



# ICLG

The International Comparative Legal Guide to:

## Shipping Law 2013

**1st Edition**

A practical cross-border insight into shipping law

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# Singapore



Bazul Ashhab



Goush Marikan

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## 1 Marine Casualty

**1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:**

### i) Collision

*Key provisions that will impact upon liability in the event of collisions*

The key provisions can be found at Section 1(1) *Maritime Conventions Act 1911* (“MCA 1911”) which has the force of law in Singapore and deals with the apportionment of liability. Section 1(1) *MCA 1911* states that if it is not possible to establish the degree of fault of either vessel to the collision, blameworthiness is to be apportioned equally.

A contravention of the *International Regulations for Preventing Collisions at Sea 1972* (“the COLREGS”) may bring about liability for the collision: see *Public Prosecutor v. Ng Keng Yong and Another* [2004] SGDC 74. The COLREGS form part of Singapore’s law by virtue of Regulation 3 *Merchant Shipping (Prevention of Collisions at Sea) Regulations*. Section 103 *Merchant Shipping Act* (“MSA 1996”) directs that all persons in charge of the navigation obey the COLREGS and that contravention of the COLREGS be classified as a criminal offence that is punishable with a fine not exceeding \$10,000.00. It is a valid defence to the said offence if it can be shown that the person charged with the offence took all reasonable precautions to avoid the commission of the offence: see Regulation 4(2) *Merchant Shipping (Prevention of Collisions at Sea) Regulations*.

*Key provisions that will impact upon the response of interested parties in a collision*

In the event of a collision, it is incumbent upon the masters/persons in charge of the vessels involved that they render such assistance as may be practicable and necessary to the other vessel and those on board the other vessel to save them from any danger caused by the collision. This obligation continues until there is no need for any further assistance: see Section 106 *MSA 1996*. The masters/persons in charge of the vessels are also under a duty to give each other the name of their respective vessels, the port to which it belongs, the port from which it last departed and the port it is destined for: see Section 106 *MSA 1996*. A failure to carry out the aforementioned duties would render the master/persons in charge of the vessels liable for a criminal offence that is punishable with a fine not exceeding \$10,000.00.

Further, within 24 hours of a collision, the owners/masters of the vessels involved must report the happenings to the Director of Marine. Failure to report would render the owners/masters of the vessels liable for a criminal offence that is punishable with a fine not exceeding \$10,000.00: see Section 107 *MSA 1996*.

### ii) Pollution

*Key provisions that will impact upon liability in pollution cases*

Section 3 of the *Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act* (“MSCLCOP 1998”) directs that the owners of vessels constructed or adapted for carrying oil in bulk as cargo (i.e. tankers) can be liable for the following where, as a result of any occurrence, any oil is discharged or escapes from the said vessels:

- i. any damage caused in Singapore (includes territorial sea and the Exclusive Economic Zone of Singapore, as per Section 2 *MSCLCOP 1998*) by contamination;
- ii. cost of reasonable measures to prevent or reduce the damage; and
- iii. any damage caused in Singapore by any such measure caused by contamination.

Even if there is no immediate discharge, the owners of the said vessels can be liable for preventive measures undertaken where there is a grave and imminent threat of such a discharge: see Section 3(2) *MSCLCOP 1998*. However, there can be no liability pursuant to Section 3 *MSCLCOP 1998* in the following situations as set out in Section 4 *MSCLCOP 1998*:

- i. for an act of war, or an exceptional and irresistible natural phenomenon;
- ii. for an act or omission of a 3rd party with intent to do damage; and
- iii. for negligence or a wrongful act of a government in relation to maintaining navigation aids for which it is responsible.

Liability under Section 3 *MSCLCOP 1998* shall not apply to the vessel’s charterer, manager, operator and/or the servants or agents of the owners, charterers, managers or operators, unless the loss resulted from something done or omitted to be done with intent/recklessly and in the knowledge that such loss would result: see Section 5 *MSCLCOP 1998*.

An owner of a vessel who is found liable pursuant to *MSCLCOP 1998* is entitled to limit his liability pursuant to Section 6 *MSCLCOP 1998*.

