



ATTORNEY-
GENERAL'S
CHAMBERS

**ADMIRALTY JURISDICTION OF THE
HIGH COURT:
ARREST OF SHIPS ON DEMISE
CHARTER TO SECURE THE OBLIGATIONS
OF THE DEMISE CHARTERER**

(Consultation Paper)

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ATTORNEY-GENERAL'S CHAMBERS**

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OF THE DEMISE CHARTERER**

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CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Part 1 — Introduction	1	5
Part 2 — History and Origin of Admiralty Jurisdiction in Singapore	2	11
6 & 7 Will. IV c.53 (1836) and Royal Letters Patent (1837)	2.1	11
Third Charter of Justice (1855)	2.3	11
Vice-Admiralty Courts Act 1863 and the Vice-Admiralty Courts Amendment Act 1867	2.4	11
Colonial Courts of Admiralty Act 1890 and Admiralty Procedure Rules (1895)	2.6	12
Courts (Admiralty Jurisdiction) Ordinance 1961	2.9	12
Court of Judicature Act of Malaysia 1964	2.11	13
Supreme Court of Judicature Act 1969	2.12	13
Part 3 — Ship Arrests and the Demise Charter	3	15
Ship arrests generally	3.1	15
The action <i>in rem</i>	3.4	16
Nature of the demise charter	3.11	18
Reasons for the use of the demise charter	3.14	19
Procedure for arresting a ship in Singapore	3.17	20
Undertaking to pay damages for wrongful arrest	3.20	22
Part 4 — Reform Issue: Arrest of Ship on Demise Charter to Secure the Obligations of the Demise Charter	4	25
The issue	4.1	25
The need for reform	4.6	26
The options	4.9	27

	<i>Paragraph</i>	<i>Page</i>
Evaluation	4.20	30
Conclusion	4.29	33
Creation of procedural or substantive right?	4.31	34
Part 5 — Options for Amending Section 4(4) of the HCAJA	5	37
Option 1: Minimal change	5.3	37
Option 2: Based on current English legislation	5.4	37
Part 6 — List of Questions		39
<i>APPENDIX A: International Conventions which allow Arrest of Demise Chartered Vessels</i>		41
The 1952 Brussels Arrest Convention	A.5	41
The 1999 Geneva Arrest Convention	A.9	42
<i>APPENDIX B: Arrest of Demise Chartered Ships in Selected Jurisdictions</i>		45
England	B.1	45
Malaysia	B.3	46
Hong Kong	B.4	46
Australia	B.5	47
New Zealand	B.6	48
The United States	B.8	48
France	B.13	50
Other jurisdictions	B.16	50
<i>APPENDIX C: High Court (Admiralty Jurisdiction) Act (Chapter 123)</i>		53
<i>APPENDIX D: UK Supreme Court Act 1981 (1981 c 54)</i>		61

CONSULTATION PAPER

ADMIRALTY JURISDICTION OF THE HIGH COURT: ARREST OF SHIPS ON DEMISE CHARTER TO SECURE THE OBLIGATIONS OF THE DEMISE CHARTERER

PART I INTRODUCTION

1.1 The provisions of the High Court (Admiralty Jurisdiction) Act ("the HCAJA") as they presently stand do not permit a claimant to arrest a vessel under demise charter even where the demise charterer is himself the person liable to the claimant.

1.2 This can be illustrated by an example. If goods and services are supplied to a ship that is operated by its owner, then any sums payable for such goods and services may be claimed through an action *in rem* against that ship, subject to certain requirements. However, if the same goods and services had been supplied to a ship operated by a demise charterer, an action *in rem* may not be brought against the same ship even though the demise charterer has the same control of the ship as an owner.

This is a problem faced by persons supplying goods and services or otherwise extending credit to ships under demise charters.

1.3 The position in Singapore was also the position in the United Kingdom under the UK Administration of Justice Act, 1956 ("1956 Act"), until the latter was repealed in 1981. The material provisions in our current legislation were borrowed from the 1956 Act.¹

1.4 The harbinger to the 1956 Act (and our HCAJA which followed it) was the *Brussels Convention on the Arrest of Seagoing Ships 1952* ("the Convention"). The Convention sought the international unification of rules relating to the arrest of vessels. The 1956 Act in turn aimed to adopt the matters agreed to at the Convention.

¹ For the history of Singapore's admiralty jurisdiction legislation, see Part 2 below.

- 1.5 One such matter was the right to arrest a vessel under a demise charter if the demise charterer was himself liable on the claim. This was provided for under Article 3(4) of the Convention.²
- 1.6 However, this provision of the Brussels Convention was not incorporated in the UK 1956 Act. The UK position was followed in Singapore when the UK 1956 Act was re-enacted in Singapore as the Courts (Admiralty Jurisdiction) Ordinance 1961.³
- 1.7 The divergence between the law and the Convention has since been rectified in the UK⁴ by the UK Supreme Court Act, 1981 ("1981 Act") which repealed the 1956 Act. Malaysia, Hong Kong, New Zealand and Australia are some countries which had modeled its laws after the UK 1956 Act but which have since enacted legislation to bring their laws in line with the Convention and the present UK position.⁵
- 1.8 This trend had by no means gone unnoticed in Singapore. In 1988, the Attorney-General's Chambers considered, and consulted relevant parties, on whether Singapore law should be amended to follow the position in UK. The UK position was around that time being adopted in other Commonwealth jurisdictions. While there was strong support for the amendment, there was however also strong objection raised by shipowners against the proposal. As a result, the amendment was not effected.
- 1.9 Circumstances and perspectives seem to have changed since 1988. On 12 September 2002, the Attorney-General's Chambers received a letter from the Singapore Shipping Association stating that it had reviewed its position and was proposing this amendment to bring our law in line with the UK position.⁶

² Article 3(4) reads as follows: "When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of the Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims." A brief description of the Brussels Convention is set out at *Appendix A*.

³ This was later renamed as the High Court (Admiralty Jurisdiction) Act, Cap.123.

⁴ primarily in response to criticisms that its law did not comply with the 1952 Arrest Convention to which it is a party.

⁵ See *Appendix B: Arrest of Demise Chartered Ships in Selected Jurisdictions* for a description of the legal position in these countries.

⁶ Principal reasons given by the SSA were, that the amendment will "update and make Singapore's arrest law similar in this respect to other leading maritime nations; achieve greater international

- 1.10 We have also received feedback from certain quarters⁷ that while the use of demise charters was at one time falling out of favour, currently however, they appear to be making a comeback. Now would therefore appear to be an opportune moment to relook at this issue afresh.
- 1.11 In this paper, we will consider whether the amendment should be adopted, as a matter of policy and principle. It will be suggested that the answer to this question is a yes; that unless the present position of the law is changed, the full potential of the arrest procedure as a simple yet effective mechanism for creditors to realise claims against shipowners or defendants who are outside the territory and who have no assets within the jurisdiction (apart from the ship itself) would be unnecessarily restricted.
- 1.12 Singapore has no interest *per se* in promoting itself as an ideal place to arrest a ship⁸, but it is a fact of commercial life that ship suppliers, or cargo owners, may have legitimate claims against demise charterers and genuine grounds to arrest ships as security in disputes. It will be argued that the proposed reform will help circumvent many practical problems and will protect and provide better access to justice to innocent claimants.
- 1.13 The amendment merely plugs what is increasingly being perceived by many as a lacuna in maritime law. The legal and other costs invested by a plaintiff in pursuing an admiralty claim *in rem* may be frustrated and wasted if the ship is subsequently proved to be on demise charter. Much unnecessary litigation and wasted judicial time and resources would be avoided if the law applied uniformly to ships on demise charters. This is especially where other jurisdictions do not draw a distinction between the owner and the demise charterer in terms of liability to arrest.
- 1.14 At the same time, the amendment may have the positive effect of promoting Singapore as a centre for dispute resolution.

uniformity; that a demise charterer should not be in a more favourable position than a shipowner, when the demise charterer is liable in personam; the amendment would prevent shipowners from insulating their ships from arrest by chartering ships by demise to related companies".

⁷ By a letter dated 1 September 2000 to the Attorney-General.

⁸ In fact, the combination of heavy seafaring traffic and limited port space suggests that arresting a ship in Singapore would be uneconomical to port operators, as such ships tie up valuable space in port.

- 1.15 Finally, consensus reached at international conventions⁹ are gauges of the changing international trends in the international maritime scene. It is imperative that Singapore progress with these trends, or risk attracting critical comments. The amendment will keep Singapore abreast with current international maritime practices.¹⁰
- 1.16 The present position (of not allowing the arrest of a demise-chartered ship in respect of the demise charterer's obligations) has attracted strong criticism from the bench in the UK and Australia.¹¹ Mr Justice Sheen in *The Maritime Trader*¹² observed (on the failure of Parliament to enact the part of the Convention on arrest of demise chartered ships):
- "I can only express the hope that before long Parliament will do so, because it would be a useful addition to the power of this Court to do justice within the world-wide maritime community. There is at present a lacuna in the law of this country which prevents a claimant arresting a ship belonging to a shipowner who has chartered additional tonnage and is liable on a claim relating to a ship on charter. Furthermore the purpose of the Convention was to provide uniform rules as to the right to arrest seagoing ships by judicial process to secure a maritime claim against the owner of a ship. Uniformity has not been achieved because Parliament did not enact the Convention."
- 1.17 In *The Father Thames*¹³, his Honour had expressed his regret that the 1956 Act, although it had intended to give effect to Article 3 of the Convention, had failed to do so. In *The Andrea Ursula*¹⁴, Brandon J went to great lengths to stretch the English language so as to construe the 1956 Act in such a manner as to give effect to the failed intention of Parliament to adopt the Convention.
- 1.18 In the UK, the Lord Chancellor in proposing the 1981 bill to the House confirmed that all parties consulted (which it appears included

⁹ Eg. 1956 Brussels Arrest Convention and the 1999 Geneva Arrest Convention. See *Appendix A*.

¹⁰ The sole purpose of enacting the HCAJA back in 1961 was to bring Singapore in line with the Convention and international maritime practices (see Parliamentary Debates, 16 December 1961). Parliament observed then that "their adoption will be to the benefit of local shipping". It is suggested that this observation is as valid today as it was in 1961.

¹¹ These no doubt prompted the amendments to their respective legislation.

¹² [1981] 2 Lly. LR 153, 156

¹³ [1979] 2 QB 364, 367

¹⁴ [1971] 1 Lly. LR 145

the General Council of Britain Shipping and the P&I Clubs) agreed that the amendment was a useful improvement.

