SINGAPORE ACADEMY OF LAW

Singapore:
An Overview of Shipping Law

Photograph courtesy of the Maritime and Port Authority of Singapore

"This is a most valuable judgment, both for its depth of analysis and the width of its comparative law survey."

- The English Court of Appeal in The Alkyon [2018] EWCA Civ 2760 commenting on the judgment of the Singapore Court of Appeal delivered by Rajah JA in The Vasiliy Golovnin [2008] SGCA 39

Supporting organisations:

MPA SINGAPORE

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SMF Singapore Maritime Foundation

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I. INTRODUCTION

Singapore - A Maritime and Trading Hub

Singapore is today one of the busiest ports in the world. With more than 130,000 vessels calling at the port of Singapore annually, it acts as a maritime gateway to Asia.

Backed by good infrastructure and governmental support, it is also home to more than 150 of the world's top international shipping groups. The Singapore Registry of Ships has also grown over the years and today it boasts more than 4,000 vessel registrations. See Schedule I for a more detailed discussion on the registration of ships in Singapore.

The importance of the maritime industry to Singapore, and to the rest of the world, has led to a modern, sophisticated and constantly evolving legal framework.

Singapore Law – An Evolving Law

Singapore law has developed in line with the country's growth as a maritime hub, in terms of both modernity and speed.

As a former British colony, Singapore inherited the English common law tradition. The influence of English Law is readily apparent in the areas of contract and tort. It is apparent from the following pages that Singapore law has not stood still. Its courts have built on the foundations of English maritime law (both statutes and common law) and have gone on to develop common law legal principles shaped to suit the needs of a modern free-trade port. Its legislature has also ensured quick and efficient adoption of many of the important international maritime and trade conventions and instruments.

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, Singapore court decisions have been referred to and/or followed on numerous occasions by other courts in the Commonwealth, 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.

In this booklet, you will find an overview of the Singapore legal system and summaries of some of the more significant Singapore laws and court decisions relevant to the maritime and trading industries. Where relevant, we have highlighted those areas where the Singapore courts have departed from the current position under English law. This booklet is not intended to be a substitute for taking legal advice from a Singapore law practitioner.

"Singapore law has not stood still. At the risk of oversimplification, we have witnessed the Singapore legal system grow in an organic and steady fashion since independence under the able leadership of four Chief Justices. The initial need for a pragmatic approach was understandable, especially in light of the sudden birth of the nation. This slowly evolved into an organic legal growth which witnessed the gradual cutting of our legal apron strings."

- VK Rajah (former Judge of Appeal, Supreme Court of Singapore and Attorney-General) and Andrew Phang (Judge of Appeal, Supreme Court of Singapore) in the Foreword to "Singapore Law – 50 Years in the Making" published by the Singapore Academy of Law

II. APPLICATION OF ENGLISH LAW ACT, INTERNATIONAL CONVENTIONS & TREATIES

Application of English Law Act

In 1993, the Application of English Law Act (Cap 7A) (**"AELA"**) was enacted to incorporate English commercial statutes (as they were in force at 12 November 1993) as specified in Part II of the First Schedule of the AELA as part of the law of Singapore. The objective of this AELA was twofold:

1. To clarify the application of the listed English statutes in Singapore; and
2. To make Singapore's commercial law independent of future legislative changes in the United Kingdom which Singapore had no control over.

As of 31 December 2020, there were 13 English commercial statutes, whether in whole or in part, that applied or continued to apply in Singapore by virtue of section 4 of the AELA. This included the English Marine Insurance Act 1906 as it was in force at 12 November 1993. [1]

Conventions & Treaties

As a responsible maritime nation, Singapore has enacted implementing laws to fulfil its obligations to maritime and shipping-related conventions and treaties that it has acceded to. The conventions which Singapore have ratified include, for example, the International Convention for the unification of certain rules of law relating to bills of lading made at Brussels on 25 August 1924, as amended by the Protocol made at Brussels on 23 February 1968 (the **"Hague-Visby Rules"**) and instruments under the International Maritime Organisation (**"IMO"**) such as the 1976 Convention on the Limitation of Liability for Maritime Claims. See Schedule II for a list of maritime and shipping-related international conventions ratified by Singapore.

[1] Singapore has not adopted the more recent changes to insurance law introduced in the United Kingdom by the UK Consumer Insurance (Disclosure and Representations) Act 2012 and the UK Insurance Act 2015.

"Firstly, as I understand it, Singapore has a very sophisticated judiciary specially in the area of shipping and admiralty law. I only need to refer to the cases of Permina 3001 [1979] 1 Lloyd's Rep. 327 and Permina 1017 [1975-7] SLR 578 which were decided in 1977 against the interpretation advanced in Andres Ursula and along the same line as the judgment of Robert Goff J in I Congresso del Partido. Secondly, there is every indication that the Singapore Court does not feel constrained to differ from the House of Lords or the Privy Council or the High Court of Australia…. The judicial world is now so global specially in the common law world, that a good judgment (backed up by compelling reasoning) will be recognised and adopted wherever it comes from."

- The Honourable Justice Peter Waung in "CONVENIENCE CONTAINER" [2006] HCAJ 150/2003 (5 June 2006) setting out his views on the Singapore judiciary

III. SINGAPORE LEGAL SYSTEM

Court Structure

The Singapore Courts are made up of the Supreme Court, the State Courts and the Family Justice Courts.

The Supreme Court of Singapore consists of the High Court (General Division), the High Court (Appellate Division) and the Court of Appeal, which is the apex court. The Singapore International Commercial Court is a division of the High Court (General Division).