The insurers of the owners of the vessel may also be subject to liability as Section 15 *MSCLCOP 1998* allows a third party to bring an action directly against the insurers. That said, the insurer is protected if he can show that the contamination or threat thereof was caused by wilful misconduct of the owner of the vessel. The

insurer also has a right to limit his liability, in the same manner and extent as the owner of the vessel.

Another legislation which covers liability in the event of pollution is the *Prevention of Pollution of the Sea Act 1991* (“PPSA 1991”). The PPSA 1991 is broader than the *MSLCOBOP 1998*. It covers pollution by a wide range of causes (i.e. oil, chemicals, garbage and noxious or harmful substances) and applies to all ships.

Section 6 PPSA 1991 expressly states that the disposal or discharge of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form from any ship into Singapore waters is a criminal offence which would result in the master, the owner and the agent of the ship being guilty of an offence that is punishable with a fine not exceeding \$10,000.00 and/or imprisonment for a term not exceeding 2 years. Section 7 PPSA 1991 also expressly prohibits the discharge of oil or oily mixture from a ship into the Singapore waters. A contravention of this provision is a criminal offence which would result in the master, the owner and the agent of the ship being guilty of an offence that is punishable with a fine of between \$1,000.00 - \$1,000,000.00 and/or imprisonment for a term not exceeding 2 years.

There would be no liability under Sections 6 and 7 if the discharge of oil or pollutants was either necessary to save the ship or lives at sea, or due to unintentional damage to the ship and all reasonable precautions were taken to minimise damage: see Section 6(2) and 7(2) PPSA 1991.

Section 23 PPSA 1991 also allows for the Courts’ admiralty jurisdiction to be invoked in respect of liability incurred by the owners of a ship under this act.

The other piece of legislation that regulates maritime pollution is the *Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008* (“MSLCOBOP”). The act covers pollution resulting from the discharge or escape of bunker oil from a ship. The provisions in this act are similar to that of *MSLCOBOP*, except that it applies to bunker oil carried on board ships.

Key provisions pertaining to the response of interested parties in pollution cases

Section 12 *MSLCOBOP 1998* and Section 11 *MSLCOBOP* have stipulated time bars for the bringing of actions in relation to liability under the respective acts. Legal proceedings in respect of liability under these acts are to be commenced within 3 years from the time the claims arose or within 6 years of the first occurrence/occurrences of discharge/escape/threat of contamination.

PPSA 1991, Section 15 expressly places a duty on the master of a vessel to report all discharges of pollutants without delay. In circumstances where the Master is unable to make such a report, the onus to report the discharge falls on the owner, charterer, manager and operator of the ship or an agent of the owner, charterer, manager or operator of the ship.

### iii) Salvage / General Average

Key provisions pertaining to the liability for cases involving salvage operations

Section 6 MCA 1911 expressly stipulates that there is a general duty on a master and persons in charge of a ship to render assistance to persons in danger at sea. The failure to carry out this duty amounts to an offence. Section 166 and 167 *MSA 1996* also provide that a reasonable amount of salvage is to be paid where salvage services are rendered for the saving of life, cargo or wreck. Of particular importance is Section 166(2) *MSA 1996* which provides that salvage payable in respect of the preservation of life takes priority over all other claims of salvage.

The Courts admiralty jurisdiction can also be invoked over claims in the nature of salvage: see Section 3(i) *High Court Admiralty*

*Jurisdiction Act*. Further, Section 168 *MSA 1996* also permits disputes as to salvage to be tried before the District Court or the High Court.

Key provisions pertaining to the response of interested parties in salvage operations

Proceedings on salvage claims must be commenced within 2 years from the date when salvage services are rendered: see Section 8 *MCA 1911*.

Key provisions pertaining to the liability for cases involving General Average

Issues relating to liability for General Average are usually dictated by the contracts of carriage of goods by sea. In most cases these issues would be resolved in accordance with the York Antwerp Rules. The key conditions for a General Average act are reflected statutorily in Section 66 *Marine Insurance Act 1993*. It requires an extraordinary sacrifice or expenditure that is voluntary and reasonably made/incurred in a time of peril for the purpose of preserving property that is put at peril in the common adventure.

