, Korean Register of Shipping, Lloyd's Register of Shipping, Nippon Kaiji Kyokai and Registro Italiano Navale.

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

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 from the vessels involved. 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 Oil Pollution Fund Convention;
d the Bunker Convention;
e the OPRC Convention; and
f the Ballast Water Management Convention.

These international conventions are given effect by domestic legislation:

a the Prevention of Pollution of the Sea Act, as amended, gives effect to the International Convention for the Prevention of Pollution from Ships 1973, the Protocol of 1978 (MARPOL) and the Ballast Water Convention,[84] and to other international agreements relating to the prevention, reduction and control of pollution of the sea and pollution 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.

The MPA coordinates operations for cleaning up spills, and monitors and enforces measures to prevent oil pollution in Singapore waters. Under the Prevention of Pollution of the Sea Act, the MPA is empowered to take preventive measures to prevent pollution, including denying entry or detaining ships.

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

84 The following national legislation also plays a part in implementing the Ballast Water Management 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.

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).[85]

In the recent decision of *The 'Dream Star'*,[86] which is the first written judgment by the Singapore courts involving a collision between two vessels since 1979, the Singapore High Court had occasion to consider 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 vessels 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*, (i.e., 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 reduce speed in breach of Rules 6 and 8 of the COLREGs (which required 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.

In the recent Singapore High Court case of *The 'Tian E Zuo'*,[87] 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.

In the early hours of 12 June 2014, the area was experiencing strong winds. Resultantly, *Tian E Zuo* started to drag her port anchor and collided with *DL Navig8*. *Tian E Zuo* was unable to move unilaterally as its mooring lines and anchor chains had become entangled (or there was fear of entanglement) with *DL Navig8* and a bunker barge *Marine Liberty*. Despite *Tian E Zuo*'s port anchor and starboard anchor being in the water, the three vessels continued to drift together towards *Arctic Bridge*. Noticing the three vessels drawing closer to *Arctic Bridge*, the master of *Arctic Bridge* was forced to move from her anchored position, dredging three shackles of its port anchor cable in the water. However, *Arctic Bridge* was unable to clear another anchored vessel in her attempt to move away, and instead passed the bow of *Tian E Zuo*, and her anchor chains entangled with that of *Tian E Zuo*. The entanglement resulted in *Tian E Zuo* being towed by *Arctic Bridge* for approximately 20 minutes. Subsequently, *Tian E Zuo* collided with the port quarter of *Stena Provence*, the impact of which caused the *Stena Provence* to turn to port towards *Arctic Bridge*. *Arctic Bridge* maintained her forward movement, towing *Tian E Zuo* along after the contact. After the first contact, *Tian E Zuo*

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

86 [2017] SGHC 220.

87 [2018] SGHC 93.

reduced her engine speed before coming to a complete stop while still being dragged along by *Arctic Bridge* at full speed. Subsequently, *Arctic Bridge* towed her into a second collision with *Stena Provence*.

Belinda Ang J 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 in, inter alia, 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 for, inter alia, 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* thus resulting in the collision with *Stena Provence*.

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 Nairobi WRC 2007 came into force in Singapore on 8 September 2017. The Nairobi WRC 2007 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 over 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 will now be 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.

The MPA has general supervision over all wrecks in Singapore.

Part IX of the Maritime and Port Authority of Singapore Act empowers the MPA to require owners of any vessel or object sunk, stranded or abandoned within the port of Singapore or approaches thereto to remove or destroy the whole or any part of that vessel or object. If the MPA's directions are not complied with, it may take possession of the vessel or object, raise, remove or destroy the vessel or object, and recover its expenses from the proceeds of the sale of the vessel or object. If the proceeds of sale are insufficient to reimburse the MPA, the outstanding amount is a debt that may be recovered from the owners.

Part IX of the Merchant Shipping Act deals with wreck and salvage and provides that the MPA is empowered to appoint any person to be a receiver of a wreck. The appointed receiver has extensive powers to deal with any ship that is wrecked, stranded or in distress at any place on or near the coasts of Singapore or within Singapore territorial waters. The

receiver of the wreck may take possession and raise, remove or destroy, and sell in such manner as it thinks fit, any ship so raised or removed and any other property recovered in the exercise of his or her powers.

Further salvage is payable for saving life and for any service rendered to any shipwrecked, stranded or in-distress vessel on or near the coasts of Singapore or in any tidal water within the limits of Singapore. If salvage is due in respect of services rendered in assisting any ship, or in saving life, cargo or apparel, the Merchant Shipping Act empowers the receiver of the wreck to detain the ship, cargo or apparel until payment is made for salvage or process is issued for the arrest or detention of the property by the High Court. The receiver of the wreck is also empowered to sell the detained property if payment is not made within 20 days of the amount becoming due or within 20 days of a decision being reached by the High Court or the Court of Appeal, as the case may be.

vi Passengers' rights

Singapore is not a signatory to the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (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 the owners is 46,666 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, the Singapore Parliament passed the Merchant Shipping (Miscellaneous Amendments) Bill to implement the 1996 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 (PSC) extends to any ship in Singapore (not being a Singapore ship) engaged in commercial activities. Like 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 Convention. 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.[88] This limitation, however, is fairly arbitrary as Section 58(4) of the MLC Act provides a significant

88 Section 58(2) of the MLC Act.

list of situations in which the PSC surveyor is permitted to inspect beyond the certificates. In particular, detailed port state inspection will be carried out in the following situations, inter alia: (1) when the maritime labour certificate and the declaration of maritime labour compliance are not produced or are falsely maintained; or (2) 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 Convention, or the working and living conditions of the ship constitute a clear hazard to the safety, health or security of the seafarers.[89]

The MLC Act implements the Convention 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.[90] While neither the Convention 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.[91] 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.