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

Unless the civil appeal falls under the Sixth Schedule of the Supreme Court of Judicature Act (Cap 322) or where any written law specifies as such, all other civil appeals are heard by the High Court (Appellate Division). In other words, as from 1 January 2021, all shipping and admiralty appeals will be heard by the High Court (Appellate Division).

The Singapore courts take an active role in case management. Currently, civil actions that are commenced in the High Court (General Division) typically take 12 to 15 months from the commencement of the suit to completion of the trial.

The Singapore International Commercial Court (the "SICC")

As part of Singapore's plan to position itself as the leading dispute resolution hub in Asia, the SICC was constituted on 5 January 2015 to deal with transnational commercial disputes.

The SICC has its own Registry, Rules of Court and Practice Directions. Singapore High Court Judges and International Judges of the Supreme Court (with a mixture of common and civil law background) may be designated by the Chief Justice to hear cases in the SICC. As at 31 December 2020, there are 17 international judges on the SICC panel comprising judges from Australia, Canada, England, France, Hong Kong, India and Japan.

All appeals from the SICC are heard by the Court of Appeal.

The SICC has jurisdiction to hear claims or actions (1) that are international and commercial, (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 seek any relief in the form of a prerogative order. The SICC also has jurisdiction to hear matters arising out of the International Arbitration Act (the **"IAA"**) (see further IAA discussion at Chapter VIII).

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 (see further discussion at Chapter IX). 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.

Specialised List of Judges

In response to the increased volume of complex commercial cases being heard by the Singapore High Court, various specialised lists of Judges have been set up consisting of specially identified judges who are able to bring their considerable experience and expertise in specialist areas of law to bear on complex commercial cases. Such dedicated specialist commercial lists underscores the Supreme Court's depth of expertise and experience in these areas, and its commitment to position and promote Singapore as a premier centre for dispute resolution and as a jurisdiction of choice for the resolution of both domestic and international commercial disputes.

All disputes relating to shipbuilding, shipping, insurance, and tort claims are areas that are heard by Supreme Court justices with specialist experience in these commercial fields. As of 31 December 2020, the specialist shipping judges are Steven Chong JA, Chua Lee Ming J, Pang Khang Chau J, Ang Cheng Hock J, Vincent Hoong J and S Mohan JC.

Accredited Specialists in Maritime and Shipping Law

To assist the legal industry and consumers of legal services in identifying suitable Singapore lawyers with proven expertise in maritime and shipping law, the Specialist Accreditation Scheme was introduced by the Singapore Academy of Law in 2017. The Scheme accredits lawyers as either Accredited Specialists for those with more than 5 years of Post-Qualification Experience (**"PQE"**), or Senior Accredited Specialists for senior lawyers with more than 10 years of PQE.

As of 31 December 2020, there are 9 Accredited Specialists and 30 Senior Accredited Specialists. Please refer to the Useful Links at page 30 for the list of Accredited Specialists.

IV. CONTRACT

As Singapore law has its roots in the English common law system, its contract law closely mirrors the English position. They share the same broad principles, such as the requirements for the formation of a contract (e.g. offer, acceptance, consideration and intention to form legal relations); classification of the different types of terms in a contract (e.g. express terms which are divided into conditions, intermediate terms and warranties as well as implied terms); factors that vitiate a contract (e.g. mistake, misrepresentation, duress, undue influence and unconscionability, and illegality); and remedies available in the event of a breach (e.g. compensation in the form of damages and, where appropriate, specific performance of the contract).

Some aspects of Singapore contract law have been modified by statute. These include the Sale of Goods Act 1979, the Misrepresentation Act 1967, the Unfair Contract Terms Act 1977 and the Carriage of Goods by Sea Act 1992, all of which are equally applicable in Singapore by virtue of the Application of English Law Act.

Although English case law is no longer binding on the Singapore courts,[2] it is viewed as having persuasive authority. 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. A party familiar with English contract law or Australian contract law (which also has its roots in English law) would not find Singapore contract law unfamiliar.

However, the Singapore courts have not been shy to develop its own common law and depart from the English position, where necessary. In cases where the English courts have yet to consider an issue, but where the Singapore courts have already decided on a similar point, for example in relation to straight bills of lading, the English courts have adopted the Singapore position. See the Singapore Court of Appeal's decision in *APL Co Pte Ltd v Voss Peer* [2002] SGCA 41 where it was held that in respect of a straight bill of lading, the carrier could only deliver the cargo against its presentation and which approach was cited with approval and adopted by the English House of Lords case *J I MacWilliam Co Inc v Mediterranean Shipping Co SA ("Rafaela S")* [2005] UKHL 11.

We discuss below some of the areas in which the Singapore courts have chosen to adopt a different approach.

[2] The right of appeal to the Privy Council was abolished in 1994.

Terms Implied in Fact

The first difference comes in the form of implied terms, and in particular, terms implied in fact, which are terms that are not expressly included in a contract but which a court will read into a contract so that it reflects the intention of the parties.

In the Privy Council decision of *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988, Lord Hoffman re-formulated the test for implied terms as the single question of what the instrument, read as a whole against the relevant background, would reasonably be understood to mean (with the traditional "business efficacy" and "officious bystander" tests relegated to a peripheral role). However, in *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited and another* [2015] UKSC 72, the UK Supreme Court emphasised that *Attorney General of Belize v Belize Telecom Ltd* should not be taken as having watered down the traditional approach to the implication of terms and that the "business efficacy" and "officious bystander" tests must still be met. There is however some disagreement within the UK Supreme Court as to how *Attorney General of Belize v Belize Telecom Ltd* should be treated moving forward.