### iv) Wreck Removal

Key provisions pertaining to the liability for cases involving wreck removal

Section 146 *MSA 1996* provides that the Maritime and Port Authority of Singapore (‘the MPA’) shall have general supervision throughout Singapore over all matters relating to wrecks and may appoint a receiver for the wreck.

Key provisions pertaining to the response of interested parties for cases involving wreck removal

Section 153 *MSA 1996* states that where the owner of a wreck finds or takes possession of the wreck, he must give notice to the receiver. A failure to do so without a reasonable cause would result in the owner being guilty of an offence punishable by a fine not exceeding \$2,000.00. If the person finding or taking possession is not the owner of the wreck, he must as soon as possible deliver the wreck to the receiver. Where he fails to do so without reasonable cause, he not only forfeits any claim to salvage but is also liable to the person entitled to the wreck for double the value of the wreck.

The owner of the wreck should also note that he can have a wreck which is in the possession of the receiver delivered to him by establishing his claim to the wreck and then paying the salvage fees and expenses due: see Section 156 *MSA 1996*.

### v) Limitation of Liability

Key provisions pertaining to limitation of liability

For the purposes of limitation the *Convention on Limitation of Liability for Maritime Claims 1976* (“*CLLMC 1976*”) has the force of law in Singapore: see Section 136 *MSA 1996* and The Schedule to *MSA 1996*. The limitation regime is confined to the claims set out in Article 2 *CLLMC 1976*. Limitation is calculated in accordance with Article 6 and Article 8 *CLLMC 1976*. Limitation of liability can be excluded if it can be shown that the loss resulted from the personal act or omission of the persons liable and that the said person had an intention to cause such loss and/or was reckless and knew that such loss would result: see Article 4 *CLLMC 1976*.

Key provisions pertaining to response of interested parties in limitation of liability

Article 11 *CLLMC 1976* stipulates that a limitation fund may be constituted by depositing a sum or by producing a guarantee with the Court or other competent authority.

Notwithstanding the above, Article 10 *CLLMC 1976* provides that interested parties who are capable of limiting their liability would be able to do so notwithstanding the fact that a limitation fund has not been constituted.

## 1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

Section 118 *MSA 1996* provides that the Director of Marine has the power to order that a preliminary inquiry into a casualty be held. It also states that a Minister may appoint a Commissioner to formally investigate the casualty. Sections 205 - 207 *MSA 1996* elaborate further on the powers the authorities have in the event of major casualties. These include:

- i. going on board any ship and examining the ship or any part thereof or its equipment;
- ii. entering and inspecting any premises;
- iii. requiring and enforcing the production of any book, certificate or document relating to any ship or persons on board the ship;
- iv. mustering the crew and passengers of any ship;
- v. summoning any person before him and requiring him to answer questions;
- vi. requiring any ship to be taken into a dock for the purpose of surveying the hull;
- vii. administering oaths;
- viii. arresting without warrant any person who has committed an offence under this Act and taking him before a District or a Magistrate's Court to be dealt with;
- ix. seizing any article by or for which an offence has been committed and taking the same to a police station; and
- x. enforcing the detention of the ship.

The authorities also possess specific powers in relation to wreck removal. Section 150 *MSA 1996* provides that a receiver can apprehend anyone who plunders, creates disorder or obstructs the preservation of a wreck and that he may use force when doing so. Section 157 *MSA 1996* further empowers the receiver to make an immediate sale of a wreck in certain circumstances.

Under the Maritime and Port Authority of Singapore Act ("*MPA Act*"), the MPA has the power to order the owner of a vessel (by written notice) which has been sunk, stranded or abandoned within the port or the approaches thereto and is likely to become an obstruction, impediment or danger to navigation or to the safe and convenient use or operation of the port, to raise, remove or destroy the vessel: see Section 57 *MPA Act*. If the owner fails to comply with the order within the time given by the MPA in the written notice, the MPA may take steps to deal with the vessel itself, and sell the vessel in order to reimburse its costs of disposing of the vessel.