At the time of writing, 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. The SIAC arbitrated 343 new cases in 2016 from parties in 56 jurisdictions.[92] It is the preferred arbitral institution in Asia, and third out of the top five arbitral institutions in the world.[93] Similarly, since its re-establishment in 2009, the SCMA has enjoyed considerable success. In 2018, a record 56 references were registered at the SCMA. Compared with 2017's average case quantum of US$1.46 million, the average in 2018 was US$1.8 million. The total amount in dispute also rose from US$53 million in 2017 to US$88.7 million in 2018.[94] This trend is likely to continue as Singapore continues

89 See Section 58(4) of the MLC Act for further details.

90 Section 34 of the Merchant Shipping (Maritime Labour Convention) Act.

91 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.

92 www.siac.org.sg/.

93 www.siac.org.sg/component/content/article/69-siac-news/568-siac-is-most-preferred-arbitral-institution-in-asia-and-3rd-in-the-world.

94 www.scma.org.sg/SiteFolders/scma/387/YIR/2017YearInReview.pdf.

to grow in importance and in overall attractiveness to the maritime industry as a venue for arbitral dispute resolution and, indeed, the resolution of broader commercial disputes by litigation, with the establishment of the SICC.

As mentioned in Section III.ii, Singapore has passed legislation allowing for third-party funding in the leading global arbitration centres of London, New York and Geneva. This change to the laws helps Singapore to shore up its place in the top five most-preferred international arbitration centres in the world.

The legal framework has been enhanced to give the Singapore courts the power to grant interim remedies, specifically in support of international arbitrations. The High Court is empowered to order, where a ship or property is arrested in court proceedings in Singapore, that the arrested property be retained as security in answer to an award to be made in arbitration that is to be commenced or that is already under way in Singapore or elsewhere. Court proceedings can be stayed on the basis that provision of equivalent security is given in place of an arrested vessel for the satisfaction of any such award. With effect from January 2010, the High Court's powers to order interim measures in aid of arbitration in Singapore, or foreign arbitration, were enhanced by statutory amendment to the IAA. The amendments allow the High Court, particularly in cases of urgency, or where an arbitral tribunal has no power or is unable for the time being to act effectively, to make orders or give directions to any party for, inter alia, the preservation, interim custody or sale of property that is the subject matter of the dispute, preservation of evidence, and other interim injunctive relief.

The Merchant Shipping (Miscellaneous Amendments) Bill, passed on 14 January 2019 to amend the LLMC Convention 1976 and the 1989 Salvage Convention, when in force, will ensure that Singapore's limitation regime reflects the current value of life and property adopted by other countries that have acceded to the 1996 Protocol. This will promote the selection of Singapore law in commercial shipping contracts and attract claimants to Singapore's legal and dispute resolution facilities.

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 in order to continue to grow the maritime 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'.[95]

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 to 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 relating to bills of lading, cargo misdelivery claims and the exercise of admiralty jurisdiction.

95 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.

Appendix 1

ABOUT THE AUTHORS

MAGDALENE CHEW

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Magdalene set up AsiaLegal LLC with three others in November 2002. Since 1 July 2015, AsiaLegal LLC has been a member of HFW AsiaLegal, a Formal Law Alliance with HFW Singapore. In 2017, Magdalene was appointed onto the Expert Panel (Maritime) of the Singapore Mediation Centre. In January 2019, she was accredited as a Senior Accredited Specialist in Maritime and Shipping Law by the Singapore Academy of Law. From 2013–2015, she was nominated for the Euromoney Legal Media Group Asia Women in Business Law Awards under the Shipping practice area. Since August 2015, she has served as the President of the Singapore chapter of the Women's International Shipping and Trading Association. She is also on the management committee of Mensa Singapore. Magdalene has accumulated experience in both contentious and non-contentious work in her years of practice in general commercial litigation, and in more specific areas of litigation practice, such as insolvency, shipping and admiralty. She has handled and advised on cargo claims, demurrage claims, claims for charter hire and freight, crew claims, detention of cargo disputes, charter party disputes, collision claims, *Mare del Nord* orders and general average claims. She has independently advised on and attended to the closure or completion of many sale, purchase and ship financing transactions, both local and international.

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Edwin is an associate director at AsiaLegal LLC and has been involved in various areas of practice, including shipping, admiralty and arbitration. His experience in shipping and admiralty work includes regularly advising and acting for a wide range of stakeholders, including shipowners, charterers, cargo interests and bunker suppliers in claims relating to charter parties, bills of lading, cargo, collisions and international trade and commodities disputes.

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