In contrast, Singapore has kept to the "business efficacy" and "officious bystander" tests for implication of terms. In *Foo Jong Peng v Phua Kiah Mai* [2012] 4 SLR 1267 and *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193, the Singapore Court of Appeal considered but respectfully declined to follow the approach taken by the Privy Council in *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988.

Remoteness of Damage

The orthodox test for remoteness of damages in contract has long been accepted to be that in *Hadley v Baxendale* (1854) 9 Ex 341. This test has long been applied in Singapore (see *Yeo Leng Tow & Rautenberg, Schmidt & Co* (1880) 1 Ky 491; *Hong Fok Realty Pte Ltd v Bima Investment Pte Ltd* [1992] 2 SLR(R) 834; *CHS CPO GmbH v Vikas Goel* [2005] SGHC 74; *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769). However, in *Transfield Shipping Inc v Mercator Shipping Inc ("The Achilleas")* [2008] UKHL 48, the House of Lords, in particular Lord Hoffman, introduced an additional legal criterion to the test whereby the court would also have to consider whether or not the defendant, on a true construction / interpretation of the contract, has assumed responsibility for the loss which had occurred as a result of its breach.

When *The Achilleas* was considered by the Singapore Court of Appeal in *MFM Restaurants Pte Ltd and another v Fish & Co Restaurants Pte Ltd and another appeal* [2010] SGCA 36, the Court of Appeal declined to follow Lord Hoffmann's assumption of responsibility test to determine whether damages were too remote in a contractual claim. The Court of Appeal, however, accepted Lord Hoffmann's approach in *The Achilleas* insofar as the concept of assumption of responsibility was already incorporated or embodied in both limbs of the *Hadley v Baxendale* test (at [140]).

The above position was subsequently reaffirmed by the Singapore Court of Appeal in *Out of the Box Pte Ltd v Wanin Industries* [2013] SGCA 15. In addition to reiterating its preference for the orthodox *Hadley v Baxendale* test, the Court further emphasized that *"it is important that cases which in fact concern the interpretation of a contract in order to identify the specific nature of the obligation that has been undertaken not be conflated, or for that matter confused, with cases that truly are concerned with questions of remoteness"* (at [29]).

Illegality

The third difference relates to illegality which, as a general rule, will preclude a party from enforcing a contract.

In 2016, the majority of the UK Supreme Court in *Patel v Mirza* [2017] AC 467 introduced a new approach to illegality, replacing the test laid down by the UK House of Lords in *Tinsley v Milligan* [1994] 1 AC 340, under which a claim would be barred if the claimant had to rely on the illegality to bring the claim. Under the new approach, the defence of illegality would apply if enforcing the claim would be harmful to the integrity of the legal system, and in that regard, the court must consider a range of factors.

Shortly thereafter, in 2018, the Singapore Court of Appeal in *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 was asked to consider the approach taken in *Patel v Mirza*. The Singapore Court of Appeal rejected the "range of factors" approach in *Patel v Mirza* on the basis that it would introduce further uncertainty into the analytical process and was also unnecessary to achieve remedial justice. Instead, the Court reaffirmed the principles laid down in an earlier Singapore Court of Appeal decision, *Ting Siew May v Boon Lay Choo* [2014] 3 SLR 609, which can be summarised as follows:-

1. The Court must ask itself whether the contract is prohibited either pursuant to a statute (expressly or impliedly) and/or an established head of common law public policy. If the contract is prohibited, there can be no recovery under it, subject to the caveat that, in the general common law category of contracts which are not unlawful *per se* but entered into with the object of committing an illegal act, the proportionality principle laid down in *Ting Siew May* (that is, whether the refusal to enforce the contract is a proportionate response to the unlawful conduct concerned) ought to be applied.

2. A party who has transferred benefits pursuant to the illegal contract might be able to recover those benefits on a restitutionary basis (as opposed to recovery of full contractual damages).

"In my view the decision of the Court of Appeal of Singapore in Voss v APL Co Pte Ltd [2002] 2 Lloyd's Rep 707, 722, that presentation of a straight bill of lading is a requirement for the delivery of the cargo, is right."

- Lord Steyn delivering his judgment in Rafaela S at [45]

V. TORT OF NEGLIGENCE

The tort of negligence features most commonly in the maritime context and often arises in cargo claims, collisions, allisions and personal injury claims. We shall therefore only discuss the tort of negligence in this chapter.

Over the years, the courts, both in England and Singapore, have applied varying tests to determine the existence of a duty of care in negligence. The current position in England is far from clear and currently appears to rest with the three separate and independent tests first identified by the House of Lords in *Caparo Industries plc v. Dickman* [1990] 1 AC 605, namely, the test of foreseeability, proximity and fairness. Further, claims for pure economic loss are not allowed under English Law.

In 2007, the Singapore courts had the opportunity to reconsider the issue culminating in the Singapore Court of Appeal's decision in *Spandeck Engineering (S) Pte Ltd v. Defence Science & Technology Agency* [2007] SGCA 37 (hereafter ***"Spandeck"***). Although *Spandeck* involved a claim for pure economic loss, the Singapore courts took the opportunity to revisit the law on negligence (for both pure economic loss and physical damage) as it was felt that the state of the law (as it then was) was unsatisfactory.

The *Spandeck* decision represents a significant departure from the English law of negligence in that the Singapore courts have chosen to apply one single unified test to determine the existence of a duty of care in all situations, irrespective of the type of damage claimed. The *Spandeck* test comprises of the following steps:

1. A threshold question of factual foreseeability;
2. Proximity between the tortfeasor and victim;
3. Policy considerations against finding such a duty;
4. Application via an incremental approach with reference to the facts of decided cases.

As the aforementioned steps of the *Spandeck* test already existed in one form or another in the numerous tests developed over the years under English negligence law, users of Singapore law will find the test comprehensible and intuitive as it is universally applicable to all scenarios.