## 2 Cargo Claims

### 2.1 What are the international conventions and national laws relevant to marine cargo claims?

In Singapore, the Hague Visby Rules ("*HVR*") is given the force of law by the Carriage of Goods by Sea Act ("*COGSA*"). Article X of the HVR provides that the HVR shall apply to every bill of lading ("*B/L*") relating to the carriage of goods between ports in two different states if:

- (a) the B/L is issued in a contracting state;
- (b) the carriage is from a port in a contracting state; or
- (c) the contract contained in or evidenced by the B/L provides that the HVR or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

### 2.2 What are the key principles applicable to cargo claims brought against the carrier?

#### A. Title to sue

Under Section 2(1) of Singapore's Bills of Lading Act (Chap. 384) ("*B/L Act*"), the following persons shall have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract (i.e. title to sue):

- (a) the lawful holder of a bill of lading;
- (b) the person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or
- (c) the person to whom delivery of the goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order.

Section 5(2) further describes the persons to which the phrase "holder of a bill of lading" refers, and stipulates that a lawful holder of the B/L is one who becomes the B/L holder in good faith. There have been very important decisions clarifying the right to claim under a bill of lading.

In *Bandung Shipping Pte Ltd v Keppel Tatlee Bank Ltd* [2003] 1 SLR 295; [2002] SGCA 46, it was held that the LC Issuing Bank had lost its right to bring a claim under the bill of lading where the bill of lading had been endorsed to third parties and returned to the LC issuing bank without re-endorsing the bill of lading back to the LC issuing Bank. In *APL Co Pte Ltd v. Voss Peer* [2002] SGCA 41, the Court held that the carrier is required to deliver cargo on production of the original bill of lading, even for a straight bill of lading.

#### B. To the extent not already covered in question 2.1, applicable time limits and limits of liability including loss of right to limit

##### (I) Time Limits

Under Article 3 rule 6 of the HVR, the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.

An action for indemnity against a third person, however, may be brought even after the expiration of the year (referred to in Article 3 rule 6) if brought within the time allowed by the law of the court which has seized the case.

Under Singapore law, the normal limitation period when goods are damaged due to a breach of contract is six years; this will form the time bar for an action for indemnity against a third person.

The Singapore High Court in *Press Automation Technology Pte Ltd v. Trans-Link Exhibition Forwarding Pte Ltd* [2003] 1 SLR(R) 712, at [63], followed the English Courts on the following principles in relation to Article 3 rule 6bis:

- (a) A transport company can rely on rule 6bis to extend the time for bringing the indemnity action beyond the one-year time limit under Article 3 rule 6 even though it is not itself a shipowner or sea carrier.
- (b) There is no express requirement in rule 6bis that the liability to the cargo owner in respect of which one shipowner claimed an indemnity against another must also arise under a contract of carriage to which the HVR applied.

##### (II) Limits of Liability

Under Article IV rule 5(e) of the HVR, the carrier will not be entitled to limit his liability as provided for in Article IV if it is proved that the damage resulted from an act or omission of the carrier done (a) with intent to cause damage, or (b) recklessly and with knowledge that damage would probably result.

The HVR provides for limits on either a “per package or unit” basis or a “per kilogram” basis. The shipper is entitled to rely on the higher of the 2 limits in any particular case. By virtue of the Special Drawing Rights Protocol introduced in 1979 (“SDR”), it was agreed that the limits are set at 2 SDR per kilogram or 666.67 SDR per package or unit.

**C. The possibility of a non-contractual claim against the carrier, i.e. in tort. In what circumstances would local law allow such a claim?**

It is possible for a claim to be brought against the carrier in tort. In the case of a claim for the carrier’s negligence, the claimant must have legal ownership of, or possessory title to, the cargo at the time of the loss or damage; otherwise he cannot sue for negligence: *Leigh & Sullivan Ltd v. Aliakmon Shipping Co Ltd* [1986] 2 Lloyd’s Rep 1 followed in *The “Patraikos 2”* [2002] 1 SLR(R) 966 at [137].

**2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?**

Article III rule 5 of the HVR gives the carrier an indemnity from the shipper in respect of the ‘marks, number, quantity and weight, as furnished by him’ to compensate the carrier for its obligation to issue a B/L stating the information as required by Article III rule 3. The indemnity is against all loss, damages and expenses arising or resulting from inaccuracies in such particulars provided by the shipper.

