The Legal 500 Country Comparative Guides

Singapore: Shipping

This country-specific Q&A provides an overview to shipping laws and regulations that may occur in Singapore.

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1. **What system of port state control applies in your jurisdiction? What are their powers?**

The Maritime and Port Authority of Singapore (MPA) undertakes the Port State Control (PSC) inspections to check and ensure that visiting foreign ships are in compliance with international regulations. The PSC inspection is an important function and the inspections are carried out by PSC Officers from the Ship Safety Department of the Shipping Division. The inspection ensures that ships leaving the port meet the international safety standards, security and marine pollution prevention standards. Ships that do not meet the required standards may be detained and would need to undergo a follow-up inspection before securing their release.

2. **Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?**

**Wreck Removal**

The main sources of law dealing with wreck removal in Singapore may be found under part IX of the Merchant Shipping Act and the Merchant Shipping (Wreck Removal) Act) 2017 (“No. 25 of 2017”), which gives effect to the Nairobi International Convention on the Removal of Wrecks, 2007 (for all Singapore registered ships over 300 GT).

**Pollution**

As for pollution from a vessel, the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL Convention) (Annex I to Annex V) and the 1997 MARPOL Protocol to the International Convention for the Prevention of Pollution from Ships (Annex VI) (MARPOL PROT) had been ratified by Singapore. The Singapore Parliament has thus included provisions to give effect to the International Convention for the Prevention of Pollution from Ships 1973 as modified and added to by the Protocol of 1978.

The Prevention of Pollution of the Sea Act (Cap 243) empowers MPA to take preventive measures against pollution. In addition, the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap 180), which give effect to the International Convention on Civil Liability for Oil Pollution Damage 1992 and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 addresses liability for oil pollution. The Merchant Shipping (Civil Liability and Compensation for Bunker Oil Production) Act (Cap 180), which was enacted to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, prescribes the penalty for bunker oil pollution.

3. **Are there any applicable international conventions covering collision and salvage? If**
not what laws apply?

Collision

In Singapore, the Merchant Shipping (Prevention of Collisions at Sea) Regulations incorporates the International Regulations for Preventing Collisions at Sea 1972, and the latter is set out in the Schedule to the Merchant Shipping (Prevention of Collisions at Sea) Regulations.

The rules contained in the International Regulations for Preventing Collisions at Sea 1972 apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.

Salvage

The statute regulating salvage of vessels in Singapore is found in part IX of the Merchant Shipping Act (Cap 179).

A Bill in Parliament has been passed to implement the 1989 Salvage Convention in entirety, save for salvage that takes place in inland waters involving inland water vessels or where the salvage operation concerns seabed maritime cultural property of prehistoric, archaeological or historical importance. In this regard, the Merchant Shipping (Miscellaneous Amendments) Act 2019 was passed to amend the Merchant Shipping Act (Cap 179) to implement the 1989 Salvage Convention. As of the date of this article, there are no indications as to when the amendments may come into force.

4. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 (“LLMC 1976”) have the force of law in Singapore (other than paragraph 1(d) and 1(e) of Article 2 of the Convention). The Convention is set out in the Schedule under the Merchant Shipping Act (Cap 179). The Singapore Government has passed the Merchant Shipping (Miscellaneous Amendments) Bill (the “Bill”). One of the objectives of the Bill is to amend the Merchant Shipping Act (Cap 179) to implement the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims. It is anticipated that the amendments incorporating the 1996 Protocol will come into force by December 2019.

5. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the
1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Singapore is not a party to the 1952 International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships or the 1999 International Convention on Arrest of Ships. The types of claim permitting an arrest of ships are set out under Section 3 of the High Court (Admiralty Jurisdiction) Act (Cap 123).

In a case involving delayed, lost or damaged cargo, the relevant subsection would be sections 3(1)(g) or s 3(1)(h) of the High Court (Admiralty Jurisdiction) Act, for any claim for loss of or damage to goods carried in a ship or any claim arising out of agreement relating to carriage of goods in a ship.

Section 7(1) of the International Arbitration Act (Cap 143A), which gives the court such power to allow ships arrested under the High Court’s admiralty jurisdiction for the purposes of obtaining security to aid pending international arbitrations. However, the power of arrest in an action in rem cannot be exercised in aid of legal proceedings in a foreign court (see: The Eurohope [2017] SGHC 218).

6. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

There is no requirement for a power of attorney. A Writ is filed (with a brief endorsement of claim) and together with an affidavit setting out the background and details of the claim and the solicitor will attend before a Registrar to seek a warrant of arrest.