- 1.19 Although some related issues will also be considered, this paper is not a general review of the admiralty jurisdiction of the High Court.

PART 2 HISTORY AND ORIGIN OF ADMIRALTY JURISDICTION IN SINGAPORE

6 & 7 Will. IV c.53 (1836) and Royal Letters Patent (1837)

- 2.1 The inception of English maritime law into Singapore can be traced to 1837. Under an Act of Parliament (6 & 7 Will. IV c.53) and by the Royal Letters Patent of February 25, 1837, the Court of Judicature of Prince of Wales' Island, Singapore and Malacca¹⁵ was constituted a court of admiralty to "*take cognizance of, her, examine, try and determine all causes, civil and maritime,*" with respect to a broad range of shipping matters, "*as the same is used and exercised in ... England... and to proceed summarily therein with all possible dispatch, according to the course of our Admiralty of ...England, without the strict formalities of law, considering only the truth of the fact and the equity of the case*".¹⁶
- 2.2 The Royal Letters Patent of February 25, 1837, was thus the starting point for the introduction of English maritime law into the Straits Settlements in which Singapore was a colony.

Third Charter of Justice (1855)

- 2.3 In 1855, the Third Charter of Justice added a further, extensive instalment of admiralty jurisdiction. The relationship, if any, between jurisdiction conferred by 6 & 7 Will. IV c.53 and the Third Charter was however unclear.

Vice-Admiralty Courts Act 1863 and the Vice-Admiralty Courts Amendment Act 1867

- 2.4 Later, the Vice-Admiralty Courts Act 1863 and the Vice-Admiralty Courts Amendment Act 1867 were extended to the Straits Settlements by virtue of section 17 of the latter Act.

¹⁵ established by the Second Charter of Justice in 1826. Although the Second Charter introduced the law of England as it stood in 1826 to the Straits Settlements, it did not however confer admiralty jurisdiction upon the Court of Judicature.

¹⁶ Great Britain Sovereigns, etc. 1837-1901 (Victoria), pp.17-18.

- 2.5 The effect was an extension of the admiralty jurisdiction of the Supreme Court of the Straits Settlements and a further importation of English maritime law as it existed at that date.

Colonial Courts of Admiralty Act 1890 and Admiralty Procedure Rules (1895)

- 2.6 The 1863 Act and the 1867 Amendment Act were repealed by section 17 of the Colonial Courts of Admiralty Act, 1890.¹⁷
- 2.7 Under this Act, all Colonial High Courts with unlimited jurisdiction were deemed to be Colonial Courts of Admiralty.¹⁸ Section 2(2) of the Act provided that "*[t]he jurisdiction of a Colonial Court of Admiralty shall ... be over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England whether, existing by virtue of any statute or otherwise ...*" Admiralty jurisdiction under this Act was thus restricted to that as existed and exercised by the High Court of England in 1890.¹⁹
- 2.8 In 1895, the Admiralty Procedure Rules were brought into force by Her Majesty by Order of Council.²⁰

Courts (Admiralty Jurisdiction) Ordinance 1961

- 2.9 On January 15, 1962, the Courts (Admiralty Jurisdiction) Ordinance came into operation in Singapore "*to amend the law relating to Admiralty jurisdiction, legal proceedings in connection with ships and aircraft and the arrest of ships and other property and for purposes connected therewith and to repeal certain provisions of the Merchant Shipping Ordinance*". The material provisions of this Ordinance were borrowed from the UK Administration of Justice Act, 1956.

¹⁷ 53 & 54 Vict c 27

¹⁸ The applicability of the Colonial Courts of Admiralty Act was made clear in s 8(b) of the Straits Settlements Courts Ordinance of 1907 and the consolidating enactments succeeding it.

¹⁹ This was so interpreted by the Privy Council in *The Yuri Maru; The Woron* [1927] AC 906. Thus, expansion of admiralty jurisdiction in England after 1890, such as that which covers claims arising out of charterparties (see s 5 Administration of Justice Act, 1920 10 & 11 Geo V c 81) did not apply in the colonies.

²⁰ Applicable in the Straits Settlements, but later repealed by Order 93 of the Rules of the Supreme Court 1970.

- 2.10 The purpose of the Courts (Admiralty Jurisdiction) Ordinance was to bring the law in Singapore into line with the provisions of Part I of the UK Administration of Justice Act, 1956, which was enacted to enable ratification by the UK of the *International Convention for the Unification of Certain Rules Relating to Arrest of Sea-Going Ships*, signed at Brussels in 1952.²¹

Court of Judicature Act of Malaysia 1964

- 2.11 Between 1963 and 1970, section 24(b) of the Court of Judicature Act of Malaysia 1964²² rendered to the High Court of Singapore such admiralty jurisdiction as the High Court of England had under the UK Administration of Justice Act 1956. This was, however, without prejudice to the continued applicability of the Ordinance of 1961.²³

Supreme Court of Judicature Act 1969

- 2.12 In 1970, the Supreme Court of Judicature Act of 1969²⁴ commenced application in Singapore²⁵.
- 2.13 S. 16(3) states generally that the High Court shall have jurisdiction as is vested in it by any other written law apart from s.16(1). S.17(b) specifies that the civil jurisdiction of the High Court shall include jurisdiction under any written law relating to matters of admiralty.
- 2.14 In this manner, the High Court (Admiralty Jurisdiction) Act, which the earlier Court (Admiralty Jurisdiction) Ordinance 1961 was renamed as, is brought within the framework of the civil jurisdiction of the

²¹ Explanatory Statement to Courts (Admiralty Jurisdiction) Ordinance, 1961

²² Act No. 7 of 1964

²³ which had in any event substantially reproduced provisions from the UK 1956 Act.

²⁴ Act No. 24 of 1969 which came into force on 9 January 1970.

²⁵ The Court of Judicature Act of Malaysia 1964 thus ceased to apply to Singapore.

High Court. Except for several minor amendments in 1973²⁶, 1996²⁷ and 1997²⁸, the High Court (Admiralty Jurisdiction) Act has remained unchanged to this day.

²⁶ Act No. 34 of 1973, Statutes of the Republic of Singapore (Miscellaneous Amendments) (No.3) Act.

²⁷ Act 7 of 1996, Maritime and Port Authority of Singapore Act 1996

²⁸ Act 7 of 1997, Statutes (Miscellaneous Amendments) Act 1997

PART 3

SHIP ARRESTS AND THE DEMISE CHARTER

Ship arrests generally

- 3.1 The arrest of vessels is a special feature of common law countries whose maritime laws are primarily derived from the admiralty laws of England. Laws relating to ship arrest are especially important in Singapore where our port is one of the busiest around the world and where claimants are afforded access to an efficient legal system.²⁹
- 3.2 While admiralty jurisdiction focuses on ships, the historical problem that was sought to be addressed was not the ships themselves, but rather the problem of foreign defendants (or more precisely, foreign defendants who are potentially elusive in terms of service of process and whose assets are beyond the easy reach of local courts). This provided the historical basis for the development of a distinct admiralty jurisdiction. The unique characteristics of admiralty today are thus largely directed towards a simple mechanism for creditors to realise claims against ship-owners or defendants who are outside the territory and who have no assets within the jurisdiction apart from the ship itself.
- 3.3 Maritime claims³⁰ may be pursued by an action *in personam* or an action *in rem*. An action *in personam*, as its name suggests, is an action against the defendant personally. This remedy is available to both maritime as well as non-maritime claimants.³¹ Admiralty law allows, in addition, an action *in rem*, where the same claim, instead of being pursued against the person who would be liable in an action *in*

²⁹ The 2002 World Competitiveness Yearbook, compiled by the Lausanne-based International Institute for Management Development, ranked Singapore first in legal framework, ahead of Hong Kong, New Zealand and Malaysia. Singapore has also been innovative and progressive in encouraging arbitration and mediation in commercial and family disputes. The courts are efficient. Specialist commercial courts in the Supreme Court have been set up "to position and promote Singapore as a leading jurisdiction of choice for both domestic and international commercial disputes". The first such specialist commercial court to be established was the Admiralty Court on 4 Feb 2002 which seeks to "reinforce Singapore's status as a leading shipping hub" (Supreme Court Annual Report 2002).

³⁰ A convenient term used by practitioners to refer to claims which have something to do with ships. Not to be confused with "maritime liens".

³¹ See *Emilia Shipping v. State Enterprise for Pulp and Paper Industries* [1991] 2 M.L.J. 379. An admiralty action *in personam* will have to be brought within the admiralty jurisdiction requirements.

personam (“**person liable *in personam***”), is pursued against the ship that the claim arises in connection with.³²

The action *in rem*

- 3.4 An action *in rem* is commenced by the arrest of the ship. *In rem* arrests are unique to admiralty law. Historically, actions *in rem* were tied to the enforcement of maritime liens.³³ A maritime lien on a ship follows the ship through ownership changes. The person entitled to the lien may enforce it against the ship, regardless of the ownership of the ship.
- 3.5 In the modern context, actions *in rem* have been created by legislation that extend beyond the established categories of cases that give rise to maritime liens. These are known as statutory actions *in rem*.
- 3.6 Legislation creating statutory actions *in rem* often define the right to arrest on the basis of a nexus between the ship and the person liable *in personam*. One of the clearest situations where an action *in rem* can be justified is when a claim arises in connection with a ship that is owned and operated by the party who would be liable *in personam*, both at the time when the cause of action arose and when the action *in rem* is commenced. Some jurisdictions go further, and allow the arrest of other ships owned by the person liable *in personam*, even if such other ship is not related in any way to the dispute.
- 3.7 An action *in rem* is an action against a *res*, which is usually a ship.³⁴ In lay terms, it can be said that the ship is sued as if it were the legal person who committed the wrong that the claim is based on. The relevant court documents are served on the ship by physical placement

³² See *The Burns* [1907] P. 137, at 149. There are however, Singapore authorities for the view that the defendant is nonetheless the shipowner: see *The Kusu Island* [1989] 2 M.L.J. 257, at 262 (CA). This issue has no bearing on the issues discussed in this paper. For a discussion, see Toh Kian Sing, *Admiralty Law and Practice* (Singapore: Butterworths Asia, 1998), at 18-23. Form 155 of the Rules of Court prescribe a writ of summons that is addressed to the owner of the ship that is to be arrested, but there is no requirement for it to be served on such owner.

³³ See *The Bold Buccleugh* (1851) 7 Moo P.C. 267, at 283-5; 13 E.R. 884, at 890-1. Claims that give rise to maritime liens include salvage, seaman’s wages, and damage done by a ship.