As all forms of negligence in Singapore have been subsumed under the *Spandeck* test, there is no separate test for occupiers' liability (see *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] SGCA 29) and there is also no exclusionary rule against the recovery of all types of economic loss. The process of determining whether a duty of care exists between a tortfeasor and a claimant is therefore relatively straightforward and uncomplicated. For example, the rejection of the traditional rules governing occupiers' liability in favour of the *Spandeck* test removes classificatory problems caused by the complexities of modern commercial leasing arrangements. This generates a clearer method to determine the existence of a duty based on more tangible factors such as proximity and foreseeability.

The abolishment of the exclusionary rule also opens interesting avenues for claimants in Singapore. For instance, the ratio in the seminal English decision of *The Aliakmon* has been rejected, thereby removing the requirement for claimants to prove ownership or possessory title to a damaged property before a tortious claim can be made. As a result, this grants a degree of flexibility to tortious victims who, prior to the *Spandeck* test, may not have the locus standi to a remedy. By way of illustration, tenants or lessees who rent a property for business are now entitled to recover economic losses against a tortfeasor who had caused damage to the property. See *NTUC Foodfare Co-operative Ltd v. SIA Engineering Co Ltd and another* [2018] SCGA 41.

Application in Maritime Cases

The *Spandeck* test and its rejection of *The Aliakmon* has a profound effect on maritime cases, in particular cargo claims. Traditionally, if damage to the cargo occurred during loading operations, a freight on board (FOB) buyer may have no recourse available if title to the cargo was not yet vested in him at the time of the damage during the loading operations. However, with the advent of the *Spandeck* test, a duty of care would exist between a shipowner whose ship was carrying the cargo and the buyer of said cargo, even if title had not vested in the buyer at the time of the damage. See *Wilmar Trading Pte Ltd v. Heroic Warrior Inc* [2019] SGHC 143. Such a duty would also exist notwithstanding the absence of any contractual relationship between the buyer and the shipowner, i.e. if the buyer had not been endorsed as the legal holder of a "to order" bill of lading.

In collision claims, the flexibility on *locus standi* may potentially allow charterers to pursue a direct cause of action against an opposing ship to recover economic losses suffered. Similarly, a lessee of a damaged terminal, as opposed to the owner, may also have a direct cause of action against an errant ship for losses suffered in an allision. Whilst such cases have not yet come before the Singapore courts, it is likely that the Singapore courts may allow a direct and expeditious mode of recovery based on proximity and foreseeability. At the same time, such an approach will also be tempered by incrementalism and controlled with policy considerations. This will ensure fairness, certainty and balance in the application of tort law in Singapore.

VI. COLLISIONS

Over the years, an increased number of collision cases have been brought before the Singapore courts, including collisions which occurred outside of Singapore waters but where the parties had agreed for the matter to be resolved in Singapore. This has led to the development of collision jurisprudence in Singapore.

Time Bar

Parties utilising Singapore law to resolve collision disputes will find similar procedural elements to that of English law. For instance, the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 has been adopted as part of Singapore's legislation, hence the standard two-year time bar is applicable for collision claims heard in Singapore. See the Maritime Conventions Act 1911 (Rev Ed 2004).

Collision Regulations

As with most of other common law jurisdictions, Singapore has adopted the International Regulations for Preventing Collisions at Sea 1972 (the Collision Regulations) [see the Merchant Shipping (Prevention of Collisions at Sea) Regulations (Cap 179)]. This ensures a level of commonality in the rules governing the safety and navigation of ships under various maritime scenarios. The interpretation of the various rules under the Collision Regulations is also based on common law jurisprudence. Key principles such as the apportionment of liability using an assessment of blameworthiness and causative potency are similarly derived from English cases. Hence, users of Singapore law who are familiar with English collision jurisprudence will be able to navigate the substantive legal issues arising out of the Collision Regulations with ease.

Electronic Track Data

In recent years, the Singapore courts have heard a number of cases which have shown the court's ability to embrace novel technological developments within the maritime industry, in particular the use of electronic track data in resolving collision disputes. The advent of technology has resulted in widespread reliance on data from voyage data recorders (VDR), electronic chart display and information system (ECDIS), automatic identification system (AIS), very high frequency (VHF) recordings, as well as automatic radar plotting aid (ARPA), to resolve disputed ship logs and to decipher factual timelines leading to the collision. The primacy of electronic track data has also led to a mandatory early disclosure of such data so as to promote settlement and to assist in an efficient resolution of collision claims.

Recent Collision Jurisprudence

The Singapore courts are well poised to hear complex collision disputes and to tackle any legal or technical issues which may arise in such cases. In a trio of recent cases, namely *The Dream Star* [2017] SGHC 220, *The Tien E Zuo* [2018] SGHC 93 and *The Mount Apo* [2019] SGHC 57, the courts have handled issues involving overtaking situations, disputes on VHF communications, multi-ship collisions as well as crossing situations with the TSS. Users of Singapore law will have the confidence that the Singapore courts can deliver justice and fairness to shipowners involved in collision claims.

VII. ARREST OF SHIPS

Singapore is not a signatory to the international conventions relating to the arrest of ships, such as the Brussels Convention Relating to the Arrest of Seagoing Ships 1952 and the Geneva Convention on the Arrest of Ships 1999.

However, Singapore's laws relating to the arrest of ships has its historical roots in the Brussels Convention. In 1961, the Courts (Admiralty Jurisdiction) Ordinance, the predecessor of the High Court (Admiralty Jurisdiction) Act (the **"HCAJA"**), was introduced to bring the law in Singapore in line with the provisions of Part I of the United Kingdom Administration of Justice Act 1956, which was enacted to give effect to the Brussels Convention.