**What obligations are placed upon a shipper (*vis-a-vis* the carrier) regarding declaration of the nature and weight of the cargo in particular relating to:**

(i) Dangerous goods

In the “*Sunrise Crane*” [2004] SGCA 42, at [25, 30], the Court found that having regard to the circumstances and the clearly dangerous nature of the cargo which required special precaution to be taken for its removal, the shippers owed a duty of care to warn the carrier of the dangerous nature of the cargo. A higher standard of care was necessary because of the highly hazardous nature of the cargo and fact that appellant knew that the respondents did not know that the cargo was so hazardous.

### 3 Passenger Claims

**3.1 What are the key provisions applicable to the resolution of maritime passenger claims?**

Singapore is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (“**Athens Convention**”) 1974 nor the later Athens Convention 2002. Instead, the resolution of maritime passenger claims would be under the High Court (Admiralty) Jurisdiction Act (Cap. 123) (“**HCAJA**”), common law action in tort or in contract.

Section 3(1) of the HCAJA sets out claims for which an action can be brought against the ship. Section 3(1)(d) provides for claims for damage done by a ship and Section 3(1)(f) of the HCAJA provides for claims for loss of life or personal injury arising out of the circumstances described in the Section. Section 3(1)(g) provides for claims for loss of, or damage to, passenger luggage carried onboard a ship.

Section 3(1)(d) would cover situations where damage was done by the ship to passengers onboard another ship resulting in personal injury or damage to cargo, baggage and personal effects carried onboard another ship.

Claims brought under Section 3(1)(f) can be tortious or contractual

or in the form of an indemnity. A literal reading of Section 3(1)(f) suggests that this Section covers the loss of life personal injury of a passenger on board a ship other than the offending ship and that the passenger may not have any connection with the offending ship. Section 3(1)(f) could also cover actions brought against a foreign shipowner for death of a foreign passenger arising from a collision on high seas when such claim is made under the Singapore Civil Law Act (Cap.43). An indemnity for compensation paid out for loss of life would similarly be covered under Section 3(1)(f).

The limitation period for claims brought against a ship under Section 3 of the HCAJA for personal injuries is 3 years from the date on which the action accrued or the earliest date on which the passenger claimant had the knowledge required for bringing an action for damages in respect of the relevant injury. For claims for damage to passenger luggage arising from negligence or breach of duty, the limitation is 6 years from the accrual of the cause of action or 3 years from the earliest date on which the claimant passenger first had necessary knowledge of the damage, whichever is later. The Convention on Limitation of Liability for Maritime Claims 1976 (“**1976 Convention**”) applies to limit shipowners’ liability for passenger claims.

## 4 Arrest and Security

**4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?**

In Singapore a party can secure their claim by arresting a vessel. Singapore is not a party to either of the international conventions. Instead, the High Court (Admiralty) Jurisdiction Act (Cap. 123) (“**HCAJA**”) applies to the arrest of ships in Singapore.

The claims for which arrest can be obtained are set out comprehensively in Section 3(1) of the HCAJA. Singapore law allows the arrest of a ship chartered by a demise charterer under Section 4(4)(i). Under Singapore law, an admiralty action *in rem* must be begun by a writ *in rem*. A warrant of arrest is then obtained against the ship to be arrested. The writ and warrant of arrest are then served on the vessel against which the action is brought, and both must be served on the ship within the Singapore port limits.

Under Singapore law, the arrest of sister ships is permitted under Section 4(4)(ii) of the HCAJA. However, Singapore law does not provide for associated ship arrests.

A shipowner whose ship is under arrest or threatened with arrest may secure the release of the ship or hold off an arrest by providing security for the plaintiff’s claim in the form of a bank guarantee or a letters of undertaking from a P&I Club. Payment into Court of the plaintiff’s claim is also an acceptable albeit rare form of provision of security.

Under Singapore law, a freezing injunction can be taken out on ships as there could be circumstances where it is necessary for a claimant to resort to obtaining a Mareva injunction instead of arresting the vessel.

**4.2 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?**

In order to secure a claim brought against a party, if the plaintiff is not the shipowner or demise charterer, their options would have would depend on whether the claimant can exercise a maritime line

e.g. for a collision claim. Section 4 of the HCAJA provides for the instances where a claim can be brought against a ship which is not owned or in the possession of a demised charterer who is liable *in personam*.