³⁴ Some other types of maritime property, like cargo, may also be the subject of actions *in rem*. This paper is not concerned with such actions. In Singapore, aircraft may also fall within the scope of admiralty jurisdiction in limited circumstances. This paper is also not concerned with such claims, and the discussion will be confined to ships.

on a part of the ship. The ship is technically served with a writ or “arrested” by such action. A court would determine the merits of the claim at a subsequent trial. An arrested ship is detained and prevented from sailing and may be sold to provide funds to satisfy a future judgment in favour of the plaintiff.

- 3.8 The action *in rem* is the basic procedure on which creditors rely for pre-judgment security and post-judgment enforcement. The arrest of a ship or other *res* (eg. cargo or freight) places the *res* under judicial detention pending adjudication of the claim. If the court subsequently allows the claim, the judgment is then enforceable against the arrested *res* (by judicial sale) or against the security that is given to take its place.³⁵ In practice, the arrest of the *res* often induces the defendant immediately to put up bail or provide other security acceptable to the plaintiff. It may induce a settlement of the claim itself without proceeding to trial.
- 3.9 Maritime arrest is also a means for obtaining *in personam* jurisdiction over a non-resident ship-owner who enters an appearance to an admiralty action *in rem*³⁶ as it has the practical effect of securing the appearance in the action of the ship-owner, thus establishing the *in personam* jurisdiction of the court.³⁷
- 3.10 Actions *in rem* offer significant advantages over actions *in personam*. The recent development of the Mareva injunction as a general remedy has not removed the uniqueness of the security aspect of arrest *in rem*³⁸ and most admiralty actions in Singapore are commenced as actions *in rem*.

³⁵ But the value of the *res* may be insufficient to meet the full claim, or others with a greater priority may leave no residue for the plaintiff, so that the security is far from perfect. But the plaintiff is protected from the various risks of loss that can arise between serving a writ and obtaining judgment, such as the defendant absconding leaving no assets, becoming bankrupt or dissipating those assets.

³⁶ See *Kuo Fen Ching & Anor v Dauphin Offshore Engineering & Trading Pte Ltd ('The Capricorn')* [1999] 3 SLR 721.

³⁷ From then onwards, the action continues as an action *in rem* and *in personam*: *The Kusu Island* [1989] SLR 119; [1989] 3 MLJ 257. The appearance of the defendant does no more than to provide another source against whom the judgment can be satisfied in the case where the value of the ship is not sufficient to meet the plaintiff's claim; the *in rem* action exists independently of and does not become subsumed with the *in personam* action: '*The Capricorn*'.

³⁸ Some advantages of arrest over the Mareva Injunction are: a) Arrest is a legal remedy available as of right whereas the Mareva injunction is equitable and discretionary; b) In order to obtain a Mareva injunction the plaintiff will have to show that success is likely at the eventual trial, that there is a real

Nature of the demise charter

- 3.11 A demise charter is a special type of ship hire, where the charterer is given full possession and control of the vessel.³⁹ Under a demise charter, the charterer has the right to decide on the use and employment of the vessel. The rights of a demise charterer are very similar to those of an owner of a ship, but the demise charterer is not the legal or beneficial owner of the vessel, and cannot sell and pass good title to the vessel.
- 3.12 Under the terms of some demise charters, the charterer would hire his own master and crew. Such demise charters are sometimes referred to as “bareboat” charters as the charterer obtains the use of the bare vessel, without anything else.
- 3.13 A mere hire of a vessel does not create a demise charter. A demise charter is created only when the owner gives up both possession and control. The charterer must be given the “power and right to do as he pleases with regard to the captain, the crew and the management and employment of the ship.”⁴⁰ The existence of a demise charter depends on the terms of the charter and not its label.⁴¹ A charter that is not expressly identified by the parties to be a demise charter may be a demise charter if its terms confer the necessary rights on the charterer.

danger that assets will be removed or dissipated so as render valueless any judgment obtained and that the injunction will not seriously interfere with the rights of third parties. There may be difficulties eg. in using a Mareva injunction to block the departure of a vessel when the cargo on board is the property of third parties. In admiralty, if the plaintiff is entitled to arrest the vessel, the inconvenience or damage caused to third parties is not relevant. c) An injunction to prevent the only asset within the jurisdiction from departing may be refused if the defendant has substantial assets abroad which are unlikely to be dissipated and which can be reached by machinery for the reciprocal enforcement of foreign judgments. In admiralty, on the other hand, the question of dissipation of assets does not arise when seeking to arrest the *res*. d) A Mareva injunction does no more than prevent assets from being removed from the jurisdiction or dissipated within it. It does not give the plaintiff a preference as against other creditors. Nor does it prevent the assets subject to the injunction being used to pay debts due to other creditors. On the other hand, if the *res* is arrested in admiralty, it or the proceeds of its sale remain intact in the hands of the court until judgment is obtained or bail or alternative security put up. (However, the plaintiff who procured the arrest still runs the risk that other creditors will take priority under the system of priorities that operates in admiralty. So a claimant who ranks low on the admiralty scale of priorities arrest may not end up being any better off than if he had obtained a Mareva injunction.)

³⁹ For a general discussion, see Tan Lee Meng, *The Law in Singapore of Carriage of Goods by Sea*, 2nd ed. (Singapore: Butterworths Asia, 1994) Chapter 5.

⁴⁰ *Baumvoll Manufactur von Carl Scheiber v. Gilcrest & Co.* [1892] 1 Q.B. 253, at 259.

⁴¹ See *The Giuseppe di Vittorio* [1998] 1 Lloyd's Rep 136.

For example, in *Wah Tat Bank Ltd v. Chan Cheng Kum*,⁴² the court concluded that there was a demise charter after considering the terms of the charter. It was particularly influenced by the fact that the charterer bore responsibility for the wages of the crew and all outgoings, including the cost of insurance and repairs. Some standard contracts create demise charters and there will not be any identification problems with such contracts.⁴³

Reasons for the use of the demise charter

- 3.14 From a commercial viewpoint, demise charterparties are appropriate when a business entity requires total control and possession of his business interests but is unable or unwilling to assume the financial risks and obligations which follow the purchase of a vessel. A demise charter is often used to facilitate the hire-purchase of a ship (such transactions are also known as “charterpurchase”). Other legitimate operational reasons may include crewing reasons (the ability to hire crew at cheaper rates) or tax reasons (ability to “write-down”).
- 3.15 A demise charter may also be tactically employed to avoid the arrest of the ship.⁴⁴ The owners of a ship may incorporate a separate shell company (with no assets) to operate the ship on a demise charter from themselves or other related companies. The person liable *in personam* on claims arising from the use and operation of the ship would generally be the shell company. As this shell company does not “own” the ship, the ship would be rendered arrest-proof in respect of personal (non-proprietary) claims against the demise charterer.
- 3.16 Singapore courts, like those of the UK, are prepared to “lift the corporate veil” to determine where the true beneficial ownership lies, but will generally do so only where they have evidence that the corporate structure is being manipulated to create a sham or fraud designed to avoid arrest and *in rem* liability.⁴⁵ It has been held that the use of a subsidiary in a legitimate fashion to avoid liabilities cannot justify the lifting of a corporate veil.⁴⁶

⁴² [1972] 2 M.L.J. 81.

⁴³ E.g. BARECON 89, which is a bareboat charter with an option to purchase (sometimes called a charterpurchase). See *The HI56* [1999] 3 S.L.R. 756.

⁴⁴ See Toh Kian Sing, *op. cit.*, n. 32, above, at 107.

⁴⁵ See *The Aventure* [1978] 1 Lloyd’s Rep. 184, at 187, *cf. Salomon v. Salomon* [1897] A.C. 22.

⁴⁶ *The Andres Bonifacio* [1993] 3 SLR 521 (Court of Appeal)

Procedure for arresting a ship in Singapore

- 3.17 The procedure for arresting a ship is relatively straightforward. Order 70 of the Rules of Court sets out the procedure for admiralty proceedings.
- 3.18 The following are some practical procedural points:
- (1) The arrest warrant is issued by the High Court. This is the only court in Singapore vested with admiralty jurisdiction.⁴⁷
 - (2) Ships may only be arrested within port limits. This is because the letter from the Supreme Court Registrar only authorises an arrest within port limits. An arrest of a vessel outside port limits in contravention of the Registrar's authorisation may be held to be due to bad faith on the part of the arresting party and damages may be awarded against them for wrongful arrest under Order 70 of the Rules of Court.⁴⁸
 - (3) In Singapore, as in many countries such as UK and France, damages for wrongful arrest are only awarded for losses caused intentionally or through gross negligence.⁴⁹ A mistake *per se* does not amount to a case of wrongful arrest; neither does a weak case for the plaintiff.⁵⁰
 - (4) Before the court issues a warrant of arrest, solicitors for the arresting party are required to provide an undertaking to the Sheriff, and put the Sheriff in funds, to meet the charges and expenses (including port dues, guard charges, sheriff's commission etc, also known as sheriff's fees) incurred during the arrest. In practice, a deposit of \$5,000 is required. The expenses incurred during the arrest will usually be covered by the proceeds of sale of the vessel.

⁴⁷ The Subordinate Courts do not have any admiralty jurisdiction. So an admiralty action may be brought before the High Court even if it involves a claim for an amount of money that would normally be pursued before a lower court in an ordinary civil claim.

⁴⁸ See *The Trade Resolve* [1999] 4 SLR 424.

⁴⁹ This should be contrasted with Swedish law where damages for wrongful arrest are awarded on a strict basis.

⁵⁰ See *The Euroexpress*, [1998] 3 MLJ 367. It should however be remembered that a claim which is not at least reasonably arguable is liable to be struck out at an interlocutory stage under Order 18 rule 19, as would any other civil claim.

- (5) The court can require security for the defendant's costs.⁵¹ The same general rules apply as for litigants in ordinary civil actions. The security is for legal costs only and does not cover damage suffered in other forms, such as the consequences of wrongful arrest.
- (6) No minimum sum has to be in dispute before the High Court's admiralty jurisdiction may be invoked.⁵² Claims involving sums that would usually be dealt with by the Subordinate Courts have to be commenced in the High Court, unless an ordinary civil action can be brought, e.g. for a simple debt. A ship can, in theory, be arrested for a claim of any amount, as there is no minimum sum requirement. But there is the practical barrier of legal costs (usually in the region of S\$10,000) and more significantly, the solicitor's undertaking in respect of Sheriff's expenses, which may be engaged if the proceeds from the sale of the vessel are insufficient to cover the Sheriff's expenses.
- (7) The court does not require an undertaking to pay damages to the defendant in the event of wrongful arrest.