Admiralty Jurisdiction

The types of claims that the General Division of the High Court has jurisdiction to hear and determine are enumerated in sections 3(1)(a) to (r) of the HCAJA as follows:-

(a) possession or ownership of a ship;
(b) possession, employment or earnings of a ship, in the case of co-owners;
(c) mortgage of or charge on a ship;
(d) damage done by a ship;
(e) damage received by a ship;
(f) loss of life or injury occurring in the course of the navigation or management of a ship;
(g) loss of or damage to goods carried in a ship;
(h) agreement for the carriage of goods or the use or hire of a ship;
(i) salvage services;
(j) towage;
(k) pilotage;
(l) goods or materials supplied for the ship's operation or maintenance;
(m) construction, repair or equipment of a ship or dock charges or dues;
(n) crew wages;
(o) master's or agent's disbursements on account of a ship;
(p) general average act; or
(q) claim arising out of bottomry;
(r) the forfeiture or condemnation of a ship as prize.

Before the Singapore court will exercise its admiralty jurisdiction, the requirements of sections 4(2), 4(3), or 4(4) of the HCAJA must also be satisfied.

Section 4(2) provides that the admiralty jurisdiction of the court may be invoked against the ship in question where the claim falls within sections 3(1)(a), (b), (c), or (r) of the HCAJA. In the case of a maritime lien or other charge against a ship, the admiralty jurisdiction of the court may be invoked by an action in rem against the ship in question under section 4(3) of the HCAJA.

Beyond arresting the offending ship, it is also possible to arrest a sister ship in Singapore by bringing an action *in rem* against the sister ship pursuant to section 4(4) of the HCAJA. A sister ship is one that shares the same beneficial ownership as the offending ship.

In the case of claims which fall within sections 3(1)(d) to (q) of the HCAJA, the arresting party would need to satisfy the following requirements when commencing an action in rem and arresting the offending/sister ship under section 4(4) of the HCAJA, as set out in *The "Bunga Melati 5"* [2012] SGCA 46:-

1. Show that the claim probably exists and is in the nature of a maritime claim that falls within sections 3(1)(d) to (q) of the HCAJA;
2. Show that the underlying claim arises in connection with the offending ship;
3. Identify who is the person who would be liable on the claim *in personam* (the **"Relevant Person"**);
4. Show that the Relevant Person was the owner, charterer, or in possession or control, of the offending ship when the cause of action arose; and
5. Show that at the time when the action is brought, the Relevant Person is,
    i. the beneficial owner or bareboat/demise charterer of the offending ship, or
    ii. the beneficial owner of the sister ship.

It bears noting that a vessel may be arrested in order to obtain security in aid of both Singapore arbitrations *and* foreign arbitrations (see section 7(1) of the International Arbitration Act). See also Chapter VIII for further discussion.

However, a vessel may not be arrested in aid of foreign court proceedings.

Arrest Procedure

To obtain a warrant of arrest against a vessel, the arresting party is required to file:-

(a) an admiralty *in rem* writ;
(b) a Request for the arrest of the vessel to be issued, supported by an affidavit setting out, among other things, the grounds for the arrest of the vessel; and
(c) an undertaking by the arresting party's solicitors to pay the fees and expenses of the Sheriff in maintaining the vessel under arrest; and

Unlike some other jurisdictions (for example, China), the arresting party is not required to put up counter-security.

It also bears noting that under the new Insolvency Restructuring and Dissolution Act 2018, which came into effect on 30 July 2020,[3] the commencement of any admiralty proceedings has been carved out. In other words, a creditor's right to issue an admiralty in rem writ to protect, for example, a time bar, is no longer affected by the statutory moratorium where the ship owning company is undergoing a scheme of arrangement or in judicial management.

Ex Parte Hearing

The application for a warrant of arrest is heard *ex parte* before the Duty Registrar. In appropriate cases, where the arresting party is able to demonstrate urgency and provide a good reason as to why the application could not or cannot be made during office hours, the arrest application may be heard after office hours or on weekends.

Unlike the English position where the entitlement to a warrant of arrest is as of right, the Singapore court has a discretion whether or not to grant a warrant of arrest. To enable the Singapore court to exercise its discretion, full and frank disclosure of all material facts must therefore be made on any application for a warrant of arrest. The facts to be disclosed are not limited to the circumstances leading to the arrest but also to any plausible defences that the defendant would have in seeking to set aside the arrest.

The arresting party is also required to procure a search of the caveat book to ascertain whether there is a caveat against arrest in force. The duty registrar will typically be informed of the result of this caveat search at the end of the ex parte hearing.

[3] Read together with the Insolvency Restructuring and Dissolution (Prescribed Arrangements and Proceedings) Regulations 2020.

To arrest the vessel, the admiralty in rem writ and the warrant of arrest must be served on the vessel. The warrant of arrest can only be executed within Singapore port limits (not territorial waters).

Wrongful Arrest

A warrant of arrest may be set aside if it is an abuse of court process or where there has been material non-disclosure on the part of the arresting party. Furthermore, the arresting party may be liable for damages for wrongful arrest if it can be shown that the arrest was carried out in bad faith or with gross negligence implying malice.

Security for Release of Vessel

In order to release the vessel from arrest, the shipowner or other interested party may furnish security to procure the release of the vessel. The arresting party is entitled to security on its reasonably best arguable case. Security can be furnished by way of payment into court, but more commonly, by way of bank guarantee, or a letter of undertaking issued by a Protection and Indemnity Club (typically a member of the International Group of P&I Clubs).