## 5 Evidence

### 5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

The Court has the power under Rules of Court (“ROC”) Order 29 Rule 2 to make an order for the detention, custody, preservation or inspection of any property which is the subject-matter of their claim. A party can apply for a Mare Del Nord Order to detain a ship to carry out an inspection on board the ship to investigate the cause of the incident and obtain documents which will aid the investigation. The evidence and documents obtained through the order can be preserved and relied at the trial of the dispute.

The attendance of a witness for cross-examination can be compelled by subpoena and parties may apply to Court for a subpoena under ROC Order 38 Rule 14 using Form 67. Prior to the issuance of the subpoena, a praecipe in Form 70 must be filed with the Court Registry. Failure to attend after service of subpoena will expose the party to contempt of court proceedings.

A party can apply for pre-action discovery of documents (ROC Order 24A) to determine whether he has a cause of action or to establish the identity of the alleged wrongdoer.

### 5.2 What are the general disclosure obligations in court proceedings?

Subject to legal professional privilege, there is a strict requirement to disclose all relevant documents which will include documents on which the party relies or will rely and documents which could either adversely affect his own or another party’s case or support another party’s case.

Recent Court of Appeal decision of *Teo Wai Cheong v. Crédit Industriel et Commercial v. Teo Wai Cheong* [2013] SGCA 33 confirmed this strict requirement with a warning that the solicitors who fail to advise clients of this obligation may be made liable for costs sanctions.

Documents disclosed in judicial proceedings in Singapore are not allowed to be used in foreign or other collateral proceedings without leave of Court.

## 6 Procedure

### 6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

#### (i) National courts

The Rules of Court govern the procedure which is applicable. Admiralty actions may be either *in rem* or *in personam*. The typical procedure will include filing an action in Court, providing documentary evidence, providing witness statements and oral

hearings. In Singapore, there are unwritten directions to complete an action within a year and a half. This is enforced by regular pre-trial conferences between the lawyers and the court.

#### (ii) Arbitration

Arbitration is the most favoured alternative dispute resolution. There has been a big push to have Singapore as a centre for Asian dispute resolution. The efforts have gained traction and the number of arbitration cases has increased significantly. The Singapore Chamber of Maritime Arbitration (“SCMA”) was originally established in November 2004 to provide a framework for maritime arbitration and modelled similar to LMAA arbitration.

#### (iii) Mediation/alternative dispute resolution

The Singapore Mediation Centre (“SMC”) was set up in 1997 and aims to offer the business community an avenue to mediate their disputes. Parties in the High Court are sent letters to encourage the use of the mediation centre.

## 6.2 Highlight any notable pros and cons related to Singapore that any potential party should bear in mind?

#### Pros:

- Parties can be assured of a transparent legal system. There is zero corruption and the decisions are based on the merits rather than influence.
- There is a specialised Admiralty Court.
- Quick resolution of disputes. Matters do not usually take more than one year and six months to resolve.
- With respect to arbitration, Singapore is party to the New York Convention and its International Arbitration Act adopts (most of) the UNCITRAL Model Law. Singapore has taken steps to ensure practical support for international arbitrations conducted here, with the result that it is regarded, both legally and commercially, as a preferred forum for resolving trade disputes.

#### Cons:

- Hearsay evidence is not allowed, subject to exceptions under the Evidence Act. This leads parties in Court proceedings to call witnesses who have personal knowledge which may increase costs and time to conclude the trial in Court.

## 7 Foreign Judgments and Awards

### 7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

The enforcement of foreign judgments in Singapore is governed by both the common law and statutes.

#### Legislation

The Reciprocal Enforcement of Commonwealth Judgments Act (“RECJA”) provides for judgments of Courts in other Commonwealth countries to be recognised and enforced in Singapore. These countries enjoy the reciprocal benefits.

The Reciprocal Enforcement of Foreign Judgments Act (“REFJA”) provides for the enforcement of judgments of foreign Courts which themselves recognise and enforce Singapore judgments in their local jurisdiction.

#### Common law

Not every foreign judgment will be enforceable in Singapore. The foreign judgment must be (i) final and conclusive on the merits, and (ii) for a fixed or ascertainable sum of money.