3.19 In practice, owners of arrested ships would often:

- (a) challenge the legality of the action *in rem*, for example, by arguing that an action *in rem* is not available under the circumstances of the particular case; or
- (b) provide an acceptable alternative form of security to the court, so that the vessel can be released. In Singapore, this security would usually be in the form of a letter of guarantee issued by a bank or P & I Club.

⁵¹ See O. 23 generally. The court has a discretion to require security for costs of the defendant if the plaintiff is ordinarily resident out of the jurisdiction: O. 23, r. 1(1)(a).

⁵² This is in line with international trends. Malta is the only jurisdiction of the 35 major shipping jurisdictions surveyed in the *Ship Arrest Handbook*, above, Paul Smith ed. (London: L.L.P., 1997) which has such a requirement (minimum of LM3,000 in dispute for an arrest to be effected). Imposing such a requirement may result in hardship on claimants like seamen who have not been paid their wages.

Undertaking to pay damages for wrongful arrest

- 3.20 As noted at (7) above, a plaintiff is not presently required, before arresting a ship, to provide an undertaking to pay damages that may be suffered by the defendant as a result of wrongful arrest.
- 3.21 This, and the limited grounds for which damages for wrongful arrest may be awarded in the first place, may give rise to issues of whether the regime in Singapore provides sufficient deterrence for claimants from taking unfounded or frivolous arrest measures.⁵³
- 3.22 In other jurisdictions, it is relatively common for courts to require claimants to provide an undertaking or even security for damages that may be suffered by the defendant as a result of wrongful arrest. Of the 35 jurisdictions covered in the *Ship Arrest Handbook*⁵⁴, courts in the following may require security for damage suffered besides costs: Argentina,⁵⁵ Belgium,⁵⁶ Brazil,⁵⁷ Chile,⁵⁸ China,⁵⁹ Denmark,⁶⁰ Egypt,⁶¹ France,⁶² Germany,⁶³ Greece,⁶⁴ Israel,⁶⁵ Italy,⁶⁶ Japan,⁶⁷ Korea,⁶⁸ Malaysia,⁶⁹ Netherlands,⁷⁰ Norway,⁷¹ Panama,⁷² Portugal,⁷³ South Africa,⁷⁴ Spain,⁷⁵ Sweden,⁷⁶ United Arab Emirates,⁷⁷ U.S.A.⁷⁸

⁵³ The danger may be more serious for private vessels without a shipping or insurance company behind them to raise bail or other security.

⁵⁴ Paul Smith ed. (London: L.L.P., 1997).

⁵⁵ *Ibid.*, at 6.

⁵⁶ *Ibid.*, at 19.

⁵⁷ *Ibid.*, at 24-5.

⁵⁸ *Ibid.*, at 36-7.

⁵⁹ *Ibid.*, at 47.

⁶⁰ *Ibid.*, at 52-3.

⁶¹ *Ibid.*, at 58.

⁶² *Ibid.*, at 73. It is rarely required.

⁶³ *Ibid.*, at 80.

⁶⁴ *Ibid.*, at 87. It is rarely required.

⁶⁵ *Ibid.*, at 108. This was required only recently.

⁶⁶ *Ibid.*, at 116.

⁶⁷ *Ibid.*, at 128. It is required in some situations, but not if there is a lien.

⁶⁸ *Ibid.*, at 137.

⁶⁹ *Ibid.*, at 145. It is required if the claimant is ordinarily non-resident and has no assets within the jurisdiction.

⁷⁰ *Ibid.*, at 157. It is rarely required.

⁷¹ *Ibid.*, at 170.

⁷² *Ibid.*, at 174. It is required in all cases.

⁷³ *Ibid.*, at 187. It is rarely required.

⁷⁴ *Ibid.*, at 209. It is seldom required.

3.23 We have however received feedback that developments along such lines would not be in the interests of Singapore. Such requirements could seriously slow down the arrest process and some ships are not in port for long, especially ships which are merely bunkering. Such developments go against the historical basis and development of the *in rem* action. Further, a significant difference between *in rem* actions and ordinary civil actions is that a defendant shipowner may quickly furnish a Letter of Undertaking from a P&I Club to free the vessel from arrest. This means that the potential claim to damages would be reduced.

⁷⁵ *Ibid.*, at 221.

⁷⁶ *Ibid.*, at 230.

⁷⁷ *Ibid.*, at 235.

⁷⁸ *Ibid.*, at 240. If there is a counter-claim.

PART 4

REFORM ISSUE: ARREST OF SHIP ON DEMISE CHARTER TO SECURE THE OBLIGATIONS OF THE DEMISE CHARTERER

The issue

- 4.1 We turn now to the main issue under consideration. At present, under section 4(4) of the HCAJA, which covers most of the claims that are within the admiralty jurisdiction of the High Court, a ship may only be arrested where its owner is the person who would be liable *in personam*.⁷⁹ Under present legislation, the nexus that justifies the action *in rem* is the fact of full beneficial ownership⁸⁰ by the person liable *in personam*.
- 4.2 This denies any opportunity of arrest to those plaintiffs who have dealt with the ship (for example, by supplying goods to a ship) at the behest of a demise charterer, or anyone on his behalf. There seems to be a need to be able to arrest the vessel with respect to which the claim arose even though its owner is not the person who would have been personally liable had the action been brought *in personam*.
- 4.3 The effect of allowing such wider arrest is to make the owner a guarantor, up to the value of the ship, for liabilities incurred by charterers or others in possession of the ship. It would, in effect, be allowing recovery against A in respect of the liabilities of B.
- 4.4 To one who is not versed in admiralty law, this may appear a startling proposition. Why should a ship belonging to one person be arrested on a claim for which someone else is personally liable? It might also be thought that admiralty is already more generous to plaintiffs in

⁷⁹ S.4(4) relates to arrests in cases other than cases where ownership of the vessel is in dispute (such arrests are covered under s.4(2)), or where there is a maritime lien or other charge on the ship (such arrests are covered under s.4(3)). Although arrests under s.4(2) and s.4(3) may be effected against a vessel regardless of the possession and ownership of the vessel, these are non-controversial because such arrests are in the nature of a proprietary interest or right over the vessel. They should be and are exercisable by the holder regardless of the current ownership of the vessel.

⁸⁰ Defined in s.4(4) as "beneficially owned as respects all the shares therein by that person". It was held in *The Pangkalan Susu/Permina 3001* [1977] 2 MLJ 129 that a ship is not "beneficially owned as respects all the shares therein" by a demise charterer. The legal position in Singapore is therefore clear that such ships cannot be arrested under s.4(4) if the person liable *in personam* is a demise charterer at the time of the action.

Singapore than the general Singapore law, and to widen the scope of arrest would be to increase the gap even further. Yet this appears to be desirable and internationally acceptable. Admiralty legislation in other countries has extended the right of action *in rem* to cases where the owner is not liable *in personam*.

- 4.5 The merits of such an approach for Singapore has to be considered from the point of view of both policy and principle.

The need for reform

- 4.6 The principal argument for reform arises from the complex and often obscure ways in which control over especially foreign trading ships is exercised.⁸¹ A person dealing with a foreign ship is likely to be dealing with an agent who may be an agent for a demise charterer or sub-charterer, for an associated company or for a range of other persons. For example, in *Cramb Tariff Service v Hoko Senpaku KK*⁸² the first defendant was the owner of the ship and the employer of the master; the second defendant was a time charterer; the third defendant was a time charterer; the fourth defendant was the agent of the demise charterer; and the fifth defendant was the demise charterer. The first four defendants were Japanese companies, the fifth was Panamanian. All appear to have cooperated to prevent the plaintiff from discovering the correct party to sue, provoking the judge into commenting:

"It is self evident that the entire method of procedure whereby shippers are entitled to make claims against those who carry their goods at sea is in urgent need of revision in order to ensure that this sort of situation cannot arise."⁸³

- 4.7 There have also been cases where effective control over a vessel has been vested not in the owner but in a long-term time-charterer.
- 4.8 It can be argued that an effective admiralty regime should not cast the burden of determining ownership or other relationship with the vessel

⁸¹ See Australian Law Reform Commission Report 33: *Civil Admiralty Jurisdiction (1986)* ("ALRC Report") at paragraph 127.

⁸² Unreported, NSW S Ct, 22 November 1983, Rogers J. This was a cargo claim brought *in personam* in the Common Law Division.

⁸³ Transcript of Judgment, 3.

on the person dealing with the vessel.⁸⁴ The vessel should be able to be served and arrested, with the effective liability to meet any judgment a matter to be resolved between the various persons with interests in the ship.

The Options

- 4.9 It is helpful to consider these issues in the context of the provisions which have been adopted or proposed in other jurisdictions. The options are (some of these may be combined):⁸⁵
- (a) owner's liabilities only (present Singapore position; Australian position before *Admiralty Act 1988*);
 - (b) under all heads, with service of process conferring jurisdiction over the merits (*Brussels Arrest Convention* on one view of English text; *UK Supreme Court Bill 1981* before its amendment in the House of Lords);
 - (c) under all or most heads of jurisdiction where a demise charterer is the relevant person (*UK Supreme Court Act 1981*; *New Zealand Admiralty Act 1973*; *Australian Admiralty Act 1988*; *Hong Kong High Court Ordinance*; *Malaysian Courts of Judicature Act 1964* importing English law);
 - (d) in respect of traditional maritime liens plus a limited number of other cases (*Canadian Federal Court Act 1970*);
 - (e) in respect of maritime liens, owner's liabilities, and also of charterer's liabilities with right of arrest limited to duration of charter (no overseas equivalent).

Option (a)

- 4.10 Option (a) represents the long-standing status quo. As stated by Justice Menzies in *Shell Oil Co v The Ship 'Lastrigoni'*:

⁸⁴ See ALRC Report at paragraph 127.

⁸⁵ See ALRC Report at paragraph 128.