Judicial Sale

If the vessel is not released after a reasonable period of time, the arresting party may apply for an order for the sale of the vessel *pendente lite* (i.e., pending judgment). The vessel will be sold by the Sheriff of Singapore and will be sold free from all encumbrances.

The application is by way of summons supported by affidavit and is to be heard by a Judge. The applicant should demonstrate how and why the arrested property is a wasting asset and should be sold by way of judicial sale.

Following the sale of the property, the sale proceeds will be paid into Court. Any party with an interest in the sale proceeds of a vessel and who has obtained judgment against the vessel or its sale proceeds, may apply for the determination of priorities and for payment out from the sale proceeds.

VIII. ARBITRATION

A dual track regime regulates the conduct of arbitration in Singapore.

Domestic arbitrations are governed by the Arbitration Act (Cap. 10) (the **"AA"**), whilst the International Arbitration Act (Cap.143A) (the **"IAA"**) regulates the conduct of international arbitrations. The IAA was first enacted in 1994 to give effect to the UNCITRAL Model Law on International Commercial Arbitration (with minor modifications) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In this section, we will only discuss the IAA as the AA hardly features in shipping due to the international elements involved in most shipping disputes.

An arbitration is considered "international" under the IAA where:

- At least one of the parties, at the time of the conclusion of the arbitration agreement, has its place of business in any state other than Singapore.
- The place of arbitration, or the place where a substantial part of the obligations of the commercial relationship is to be performed, is not where the parties have their places of business.
- The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

Arbitrability of Disputes

Section 11 of the IAA provides that all disputes are arbitrable unless it is contrary to public policy.

As a matter of Singapore law, only a very limited list of dispute subject matters has been recognised as being against public policy to arbitrate, including:

- Citizenship
- Legitimacy of marriage
- Bankruptcy (for individuals) and winding-up (for companies)
- Administration of estates

In 2019, the IAA was amended to clarify that disputes concerning intellectual property rights are arbitrable.

A dispute is arbitrable even if the arbitral tribunal does not have the power to issue the relief sought. An example of this would be a minority oppression claim, where the tribunal may not have the power to vary any transaction or resolution under section 216(2) of the Companies Act, which would impact the rights of third parties.

Stay

Section 6(2) of the IAA provides for a mandatory stay unless the arbitration agreement is null and void, inoperable or incapable of being performed.

Interim Reliefs

Pursuant to section 12 of the IAA, an arbitral tribunal in a Singapore-seated international arbitration can grant a range of interim measures, including:

- security for costs;
- discovery of documents and interrogatories;
- giving of evidence by affidavit;
- the preservation of evidence;
- securing the amount in dispute;
- ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- an interim injunction or any other interim measure.

Under section 12A, save for security for costs and discovery, the Singapore court is also empowered to make an order in respect of the matters listed above. This provision applies regardless of whether the place of arbitration is in Singapore.

In exercising its discretion, where the place of arbitration is outside Singapore or likely to be outside Singapore, the Singapore court may refuse to make such an order under section 12A(2) where it is inappropriate to do so. In this regard, it remains unclear how the criterion of appropriateness under section 12A(3) will apply (see *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64 at [58]). One such instance would be if the applicant to a foreign arbitration was unable to show that the other party has substantial assets in Singapore or was unable to show any link between the foreign arbitration and Singapore, the Singapore court could refuse to make an order.

However, it bears noting that pursuant to section 12A(6), such power is only exercisable "*only if or to the extent that the arbitral tribunal… has no power or is unable for the time being to act effectively".*

Arrest in Aid of Arbitration

As mentioned earlier, section 7(1) of the IAA provides the Court with the power to order the arrested vessel to be retained as security for the satisfaction of any award made on arbitration, or to order a conditional stay subject to the provision of equivalent security for the satisfaction of any such award.

Setting Aside Arbitral Award

In Singapore, there are very limited grounds for setting aside an arbitral award and they include the following instances:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement is invalid;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- the award deals with a dispute not covered by the arbitration agreement;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;
- the subject matter of the dispute is not arbitrable;
- the award is contrary to public policy;
- the making of the award was induced or affected by fraud or corruption; and
- there had been a breach of the rules of natural justice by which the rights of a party had been prejudiced.

Right to Appeal on Point of Law

Under the IAA, there is no right to appeal on a point of law. This right was deliberately omitted from the IAA to adhere to the policy of minimal curial intervention.

The Singapore position can be contrasted with the English position under section 69 of the English Arbitration Act 1996, which allows for appeals against arbitral awards on questions of law, with the option for parties to opt-out if so desired.

In June 2019, the Ministry of Law commenced a consultation exercise in respect of amendments to be made to the IAA. The proposed amendments include a right of appeal on a point of law. As of 31 December 2020, the Ministry of Law, as part of its periodic review of Singapore's legislative framework for international arbitration, is considering whether to allow parties the right of appeal on a question of law on an opt-in basis.

Enforcement of Awards

Singapore is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, more commonly known as the New York Convention.

A foreign award of an arbitration seated in a country that is a party to the New York Convention can be enforced in Singapore as if it were an award of an arbitration seated in Singapore, without the need to sue on the underlying award. This results in savings in terms of time and legal costs.

IX. ENFORCEMENT

Enforcement of Local Judgments

In this section, we will outline the main methods of enforcing an *in personam* judgment in Singapore. The available methods include but are not limited to the following:

Writ of Seizure and Sale – A Writ of Seizure and Sale (**"WSS"**) is a writ of execution aimed at enforcing a money judgment which allows the seizure of all the property (movable or immovable) of a judgment debtor for purposes of satisfying a judgment. A WSS may be issued against both movable and immovable property. The writ instructs/authorizes the Sheriff to carry out the seizure and to sell the property seized. The sale proceeds will then be used to satisfy the judgment debt, interest and costs associated with the execution procedure.