**Process of enforcement**

If the foreign judgment falls under the purview of the RECJA or REFJA, this judgment may be enforced directly as a local judgment. If the foreign judgment is enforced by a common law action, fresh action needs to be taken and a summary judgment application can be taken to obtain a local judgment.

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**7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.**


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**Legislation**

The International Arbitration Act (“IAA”) provides for arbitration awards made in a Convention country or under the Reciprocal Enforcement of Commonwealth Judgments Act to be enforced in Singapore.

**Procedure**

Enforcement is relatively straightforward. To enforce an award, the party seeking enforcement must file an originating summons accompanied by an affidavit. The language of the Singapore Courts is English; if the arbitration award is in any other language, a translation of it must be provided.

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**8 Updates and Developments**


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**8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.**


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On 16 November 2012, BIMCO issued a press release to announce that Singapore is now recognised as an official seat of arbitration to represent the Asia region. This means that a Singapore arbitration clause will be included in all new and revised BIMCO Standard Dispute Resolution Clauses which appear in all BIMCO contracts. The Singapore maritime community saw this recognition by BIMCO, a renowned shipping documentation expert, as affirmation of the fact that Singapore has attained the status of being an international arbitration venue of choice.

**Bazul Ashhab**

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Bazul Ashhab is the Firm's Head of Dispute Resolution leading the Litigation and the Arbitration Practice Groups.

Bazul's expertise in shipping includes dealing with collision, salvage, general average, wreck removal, charterparty disputes, disputes arising from bills of lading and ship building disputes. He is very involved in the marine insurance industry in Asia. He assists insurers with their Hull & Cargo claims and issues involving facultative and treaty reinsurance.

Chambers Asia Pacific and Asia Pacific Legal 500 have ranked Bazul as one of the leading lawyers in Singapore. Chambers Asia Pacific describes Bazul as an "exceptional lawyer" and Asia Pacific Legal 500 notes that clients admire Bazul for his "quick intellect and grasp for material issues".

Bazul's notable cases include:

- Acting for buyers against a Chinese yard in London to recover payments made under a ship building contract for a sum exceeding US\$60 million.
- Advising owners involving sinking of vessel arising from liquefaction of iron ore cargo.

**Goush Marikan**

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Goush heads the firm's Marine Casualty Response team and Wet Shipping practice.

His invaluable experience as a sea-going officer for eight years and experience in handling casualties in the region has allowed him to carve a niche for himself as a specialist wet shipping lawyer in Singapore. He is regularly instructed on casualties across the region involving collisions, groundings, fires, cargo damage and loss of life.

Goush has been praised by the Asia Pacific Legal 500 for being "knowledgeable in dealing with collision and other casualty work" and for being "exceptionally good in wet work".

Goush's experience includes:

- Acted for the owners of the vessel "BUILDER SUCCESS" against owners of the vessel "SUIJIN" in a claim arising from a collision in the Singapore Straits. The claim amount involved is in excess of S\$4 million.
- Acting for German owners of the container vessel "APL SOKHNA". Clients were claiming against PSA for damage caused to their vessel as a result of PSA's crane handler dropping the vessel's hatch cover onto the vessel and damaging it. The claims involved were in excess of S\$3.9 million.

## OON & BAZUL

Oon & Bazul LLP is one of Singapore's leading law firms, specialising in shipping, international trade, insurance and energy law. The firm has been consistently commended in leading legal publications such as The Legal 500 and the Chambers and Partners. The firm's shipping practice and international arbitration practice are ranked as one of the best in Asia.

Our lawyers handle the full spectrum of shipping and trade related matters including disputes involving charterparties, cargo claims, "wet" work, shipbuilding / ship repair, ship finance and transactional shipping work, marine insurance and international trade. Our team also has extensive experience in handling all nature of disputes relating to offshore oil & gas projects.

Our dedicated team is made up of lawyers qualified in various jurisdictions such as England & Wales, Singapore, Malaysia, India and China with expertise in handling matters involving complex, cross-border and multi-jurisdictional issues involving jurisdiction in all continents.

Our clients include major international shipping lines, commodities traders, marine insurers, P&I Clubs, offshore contractors and banks.

## Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Insurance & Reinsurance
- International Arbitration
- Lending and Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- PFI / PPP Projects
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