"Proceedings in admiralty are intended to facilitate the enforcement of liabilities, not to allow pressure to be put upon a person who is himself under no liability in respect of the liabilities of others."⁸⁶

- 4.11 Putting pressure may be precisely the effect of a maritime lien. But these are relatively few and well-established, and courts (outside the United States) have been reluctant to create new maritime liens. The UK only moved from option (a) in 1981⁸⁷, primarily in response to criticisms that its law did not comply with the 1952 Arrest Convention to which it is a party.
- 4.12 The current position was developed largely by English courts in a very ad hoc, and even to some extent, accidental, manner.⁸⁸ Although long-standing, it does not follow that the position serves Singapore's interests. Both the 1952 and 1999 Arrest Conventions and the variety displayed by overseas legislation show that a Singapore assertion of wider powers of arrest would not necessarily be treated as an exorbitant exercise of jurisdiction. Reflecting the fact that Singapore is a nation of shippers, not shipowners, the power of arrest should, it can be argued, be as wide as possible consistent with fairness to shipowners.

Option (b)

- 4.13 Option (b) would allow an action to be commenced against the wrongdoing ship under *all* heads of admiralty jurisdiction where the relevant person has *some* connection with the ship, whether as its owner, charterer of whatever type, operator or as a person lawfully in possession or control of the ship at the time the action is commenced.
- 4.14 It is the option most favourable to shippers and those dealing with ships, and least favourable to shipowners. This is an extreme position, and the main reason for not adopting it would be that it may be

⁸⁶ (1974) 131 CLR 1, 6.

⁸⁷ Supreme Court Act 1981 (UK) s.21

⁸⁸ "It is evident that the chequered course in which admiralty jurisdiction evolved stems as much from fortuity and accidents as from conflicts and compromises. What is left is a corpus of principles and procedures that, to this day, still bears a considerable degree of arcaneness, anomaly and distinctiveness from the common law...": Toh Kian Sing, *Admiralty Law & Practice* (Singapore: Butterworths Asia, 1998) at page 5.

thought overly unfair or burdensome on the shipowner, or that it may be internationally unacceptable.

Option (c)

- 4.15 Option (c) would allow an action to be commenced against the wrongdoing ship where either the *owner or the charterer by demise* is the person liable *in personam*. This option would provide (from Singapore's point of view) a valuable extension to the present right of action *in rem*, given the position of demise charterers as persons effectively in control of the ship. One difficulty with it is explaining why the extension should apply only to demise charterers. The problem of, for example, the supplier of necessaries, can arise with time as well as demise charterers. An answer to this would be that historically and legally, there has been a tendency to emphasise the ways in which a demise charterer, because he has legal possession of the ship, is similar to the owner. Demise charterers have been referred to as temporary owners or owners *pro hac vice*.⁸⁹ They are thus in a legally different position from other charterers.⁹⁰

Option (d)

- 4.16 A further option would be to permit an action *in rem* to be commenced against the wrongdoing ship *without* reference to the identity of the relevant person, but only in respect of *certain* heads of admiralty jurisdiction. The question would then arise which heads of jurisdiction would be selected. The choices made by the Federal Court Act 1970 (Canada) exhibit no clear rationale.⁹¹ In the United States too, striking an appropriate balance has proven difficult.

⁸⁹ Lord Atkinson in *Sir John Jackson Ltd v The Owners of the SS Blanche* [1908] AC 126 referred to '... the special and temporary ownership possessed by a charterer by demise.' This case lends support to the view that in maritime law when the context so requires the word 'owner' includes a charterer by demise. See also the dicta of Sheen J in *The Father Thames* [1979] 2 Lloyd's Rep 364.

⁹⁰ It was held in *The Great Loyalty* [1982-1983] SLR 287, [1982] 2 MLJ 10 that demise charterers are to be treated as owners for the purpose of maritime liens. This case was cited in *The Pacific Wisdom* [1998] 3 SLR 170.

⁹¹ s.43(3). To the extent that they go beyond maritime liens, the heads chosen seem to be either proprietary claims, which are acknowledged as a separate category anyway, or to reflect the interests of governments rather than private plaintiffs (pilotage, port, harbour dues, canal tolls and other charges). Only the head relating to claims in respect of general average appears to benefit the private plaintiff. Perhaps a more defensible basis of choice would be to distinguish between those claims

4.17 There is a limited precedent for this approach in Singapore. Section 29 of the *Maritime and Port Authority of Singapore Act (Cap. 170A)* grants the Maritime and Port Authority of Singapore statutory power to arrest any vessel for the non-payment of port dues and other charges.

Option (e)

4.18 Option (e) is to allow an action *in rem* to be brought against the wrongdoing ship in respect of claims for which the charterer, not the owner, is the relevant person only *during the currency of the charter*.

4.19 The main advantage of this option is that it would only allow an action to be brought in respect of a charterer's liabilities against the wrongdoing ship *while* the charterer had at least some financial interest in that ship. In principle, it can be argued, the appropriate place to draw the line is where the charterer has a stake. This option allows charterers to be reached through arrest of the ship only at a time when the owner is best placed to pass on any loss suffered in the process to the charterer. The chance of the burden of liabilities incurred by the charterer remaining with the owner is reduced, though by how much will vary widely from case to case.

Evaluation

4.20 Underlying any extension beyond existing maritime liens of the ability to arrest the wrongdoing ship where its owner is not the person liable *in personam* is a pragmatic argument, which to some extent provides a rationale for maritime liens themselves. For a person dealing with a ship, the identity of the relevant person may be difficult to discover. The person liable may be difficult to locate, or may be in a distant country, thereby creating difficulties in effecting service *in personam*. Even if the plaintiff succeeds in obtaining judgment, assets against which to execute may prove elusive or non-existent. It is easier if the plaintiff can serve and arrest the ship and execute against it or the security put up to secure release.

which arose from consensual dealing with the ship and those that did not. But this has caused difficulties in the United States.

- 4.21 In some situations this security will be put up by a charterer, whose financial stake in the ship sailing on schedule may well be greater than the owner's. In other situations it will be the owner (or the owner's P & I club) who will be compelled for commercial reasons to put up the security even though the charterer is the relevant person. This is arguably an efficient solution. The prudent owner will be aware of the identity and location of the relevant person and will be protected by means of an indemnity clause in the charter-party. Under this the charterer will be obliged to reimburse the owner for costs incurred where the charterer is the relevant person with respect to arrest. If the charterer is a \$2 company, the owner will be protected by guarantees, perhaps from the principals behind the company. Therefore, the argument goes, allowing arrest of the wrongdoing vessel will always ensure that the liability ends up either directly or indirectly where it belongs.
- 4.22 This argument is difficult to evaluate. In some cases it will no doubt provide a just and convenient solution. But this will by no means always be so. For example, Lord Diplock has suggested that the owner cannot insure against the risk that the charterer will not honour the indemnity clause.⁹² Or there may be a chain of charterers and sub-charterers between the owner and the relevant person. While it may be argued that the new owner simply extracts an indemnity from the old and that the chain of indemnities becomes longer but still brings home liability to the relevant person, it has been observed⁹³ that "the longer the chain, the less likely it is in practice that it will remain effective. In practice complex chains of charters and sub-charters of various types are not uncommon. Even where there is only an owner-demise charterer link, the latter may, if the charter is almost over, or a frustrating event has occurred, have little practical incentive to put up security."
- 4.23 Proponents against the granting of wider powers of arrest could argue that this merely encourages commercial irresponsibility on the part of those dealing with the ship. For example, suppliers of stores or fuel to ships should, it can be argued, be able to protect their interests adequately through such available commercial options as insisting on payment in advance, use of letters of credit or obtaining bank

⁹² Great Britain, 418 *Parl Debs (HL) 5th Series* (26 March 1981) 1309.

⁹³ ALRC Report at paragraph 134.

guarantees. They should have a duty to enquire as to the identity of the party with whom they are dealing. On this view, they do not need and should not have recourse to the wrongdoing vessel where the relevant person is only a charterer.⁹⁴

- 4.24 Such proponents could also argue that an increased number of arrests in Singapore will have a negative effect on shipping related industries like bunkering, ship repair, and cargo handling, as ship operators may prefer to avoid ports where their ships can be easily arrested.
- 4.25 However, feedback received seems to indicate that such fears may be unfounded. We are advised that the better view on this issue is that the use of a port is influenced more by economic factors (such as facilities, cost and efficiency, tax). It is these factors which are more important than a legal liability to be arrested, especially to ship operators running legitimate operations. As for the argument that the amendment will result in an increase in the number of arrests, this is a fallacy that is easily dispelled. We understand that in practice, the ship in connection with which a maritime claim arises would be very likely to be arrested to begin with. If it is eventually proven that the person who would be liable *in personam* is not the owner of the vessel, the court simply sets aside the writ and all subsequent proceedings, including the arrest. The amendment will save legal costs that would otherwise be wasted in this way. It will reduce uncertainty and render the whole arrest mechanism more efficient.
- 4.26 The amendment will also remove the need for litigation over such issues as ownership⁹⁵, lifting of corporate veil, genuineness of the

⁹⁴ However, it should also be pointed out that persons dealing with a ship often do so at short notice. Often, a vessel is within port limits for a very short period, sometimes only a matter of a few hours, especially if she is calling only for the purpose of taking on stores or bunkers. Even if the stay is a fairly prolonged one, it may often happen that the existence of a claim with regard, for instance, to damaged cargo or to cargo not landed at the proper destination may become known only when the ship is about to leave.

⁹⁵ see eg. *Far East Oil Tanker SA v Owners of the Ship or Vessel 'Andres Bonifacio' and other appeals; 'The Andres Bonifacio'* [1993] 3 SLR 521 where the issue of beneficial ownership of the vessel was contested to the Court of Appeal. The court found that there was sufficient evidence on which to find a constructive trust.

demise charterparty, etc, thus discouraging unnecessary and at times complex litigation⁹⁶ and saving valuable judicial time and resources.

- 4.27 Finally, a wider arrest regime in Singapore may have positive spin-offs for the dispute resolution sector. Singapore is a major port and a change in the law in this manner may help Singapore in its efforts to become a hub for maritime dispute resolution.
- 4.28 The case for amendment may thus be summed up as follows:
- i) to plug what is now generally regarded as a lacuna in the law;
 - ii) to support the maritime industry in Singapore;
 - iii) to save judicial time and resources;
 - iv) to ensure uniformity with international maritime jurisdictions;
 - and
 - v) to promote Singapore as a dispute resolution hub.

Conclusion

- 4.29 The matter involves a basic question of policy for Singapore, and one on which different views can reasonably be held.
- 4.30 For the reasons given above, we would suggest that wider powers of arrest would be in the interests of Singapore, although it is not desirable at this stage to go beyond the generally accepted scope of the statutory right of action *in rem* in comparable countries.⁹⁷ We suggest that option (c) be adopted, and that a statutory right of action *in rem* should lie where and only where an owner or a demise charterer is the person who would be liable *in personam*.⁹⁸

⁹⁶ Although such litigation commences as an interlocutory matter, depending on the amount involved, it may and quite often is contested to the Court of Appeal, eg in *The Andres Bonifacio* [1993] 3 SLR 521.