Garnishee Proceedings – Garnishee proceedings allow for the enforcement of a judgment debt where a third party (known as a "garnishee") owes a debt to the judgment debtor. When the judgment creditor garnishes the judgment debt, the Singapore court can order the garnishee to pay such debt to the judgment creditor instead.

Insolvency Proceedings – The judgment creditor may also commence bankruptcy (where the judgment debtor is an individual) or winding up (where the judgment debtor is a company) proceedings against the judgment debtor. The framework for insolvency proceedings in Singapore is now governed by the Insolvency, Restructuring and Dissolution Act 2018 (the **"IRDA"**) which came into effect on 30 July 2020.

No bankruptcy application may be made to the court in respect of any debt unless at the time the application is made the debtor is unable to pay the debt (see section 311(1)(c) of IRDA). A statutory presumption is further provided for in that the judgment debtor will be presumed to be unable to pay any debt within the meaning of section 311(1)(c) of the IRDA if the debt is immediately payable and execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part. The amount of the judgment debt must also be at least S$15,000 (section 311 (1)(a) of IRDA).

The Court may order the winding up of a company if the company is unable to pay its debts (see section 125(1)(e) of IRDA). Section 125(2)(b) of the IRDA provides a statutory presumption that a company will be deemed unable to pay its debts where execution or other process issued on a judgment in favour of a creditor of the company is returned unsatisfied in whole or in part.

Enforcement of Foreign Judgments

Foreign judgments can be enforced in Singapore either by way of a common law action or pursuant to statute.

To be enforceable at common law, a foreign judgment must be:
(a) from a court of competent jurisdiction;
(b) final and conclusive on the merits; and
(c) for a fixed or ascertainable sum of money.

There are **3 statutory regimes** that regulate the enforcement of foreign judgments in Singapore namely:

- the Reciprocal Enforcement of Foreign Judgments Act (**"REFJA"**);
- the Reciprocal Enforcement of Commonwealth Judgments Act (**"RECJA"**); and
- the Choice of Court Agreements Act 2016 (**"CCAA"**).

The effect of applications under the above regimes, if successful, will be to enable the recognition and enforcement of foreign judgments in the same manner and to the same extent as a local judgment.

REFJA – The REFJA allows for a less costly as well as faster method of enforcement of foreign judgments as if the judgment was made by a Singapore court. However, this is only available to judgments from gazetted countries where there are already more reciprocal arrangements in place. The scope of the REFJA framework has recently been expanded to include 4 more types of judgments namely: Non-money judgments, Lower court judgments, Interlocutory judgments, and Judicial settlements, consent judgments, and consent orders.

As at the date of publication, only judgments from the superior courts of Hong Kong obtained on or after 1 July 1997 may be enforced in Singapore under the REFJA.

RECJA – A similar procedure is also available for the enforcement of Commonwealth judgments under the RECJA. The effect of registration under the RECJA is similar to that under REFJA but only a foreign money judgment issued by a superior court of the United Kingdom and other gazetted jurisdictions may be registered and enforced under the RECJA. This includes a foreign arbitration award which has been made enforceable in the same manner as a judgment by the foreign court.

As at the date of publication, the reciprocal arrangements are available only to gazetted jurisdictions which include: United Kingdom, New Zealand, Sri Lanka, Malaysia, Pakistan, Hong Kong (for judgments obtained up till 30 June 1997), Windward Islands, Brunei Darussalam, Papua New Guinea, India (excluding states of Jammu and Kashmir), and the Commonwealth of Australia.

The RECJA will be repealed on a future date following the gazetting of the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 which has yet to come into force. Upon repeal, the reciprocal enforcement of foreign judgments regime in Singapore will be consolidated under the newly amended REFJA and its application to the extended list of judgments will similarly apply to Commonwealth judgments.

CCAA – The recognition and enforcement regime under the CCAA extends to foreign judgments in international cases where there is an exclusive choice of court agreement concluded in a civil or commercial matter after the CCAA came into force i.e. on or after 1 October 2016. 'International case' for the purposes of Part 3 of the CCAA means a case where the claim is for (a) the recognition, or recognition and enforcement, of a foreign judgment; or (b) the enforcement of a judicial settlement recorded before a court of a Contracting State (other than Singapore).

The CCAA applies to a foreign judgment given by a court of a Contracting State to the Hague Choice of Court Convention where the court was the chosen court designated in the relevant exclusive choice of court agreement; or where the court was a court to which the chosen court has transferred the case to which the judgment relates in accordance with the relevant law or practice among courts in that Contracting State. The types of judgments enforceable under the CCAA includes any final court decision on the merits, consent orders, consent judgments, default judgments, or determinations on any costs or expenses thereto. Any judgment that may be recognized or enforced under the CCAA will not be registrable under the REFJA and the RECJA.

As at the date of publication, the contracting states of the Hague Convention include: Denmark (not applicable to certain insurance contracts, and Faroe Islands and Greenland), European Union (excluding Denmark), Mexico, Montenegro and the United Kingdom. China, North Macedonia, Ukraine and the United States are also signatories to the Hague Convention but they have yet to ratify the Hague Convention and enter it into force in their laws.

X. CONCLUSION

Many factors influence a potential user's choice of governing law of a contract. They include freedom of contract, predictability, neutrality, market acceptability, commerciality and enforceability of judgments, just to name a few.

As can be seen from this booklet, the Singapore courts will uphold what the parties had agreed to, subject to established legal principles. The lower courts in Singapore are also bound by the decisions of the higher courts, thus ensuring consistency and predictability.