⁹⁷ As the justification for admiralty jurisdiction, as a universal jurisdiction dependent only on local service of process on the *res*, depends on its broad international acceptance. *Appendix B* below sets out briefly the position in comparable countries such as England, Malaysia, Hong Kong, Australia and New Zealand.

⁹⁸ Following the approach of the major shipping jurisdictions referred to in the footnote above.

Creation of procedural or substantive right?

- 4.31 It is settled law that where an entirely new class of claims is brought within admiralty jurisdiction, no maritime lien is created.⁹⁹ Statutory extensions of jurisdiction instead create a wholly novel form of action sometimes referred to as a statutory lien but more accurately described as a statutory right of action *in rem*.
- 4.32 While not all the characteristics of a statutory right of action *in rem* have yet been worked out, the main outlines are clear. Statutory rights of action *in rem* are generally regarded as "procedural" rights.¹⁰⁰ They are regarded as a method of pursuing the owner of a ship with respect to the owner's personal liabilities arising in connection with the ship. This is to be contrasted with maritime liens which are generally regarded as substantive rights. To use the language of Lord Watson in *The Henrich Bjorn*, the former relates to remedies, the latter to the rights of suitors.¹⁰¹
- 4.33 Unless already carried into effect by the commencement of proceedings *in rem*, the statutory right of action *in rem* does not survive a bona fide change of ownership.¹⁰² In a competition between claims, it ranks after both the maritime lien and the mortgage in priority. It does not relate back to the time when the cause of action arose but gives a security interest only when proceedings are commenced. It is, initially, merely a right to commence proceedings to arrest the property in an action *in rem*.
- 4.34 Against this background, a potential question may arise as to the effect of a judgment obtained *in rem* against an owner who is not the person liable *in personam*, pursuant to an action commenced under the proposed extended arrest jurisdiction. This issue does not arise under the present regime where the debtor has to be the owner of the ship

⁹⁹ *The Two Ellens* (1872) LR 4 PC 161; *The Pieve Superiore* (1874) LR 5 PC 482; *The Henrich Bjorn* (1886) 11 App Cas 270. See ALRC Report at paragraph 15.

¹⁰⁰ See eg *The Henrich Bjorn* (1886) 11 App Cas 270, 278 (Lord Watson). See also *The Monica S* (1968) P 741, 768 (Brandon J) ('a statutory right of action *in rem* is a procedural right'). But cf Jackson (1985) 253-5, pointing out that both classes of right are as much substantive as procedural.

¹⁰¹ (1886) 11 App Cas 270, 278. See also *The Alexander* (1842) 1 Wm Rob 346, 360; 166 ER 602, 608 (Dr Lushington).

¹⁰² cf. maritime liens, on the other hand, which partake of the nature of a proprietary right in the ship and may be enforced by an action *in rem* despite a change in ownership of the ship (the so-called '*droit de suite*').

and hence the defendant is the person liable *in personam* anyway. Such persons who are liable *in personam* are personally liable for the full amount of judgment, irrespective of the value of the *res*.¹⁰³

- 4.35 In extending the right of arrest on the basis of something other than *in personam* liability, a potential issue may be whether such reform creates *substantive* rights in favour of claimants.¹⁰⁴ This has implications on fundamental issues, such as, does the plaintiff have a right to satisfy his claim against the proceeds of sale from the ship? Is the owner, who is not a relevant person, personally liable to the plaintiff for any shortfall between the judgment sum and the value of the *res*?¹⁰⁵
- 4.36 In our view, it must be implicit, in any piece of legislation that expressly provides that a claimant may arrest a ship in respect of liabilities incurred by someone other than the owner, that the claimant is entitled to obtain satisfaction from the proceeds of the sale of the ship (or any bond or other security substituted for the ship), notwithstanding that the owner of the ship is not liable *in personam* on the claim. This must be quite obvious. There is therefore no need, in our view, for an explicit statutory provision to this effect.
- 4.37 It must also be quite implicit (again this is simply a matter of statutory interpretation) that where a statutory provision is silent, a person, who is not the relevant person, but who appears to defend the *res*, is not personally liable on the judgment obtained in admiralty, and that his liability extends only to the loss of his *res* (or the value of the security put up to obtain its release).
- 4.38 We do not therefore see any need for statutory provisions to deal specifically with these issues.¹⁰⁶ The UK legislation¹⁰⁷ does not

¹⁰³ *The Dictator* [1892] P 304. See also *The Gemma* [1899] P 285.

¹⁰⁴ See ALRC Report at paragraph 126.

¹⁰⁵ See ALRC Report, *ibid*. The ALRC regarded that to achieve its true objectives, the amendment "would require a rule to be expressed or implied to the effect that a plaintiff who can establish a claim relating to the ship in one of the specified ways is entitled to satisfaction from the proceeds of the sale of the ship (or any bond or other security substituted for the ship), notwithstanding that the owner of the ship is not liable *in personam* on the claim".

¹⁰⁶ Although Australia did so in their Admiralty Act 1986, this could be explained by the existence of certain legislative complications, in particular s.76(iii) of their Constitution which conferred legislative powers on their Commonwealth Parliament that was limited to jurisdictional matters only. The ALRC dealt with this issue at length in their Report. The explanatory memorandum to the

contain any such provisions, and that legislation has been said to be working well and resolving most difficulties.¹⁰⁸

Q.1 Should the obligations of a person liable *in personam* be secured with a ship that he does not own, but which he has exclusive possession and use of as a demise charterer?

4.39 We recognise that the feedback which we have referred to and relied on may be based, at least in part, on personal observations. It is often difficult to evaluate, in an empirical manner, the actual impact of a State's ship-arrest regime on the shipping industry. We therefore seek your feedback on what impact, if any, you think the proposed reform would have on the shipping industry in Singapore.

Q.2 What impact, if any, do you think the proposed reform will have on Singapore's shipping industry?

Bill also explained that clause 31 (on effect of judgment) was included merely "for greater certainty and clarity". The ALRC also commented in their Report that "In England the solution to this potential problem is merely one of drafting technique, of making it clear that the legislation relates both to 'the remedies' and 'the rights of suitors'" (at para 126).

¹⁰⁷ UK Supreme Court Act 1981

¹⁰⁸ Justice B Sheen, *Submission 38* (21 March/2 May 1985). See ALRC Report at paragraph 136.

PART 5

OPTIONS FOR AMENDING SECTION 4(4) OF THE HCAJA

5.1 Section 4(4) now reads as follows:

“In the case of any such claim as is mentioned in section 3(1)(d) to (q), being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against —

- (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or
- (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.”

5.2 Two options for amending section 4(4) are offered for consideration.

Option 1: Minimal change

5.3 A minimal change option is to amend only paragraphs (a) and (b) of section 4(4) to read:

- “(a) that ship if, at the time when the action is brought, it is beneficially owned as respects all the shares therein, by, **or is on charter by demise to**, that person; or
- (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.”

Option 2: Based on current English legislation

5.4 A more extensive change, which would result in better tabulation and ease of reading, would be to replace section 4(4) with the following:

“4(4) In the case of any such claim as is mentioned in 3(1)(d) to (q), where —

- (a) the claim arises in connection with a ship; and
- (b) the person who would be liable on the claim in an action *in personam* (“the relevant person”) was when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action *in rem* may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against —

- (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
- (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.”

Q.3 If section 4(4) HCAJA is amended to grant the power to arrest a vessel where the demise charterer of that vessel is the person liable *in personam*, which option for reform would you prefer?

PART 6
LIST OF QUESTIONS

1. In principle, should the obligations of a person liable *in personam* be secured with a ship that he does not own, but which he has exclusive possession and use of as a demise charterer?
2. What impact, if any, do you think the proposed reform will have on Singapore's shipping industry?
3. If section 4(4) HCAJA is amended to grant the power to arrest a vessel where the demise charterer of that vessel is the person liable *in personam*, which option for reform would you prefer?

Please send your feedback marked "Re: Admiralty Jurisdiction of the High Court (Attn: Ms Wendy Yap) –

- via e-mail, at agc_LRRD@agc.gov.sg;
- via snail mail, to Law Reform and Revision Division, Attorney-General's Chambers, 1 Coleman Street, #05-04, The Adelphi, Singapore 179803; or
- via fax, at 6332 4700.

APPENDIX A

INTERNATIONAL CONVENTIONS WHICH ALLOW ARREST OF DEMISE CHARTERED VESSELS

- A.1 In the international arena, two major Conventions are in existence which provide a legal regime covering all aspects of arrest and attachment of ships before judgment.
- A.2 Over 70 nations are party to the *1952 Brussels Arrest Convention*. However, this Convention has recently undergone a major review and has been replaced by the *1999 Geneva Arrest Convention*. The latter has not come into force as fewer than the required 10 states have signed or acceded.
- A.3 Both these conventions allow the arrest of a ship under a demise charter in satisfaction of claims against the demise charterer.
- A.4 Singapore is not a party to either of these Arrest Conventions and is not under any obligation to give effect to them.

The 1952 Brussels Arrest Convention

- A.5 The main international convention governing the arrest of ships is the *International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships* (“1952 Arrest Convention”). The *in rem* jurisdiction defined by the HCAJA is generally consistent with the Convention except that the Convention allows the arrest of a ship under a demise charter to the party who would be liable *in personam*, while the HCAJA does not.
- A.6 Article 3(4) of the 1952 Arrest Convention provides:

When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership

of the registered owner shall be liable to arrest in respect of such maritime claim.

The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

- A.7 The last sentence of Article 3(4) is very broadly worded. It has been observed that the delegates to the Convention may not have had a clear or common understanding of the nature and purpose of the last sentence of the provision, and that it may have been adopted without a clear understanding of its possible consequences.¹⁰⁹
- A.8 As Singapore is not a party to the 1952 Arrest Convention, preparatory materials and the Convention cannot be used to provide any guidance in interpreting the HCAJA.¹¹⁰

The 1999 Geneva Arrest Convention

- A.9 The *International Convention on Arrest of Ships 1999* (“1999 Arrest Convention”) is intended to replace the 1952 Convention. It was open for signature from 1 September 1999 to 31 August 1999, after which it was open for accession.¹¹¹ The Convention has not come into force as less than the required ten states have signed or acceded.¹¹² The 1999 Arrest Convention retains the principle of allowing ships under demise charter to be arrested.¹¹³
- A.10 Article 3(1) and (2) of the 1999 Arrest Convention provide:

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

¹⁰⁹ Berlingieri, *Berlingieri on Arrest of Ships*, 3rd ed. (Great Britain: L.L.P., 2000) at I.505 - I.534.

¹¹⁰ *The Permina* 108 [1977] 1 M.L.J. 49, at 51

¹¹¹ A United Nations/International Maritime Organization Conference.

¹¹² The following States have signed or acceded: Bulgaria, Denmark, Ecuador, Estonia, Finland, Latvia, Norway and Pakistan.

¹¹³ Article 3(1) and (2).

- (a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or
- (b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
- (c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or
- (d) the claim relates to the ownership or possession of the ship; or
- (e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

- (a) owner of the ship in respect of which the maritime claim arose; or
- (b) demise charterer, time charterer or voyage charterer of that ship.

A.11 The 1999 Arrest Convention significantly expands the list of claims that may be enforced through an action *in rem*.¹¹⁴ The additions include disputes arising out of a contract for the sale of the ship; claims for insurance premiums; and claims for damage or threat of damage caused by the ship to the environment.¹¹⁵ The new list can lead to a significant increase in ship arrests.

¹¹⁴ Article 1(1), which defines "maritime claim".

¹¹⁵ Article 1(1)(v), (q) and (d) respectively.

- A.12 Singapore was represented at the conference, but has not signed or acceded to the Convention. There is no immediate reason to consider whether Singapore should subscribe to the principles of the Convention, whether by accession or voluntary adoption of the principles in municipal legislation.

APPENDIX B

ARREST OF DEMISE CHARTERED SHIPS IN SELECTED JURISDICTIONS

England

- B.1 The U.K. is a party to the 1952 Arrest Convention which provides for the arrest of ships on demise charter. However, England did not clearly provide for the arrest of ships on demise charter in section 3(4) of the Administration of Justice Act 1956. This fact may have influenced Brandon J. in *The Ursula Andrea*,¹¹⁶ when he strained the wording of the legislation to produce a result that was consistent with the international obligations of the U.K. Singapore seems to have modeled section 4(4) on the English legislation, but as Singapore is not a party to the 1952 Arrest Convention, and since there is no ambiguity in the relevant wording, there is no reason to adopt the broad interpretation in Singapore.
- B.2 The legal position in England was clarified in the Supreme Court Act 1981.¹¹⁷ Section 21 makes it clear that ships on demise charter may be arrested to secure the obligations of the demise charterer:

Mode of exercise of Admiralty jurisdiction

21.—(4) In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—

- (a) the claim arises in connection with a ship; and
- (b) the person who would be liable on the claim in an action *in personam* (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action *in rem* may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—

¹¹⁶ See n. 15, above.

¹¹⁷ 1981 c. 54.

- (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it **or the charterer of it under a charter by demise**; or
- (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

Malaysia

B.3 Malaysian law provides that the High Court of Malaysia shall have the same admiralty jurisdiction as the High Court in England. This is provided for in section 24 of the Malaysian *Courts of Judicature Act 1964*,¹¹⁸:

Civil Jurisdiction—specific

24. Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include —

- (b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981;

Ships on demise charters may therefore be arrested in Malaysia to secure the obligations of the demise charterer.¹¹⁹

Hong Kong

B.4 Admiralty jurisdiction in Hong Kong is similar to that in the U.K. Section 12B (4) of Hong Kong *High Court Ordinance*¹²⁰ is practically identical with section 21 (4) of the U.K. *Supreme Court Act 1981*. Ships on demise charters can therefore be arrested to secure the obligations of the demise charterer in Hong Kong.

¹¹⁸ Act 91.

¹¹⁹ See *The Sri Melati* [1976] 1 M.L.J. 283, which accepted the broad approach in *The Andrea Ursula*, n. 15, above, even before the position was clarified by the U.K. Supreme Court Act 1981.

¹²⁰ Cap. 4, Laws of Hong Kong.

Australia

- B.5 Australia's *Admiralty Act 1988*¹²¹ also allows the arrest of a demise chartered ship to secure the obligations of the demise charterer.

Section 18 provides:

Right to proceed *in rem* on demise charterer's liabilities

18. Where, in relation to a maritime claim concerning a ship, a relevant person:

- (a) was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship; and
- (b) is, when the proceeding is commenced, **a demise charterer of the ship**;

a proceeding on the claim may be commenced as an action *in rem* against the ship.

Right to proceed *in rem* against surrogate ship

19. A proceeding on a general maritime claim concerning a ship may be commenced as an action *in rem* against some other ship if:

- (a) a relevant person in relation to the claim was, when the cause of action arose, the owner or charterer of, or in possession or control of, the first-mentioned ship; and
- (b) that person is, when the proceeding is commenced, the owner of the second-mentioned ship.

¹²¹ No. 34 of 1988. See the Australian Law Reform Commission Report No. 33, *Civil Admiralty Jurisdiction*, at para. 131.

New Zealand

B.6 New Zealand also allows the arrest of ships on demise charter. Section 5 of the *Admiralty Act 1973*¹²² provides:

5(2)(b) In questions and claims specified in paragraphs (d) to (r) ... of this Act arising in connection with a ship where the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the jurisdiction of the Supreme Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against —

- (i) That ship if, at the time when the action is brought, it is beneficially owned as respects all the shares therein, by, **or is on charter by demise to, that person;** or
- (ii) **Any other ship which, at the time when the action is brought, is beneficially owned or on charter by demise** as aforesaid.

B.7 The New Zealand provision goes further than those of most other jurisdictions in that another ship that is demise chartered by the person liable *in personam* may also be arrested, even though it is not related in any way to the claim. Most jurisdictions confine the arrest of demise chartered ships to those that are related to the claim. The New Zealand extension goes beyond what is necessary to prevent the identified abuse and is not recommended for consideration.

The United States

B.8 The US has admiralty attachment procedures as well as arrests *in rem* for the enforcement of maritime claims. Its admiralty jurisdiction has developed quite differently from other common law jurisdictions.¹²³ The specific rules on both procedures are found in the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules

¹²² R.S. Vol. 18.

¹²³ This is largely due to the US breaking away from the British Empire at the end of the eighteenth century.

of Civil Procedure at Supplemental Rules "B" (attachment) and "C" (arrest). In consequence, a maritime claimant in the US may choose to take: a) an action *in personam*; b) an action *in personam* with attachment under Supplemental Rule "B"; or c) an action *in rem*, with arrest under Supplemental Rule "C".

- B.9 The arrest *in rem* under Supplemental Rule C permits the arrest of any ship or maritime property, but only to enforce a *maritime lien*. These are codified in the Commercial Instruments and Maritime Liens Act. Claims for "necessaries" (supplies, repairs, bunkers, etc) all give rise to maritime liens under US law. Moreover, "necessaries" is defined more widely in the US than in the UK or any Commonwealth country, and maritime liens are recognised for virtually *any* goods or services of benefit to the navigation, management, business or purpose of the ship. US maritime lien rights can be used to arrest a vessel even though the vessel's owner is not liable *in personam* to the holder of the maritime lien. There are no statutory rights *in rem* in US maritime law.
- B.10 Supplemental Rule B permits a claimant having an *in personam* claim against a defendant which is cognisable in admiralty to attach *any goods or chattels* (including ships) of the defendant, or the latter's credits or effects in the hands of garnishees, within the district, when the defendant cannot be found in the district. The attachment thus permits the assertion of jurisdiction over a defendant's property located within the district even though the court has no *in personam* jurisdiction over the defendant. Maritime attachment in the US resembles the *saisie conservatoire* of civilian jurisdictions. Attachment is not dependent, as is arrest *in rem*, on the existence of a maritime lien, but requires only an *in personam* claim against the defendant which falls within US admiralty jurisdiction.
- B.11 Because the US has the attachment, sister-ship arrest *in rem* is unnecessary. A sister vessel may be attached as security for the claim, in the same way as any other goods or chattels of the defendant, if it is within the district and the defendant is not found there. The attachment may be combined with the action *in rem*.
- B.12 The US is not a party to the 1952 Arrest Convention.

France

- B.13 France has no writ *in rem*. This is because France never permitted the attachment and the action *in rem* to separate. Civilian countries to this day have but a single action, the action *in personam*, which may, however, be combined with a *saisie conservatoire*, or conservatory attachment, in order to give the claimant security for his claim before judgment.
- B.14 There are two regimes of ship attachment in France: the "international" regime, based on the 1952 Arrest Convention to which France is a party, and the "domestic" or "residuary" regime governed by Decree no. 67-967 as amended by Decree no. 71-161. The international regime governs the attachment of seagoing ships flying the flag of a state which is party to the 1952 Arrest Convention. The domestic regime applies to the attachment of French vessels in French ports by French residents.
- B.15 Where the owner is liable on the claim, the ship as well as any sister ship may be attached. Where a charterer (including a demise charterer) is liable on the claim, either the "offending ship" or another ship owned by the charterer may be attached.¹²⁴

Other jurisdictions

- B.16 Some other jurisdictions that allow the arrest or attachment of demise chartered ships to secure the obligations of the demise charterer include France, Italy, Greece, Haiti, Netherlands, Spain and Croatia.¹²⁵ Some jurisdictions that do not allow such arrest or attachment (unless there is a maritime lien) include Denmark, Finland, Norway and Sweden.¹²⁶

¹²⁴ Under art 3(4) of the Convention

¹²⁵ Source: *Berlingieri on Arrest of Ships*, n. 107 above, at I.525-I.534.

¹²⁶ *Ibid*, at I5.33.

B.17 Considering the above, it can be concluded that a significant number of jurisdictions have laws that allow the arrest of demise chartered ships.

APPENDIX C

HIGH COURT (ADMIRALTY JURISDICTION) ACT (CHAPTER 123)

An Act relating to admiralty jurisdiction, legal proceedings in connection with ships and aircraft and the arrest of ships and other property and for purposes connected therewith.