Singapore courts are also widely recognized to be neutral. This is borne out by the increasing number of cases which are litigated in Singapore involving a non-Singapore party. The increased use of Singapore law has, over the years, led to the development of a robust and cohesive body of maritime law. LawNet, the repository of Singapore court decisions, shows that since 1990, there has been a total of 191 reported judgments that fall within the category of "Admiralty and Shipping".[4] As mentioned earlier in this booklet, Singapore judgements are today widely referred to, and sometimes even adopted, in other jurisdictions. Singapore judgments are also widely enforceable in numerous jurisdictions around the world.

With all of these attributes, Singapore law provides potential users with a viable alternative, and for those users who are more familiar with English law, you will not find yourself navigating in uncharted waters.

[4] Chief Justice Sundaresh Menon's Keynote Address delivered at SCMA's 10th Anniversary celebrations

SCHEDULE I

Singapore Registry of Ships

The registration of ships in Singapore is regulated by the Merchant Shipping Act (Cap. 179) (**"MSA"**) and the Merchant Shipping Act (Registration of Ships) Regulations 1997 (**"MSAR"**). The Singapore Registry of Ships (**"SRS"**) is administered by the Maritime and Port Authority of Singapore (**"MPA"**).

The MSA defines a "ship" as any kind of vessel used in the navigation by water, however propelled or moved and includes (a) a barge, light or other floating vessel; (b) an air-cushion vehicle or other similar craft, used wholly or primarily in navigation by water: and (c) an offshore industry mobile unit.

A ship may be registered with the SRS if the vessel is owned by citizens or permanent residents of Singapore or a Singapore incorporated company (whether foreign-owned or locally-owned), the ship-owning company has a minimum paid up capital of S$50,000 (unless a waiver has been obtained under the Block Transfer Scheme (**"BTS"**)); and the ship is not above 17 years of age, unless an exemption has been granted.

A Singapore ship may be bareboat chartered-out and registered outside Singapore in the name of the bareboat charterer, and its registry as a Singapore ship may be suspended during the charter period (**"Bareboat Charter-Out"**).

Under the BTS, ship owners who wish to register their ship(s) with the SRS and who meet the BTS qualifying criteria enjoy up to 80% discount off the initial registration fee.

Programmes to Support Maritime Business

MPA supports the diverse business needs of maritime enterprises and enables them to increase the scope and range of their maritime services in Singapore. A range of programmes has been put in place to help both new and existing players to develop their businesses. These include the Maritime Sector Incentive, which is a tax incentive programme that enables maritime enterprises to grow their business in Singapore as well as the Maritime Cluster Fund which supports the industry's manpower, business development and productivity improvement efforts. For more information, please visit www.mpa.gov.sg

SCHEDULE II

The maritime and shipping-related international conventions ratified and adopted by Singapore include:

1. The 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1978 SOLAS Protocol, and the 1988 SOLAS Protocol (HSSC);
2. The 1966 International Convention on Load Lines (the Load Lines Convention) and the 1988 Load Lines Protocol;
3. The 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGS);
4. The 1969 International Convention on Tonnage Measurement of Ships (TONNAGE);
5. The 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW);
6. The 1976 Operating Agreement on the International Maritime Satellite Organisation (INMARSAT OA);
7. The 1976 Convention on the International Maritime Satellite Organisation (IMSO);
8. The 1965 Convention on Facilitation of International Maritime Traffic (FAL);
9. The 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto (MARPOL) (Annex I to Annex V) and the 1997 MARPOL Protocol (Annex VI);
10. The 1976 and 1992 Protocols to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC);
11. The 1992 Protocol to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 92);
12. 12. The 2001 International Convention on the Control of Harmful Anti-Fouling Systems on Ships (AFS);
13. The 1979 International Convention on Maritime Search and Rescue (SAR);
14. The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and the 1988 SUA Protocol;
15. The 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA FPP);
16. The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) and the 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol);
17. The 1996 Protocol to amend the Convention on Limitation of Liability for Maritime Claims 1976;
18. The 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER);
19. The 2006 Maritime Labour Convention (MLC), as amended by Amendments of 2014, 2016 and 2018;
20. The 1989 International Convention on Salvage (SALVAGE);
21. The 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM);
22. The 2007 Nairobi International Convention on the Removal of Wrecks (Nairobi WRC).

USEFUL LINKS

1. For more information on the Supreme Court, including the Admiralty Court Guide: https://www.supremecourt.gov.sg/

   https://www.supremecourt.gov.sg/docs/default-source/module-document/registrarcircular/rc-5-2019---issuance-of-the-admiralty-court-guide-(second-edition).pdf

2. For free access to Singapore statues: https://sso.agc.gov.sg/

3. For access to a database of judicial decisions on international maritime conventions maintained by the Centre for Maritime Law of the National University of Singapore in collaboration with the Comité Maritime International: https://www.cmlcmidatabase.org/

4. For more information on the Singapore Academy of Law Accredited Specialists in Maritime and Shipping Law: https://www.sal.org.sg/Services/Appointments/Specialist-Accreditation/Find-a-Specialist

5. For more information on the Maritime and Port Authority of Singapore and its programmes to develop maritime businesses in Singapore: https://www.mpa.gov.sg/

6. For more information on the Singapore Maritime Foundation, which aims to forge dialogue and cooperation between private and public maritime stakeholders towards strengthening the Singapore maritime eco-system: https://www.smf.com.sg

7. For more information on the Singapore Chamber of Maritime Arbitration, including the current SCMA Rules (3rd Edition): https://www.scma.org.sg/

   https://www.scma.org.sg/rules#3rd

8. For more information on the Maritime Law Association of Singapore: https://www.mlas.org.sg/

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