Short title

1. This Act may be cited as the High Court (Admiralty Jurisdiction) Act.

Interpretation

2. In this Act, unless the context otherwise requires —
 - “goods” includes baggage;
 - “master” has the same meaning as in the Merchant Shipping Act (Cap. 179) and accordingly includes every person (except a pilot) having command or charge of a ship;
 - “ship” includes any description of vessel used in navigation;
 - “towage and pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

Admiralty jurisdiction of High Court

3.—(1) The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;

Admiralty Jurisdiction of the High Court:
Arrest of Ships on Demise Charter to Secure the Obligations of the Demise

- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) subject to section 168 of the Merchant Shipping Act (Cap. 179) (which requires salvage disputes to be determined summarily by a District Court in certain cases), any claim in the nature of salvage (including any claim arising under section 11 of the Air Navigation Act (Cap. 6) relating to salvage to aircraft and their apparel and cargo);
- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Act (Cap. 179) is recoverable as wages or in the Court and in the manner in which wages may be recovered;
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry;

- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty,

together with any other jurisdiction connected with ships or aircraft which may be vested in the Court apart from this section.

(2) The jurisdiction of the High Court under subsection (1)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit.

(3) The reference in subsection (1)(i) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under sections 166 and 167 of the Merchant Shipping Act or any regulations made under section 11 of the Air Navigation Act (Cap. 6), are authorised to be made in connection with a ship or an aircraft.

(4) Subsections (1) to (3) shall apply —

- (a) in relation to all ships or aircraft, whether of Singapore or not and whether registered or not and wherever the residence or domicile of their owners may be;
- (b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
- (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

(5) Nothing in subsection (4) shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act (Cap. 179).

[34/73]

Mode of exercise of admiralty jurisdiction

4.—(1) Subject to section 5, the admiralty jurisdiction of the High Court may in all cases be invoked by an action in personam.

(2) The admiralty jurisdiction of the High Court may in the cases mentioned in section 3(1)(a), (b), (c) and (r) be invoked by an action in rem against the ship or property in question.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the admiralty jurisdiction of the High Court may be invoked by an action in rem against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in section 3(1)(d) to (q), being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against —

- (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or
- (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, the admiralty jurisdiction of the High Court may be invoked by an action in rem against that aircraft if at the time when the action is brought it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) Notwithstanding anything in subsections (1) to (5), the admiralty jurisdiction of the High Court shall not be invoked by an action in rem in the case of any such claim as is mentioned in section 3(1)(n) unless the claim relates wholly or partly to wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages.)

(7) Where, in the exercise of its admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the High Court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(8) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam, it shall be assumed that he has his habitual residence or a place of business within Singapore.

Jurisdiction in personam of High Court in collision and other similar cases

5.—(1) The High Court shall not entertain an action in personam to enforce a claim to which this section applies unless —

- (a) the defendant has his habitual residence or a place of business within Singapore;
- (b) the cause of action arose within inland waters of Singapore or within the limits of the port of Singapore; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the Court.

(2) The High Court shall not entertain an action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Singapore against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(3) Subsections (1) and (2) shall apply to counter-claims (not being counter-claims in proceedings arising out of the same incident or series of incidents) as they apply to actions in personam, but as if the references to the plaintiff and the defendant were respectively references to the plaintiff on the counter-claim and the defendant to the counter-claim.

(4) Subsections (1) to (3) shall not apply to any action or counter-claim if the defendant thereto submits or has agreed to submit to the jurisdiction of the High Court.

(5) Subject to subsection (2), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (1)(a) to (c) are satisfied.

(6) The Rules of Court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to subsection (5).

(7) The claims to which this section applies are claims for damage, loss of life or personal injury arising out of a collision between ships or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of 2 or more ships or out of non-compliance, on the part of one or more of 2 or more ships, with the collision regulations.

(8) In this section —

“collision regulations” means the regulations made under section 100(2)(h) of the Merchant Shipping Act (Cap. 179) and any regulations made under subsection (1) of section 41 of the Maritime and Port Authority of Singapore Act (Cap. 170A) for or in respect of any of the matters mentioned in paragraph (d) of that subsection;

“inland waters of Singapore” includes any part of the sea adjacent to the coast of Singapore certified by the Minister to be waters falling by international law to be within the territorial sovereignty of Singapore apart from the operation of that law in relation to territorial waters;

“port of Singapore” means any place or places and any navigable river or channel leading into such place or places declared to be the port under section 3 of the Maritime and Port Authority of Singapore Act (Cap. 170A) and “the limits of the port” means the limits thereof as defined in the declaration.

[7/96; 7/97]

Wages

6. Nothing in this Act shall be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a Singapore ship.

High Court not to have jurisdiction in cases falling within Rhine Convention

7.—(1) The High Court shall not have jurisdiction to determine any claim or question certified by the Minister to be a claim or question which, under the Rhine Navigation Convention of 7th October 1868 as revised by any subsequent Convention, falls to be determined in accordance with the provisions thereof.

(2) Any proceedings to enforce a claim mentioned in subsection (1) which are commenced in the High Court shall be set aside.

Saving

8.—(1) Nothing in this Act shall affect section 172 of the Merchant Shipping Act (Cap. 179) (which relates to the power of a receiver of wreck to detain a ship in respect of a salvage claim).

(2) Nothing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of —

- (a) any ship of which the beneficial interest is vested in the Government, or which is for the time being demised or subdemised to or in the exclusive possession of the Government;
- (b) any aircraft belonging to the Government; or
- (c) any cargo or other property belonging to the Government.

APPENDIX D

SUPREME COURT ACT 1981 (1981 C 54)

Admiralty jurisdiction

20. Admiralty jurisdiction of High Court

(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say —

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
- (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3);
- (c) any other Admiralty jurisdiction which it had immediately before the commencement of this Act; and
- (d) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being by rules of court made or coming into force after the commencement of this Act assigned to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court.

(2) The questions and claims referred to in subsection (1)(a) are —

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage received by a ship;
- (e) any claim for damage done by a ship;

- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of —
 - (i) the owners, charterers or persons in possession or control of a ship;
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- [(j) any claim —
 - (i) under the Salvage Convention 1989;
 - (ii) under any contract for or in relation to salvage services; or
 - (iii) in the nature of salvage not falling within (i) or (ii) above;or any corresponding claim in connection with an aircraft;]
- (k) any claim in the nature of towage in respect of a ship or an aircraft;
- (l) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (n) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
- (o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

- (*q*) any claim arising out of an act which is or is claimed to be a general average act;
 - (*r*) any claim arising out of bottomry;
 - (*s*) any claim for the forfeiture or condemnation of ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.
- (3) The proceedings referred to in subsection (1)(*b*) are —
- (*a*) any application to the High Court under [the Merchant Shipping Act 1995];
 - (*b*) any action to enforce a claim for damage, loss of life or personal injury arising out of —
 - (i) a collision between ships; or
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
 - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
 - (*c*) any action by shipowners or other persons under the [Merchant Shipping Act 1995] for the limitation of the amount of their liability in connection with a ship or other property.
- (4) The jurisdiction of the High Court under subsection (2)(*b*) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.
- (5) Subsection (2)(*e*) extends to —
- (*a*) any claim in respect of a liability incurred under [Chapter III of Part V of the Merchant Shipping Act 1995]; and
 - (*b*) any claim in respect of a liability falling on the [International Oil Pollution Compensation Fund, or on the [International Oil Compensation Fund 1992], under Chapter IV of Part VI of the Merchant Shipping Act 1995].
- [(6) In subsection (2)(*j*) —

- (a) the “Salvage Convention 1989” means the International Convention on Salvage, 1989 as it has effect under [section 224 of the Merchant Shipping Act 1995];
 - (b) the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;
 - (c) the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in sub-paragraph (i) or (ii) of paragraph (j) which is available under section 87 of the Civil Aviation Act 1982.]
- (7) The preceding provisions of this section apply —
- (a) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
 - (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land);and
 - (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the [Merchant Shipping Act 1995].

21. Mode of exercise of Admiralty jurisdiction

(1) Subject to section 22, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.

(2) In the case of any such claim as is mentioned in section 20(2)(a), (c) or (s) or any such question as is mentioned in section 20(2)(b), an action in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in section 20(2)(*e*) to (*r*), where —

- (a) the claim arises in connection with a ship; and
- (b) the person who would be liable on the claim in an action in personam (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against —
 - (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
 - (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the High Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within England or Wales.

(8) Where, as regards any such claim as is mentioned in section 20(2)(*e*) to (*r*), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

22. Restrictions on entertainment of actions in personam in collision and other similar cases

(1) This section applies to any claim for damage, loss of life or personal injury arising out of —

- (a) a collision between ships; or
- (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or
- (c) non-compliance, on the part of one or more of two or more ships, with the collision regulations.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies unless —

- (a) the defendant has his habitual residence or a place of business within England or Wales; or
- (b) the cause of action arose within inland waters of England or Wales or within the limits of a port of England or Wales; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection —

“inland waters” includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of State to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters;

“port” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities therein, and “limits of a port” means the limits thereof as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom;

“charges” means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(3) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside England and Wales against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(4) Subsections (2) and (3) shall apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.

(5) Subsections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

(6) Subject to the provisions of subsection (3), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(7) Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the High Court being transferred, in accordance with the enactments in that behalf, to some other court.

(8) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the High Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

23. High Court not to have jurisdiction in cases within Rhine Convention

The High Court shall not have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the High Court shall be set aside.

24. Supplementary provisions as to Admiralty jurisdiction

(1) In sections 20 to 23 and this section, unless the context otherwise requires —

“collision regulations” means [safety regulations under section 85 of the Merchant Shipping Act 1995];

“goods” includes baggage;

“master” has the same meaning as in the [Merchant Shipping Act 1995], and accordingly includes every person (except a pilot) having command or charge of a ship;

“the Rhine Navigation Convention” means the Convention of the 7th October 1868 as revised by any subsequent Convention;

“ship” includes any description of vessel used in navigation and (except in the definition of “port” in section 22(2) and in subsection (2)(c) of this section) includes, subject to section 2(3) of the Hovercraft Act 1968, a hovercraft;

“towage” and “pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

(2) Nothing in sections 20 to 23 shall —

(a) be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship;

(b) affect the provisions of section [226 of the Merchant Shipping Act 1995] (power of a receiver of wreck to detain a ship in respect of a salvage claim); or

(c) authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty’s ships or Her Majesty’s aircraft, or, subject to section 2(3) of the Hovercraft Act 1968, Her Majesty’s hovercraft, or of any cargo or other property belonging to the Crown.

(3) In this section —

“Her Majesty’s ships” and “Her Majesty’s aircraft” have the meanings given by section 38(2) of the Crown Proceedings Act 1947;

“Her Majesty’s hovercraft” means hovercraft belonging to the Crown in right of Her Majesty’s Government in the United Kingdom or Her Majesty’s Government in Northern Ireland.