7. What maritime liens are recognised?

- Claims for salvage
- Damage lien arising out of damage done by a ship (see: The Vinalines Pioneer [2016] 1 SLR 448)
- Master and crew’s wages

8. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

It is a requirement that the owner or demise charterer of the vessel be liable in personam. Under Section 4 of the High Court Admiralty Jurisdiction Act, the arresting party must identify the party who would be liable in an action in personam.
9. **Are sister ship or associated ship arrests possible?**

Yes. Sister ships under the same registered ownership as the offending vessel may be arrested, provided it is under the same ownership at the time of the arrest. Ships in associated ownership may not be arrested.

10. **Does the arresting party need to put up counter-security as the price of an arrest?**

    **In what circumstances will the arrestor be liable for damages if the arrest is set aside?**

Counter-security is not needed. However, the Sheriff may request that the arresting party to place a deposit to cover the Sheriff’s anticipated expenses in maintaining the vessel while under arrest, as the arresting party is obliged to maintain the vessel during the period of arrest.

The arresting party may be liable for damages when the arrest is a “wrongful arrest”. In such a case, the Defendant would have to show that the Plaintiff had carried out the arrest with mala fide or with gross negligence as to imply malice on the arresting party which results in losses to the Defendant. If the Defendant is successful, the arrest may be set aside and damages may be claimed against the arresting party.

11. **How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?**

A ship may be released upon the provision of alternative security in several forms, including:

1. letter of undertaking from a P & I club;
2. bank guarantee from a first-class bank in Singapore; or
3. payment into court.

12. **Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

The practice of the Singapore courts is to consider applications for the judicial sale of ships if security is not provided, in order to avoid a depreciating value of the ship under continual arrest. The sale of a vessel pendente lite is possible.

Pursuant to Order 70 Rule 21 of the Rules of Court, where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may apply to the Court by summons for an order determining the order of priority of the claims against the proceeds of sale of the ship.

As regards the order of priorities, it is as follows:
1. port dues;
2. Sheriff’s costs and expenses;
3. plaintiff’s legal costs of arrest;
4. maritime liens that arose prior to arrest;
5. possessory liens;
6. maritime liens post-arrest;
7. mortgagee’s claim; and
8. claims by other claimants having statutory liens over vessel.

13. **Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

Whether a bill of lading is a shipowner’s bill or a charterer’s bill is a matter of construction of the bill of lading. In some cases, the terms of the charterparty may shed some light on this issue. It is crucial to read the carriage document as a whole so as to determine whether it was the parties’ intention that the shipowner or charterer should undertake responsibility for carriage of the goods (The “Arktis Sky” [1999] 3 SLR(R) 177).

14. **Is the proper law of the bill of lading relevant? If so, how is it determined?**

Where the contract of carriage involves an international dimension, any resulting cargo claim will raise issues as to what is the proper law of the contract. The proper law of the bill of lading is relevant as it determines how the contract should be performed and the law under which the dispute shall be settled.

The proper law may be determined by the express choice of law of the bill of lading itself. Otherwise, the court will determine if there is an implied choice of law and in the event where no choice is indicated, the proper law would be the system of law with which the bill of lading has its closest and most real connection.

15. **Are jurisdiction clauses recognised and enforced?**

Most bills of lading would have an express term stating the choice of court for disputes relating to the bill of lading. These clauses are generally recognised and enforced. Ultimately, the force of any application for a stay will depend upon whether the forum clause is exclusive or non-exclusive.

16. **What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

It depends on the wording of the clause. There is case law suggesting that general wordings may be insufficient to incorporate an ancillary charterparty arbitration clause and that the same result must follow with regard to the charterparty jurisdiction clause (see: The “Dolphina” [2012] 1 SLR 992) Parties should make clear in the bill of lading that the bill of
lading is subject to an arbitration clause in the charter.

17. **Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

The Hague Visby Rules is adopted in Singapore and is implemented by section 3 of the Carriage of Goods by Sea Act (Cap 33), which gives the Hague Visby Rules the “force of law”.

18. **Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

Yes, Singapore is a party to the 1958 New York Convention and the International Arbitration Act gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Pursuant to the International Arbitration Act (Cap 143A), some grounds to resist enforcement include: a party’s lack of capacity to agree to arbitrate, an invalid arbitration agreement is involved, a party not given proper notice or as unable to present his case, the award goes beyond scope of arbitration agreement, the composition of tribunal or procedure is not in compliance with agreement or lex arbitri, the award is not yet binding, the award is set aside or suspended by competent authority, the subject-matter of dispute not arbitrable and the enforcement is against the state’s public policy.

19. **Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

The time limit for commencing suit for a contractual claim, tort or product liability claim is 6 years from the date on which the cause of action accrued. The time limit for commencing suit for a personal injury claim is within 3 years of accrual of the negligent act or omission or knowledge. As for cargo claims, the time bar is within 1 year of the date of delivery of goods or of the date when they should have been delivered (Article III, paragraphs 6 of the Hague Visby Rules). As for salvage and collision claims, pursuant to Section 8 of the Maritime Conventions Act 1911 (Cap IA3), there is a 2 year limitation period from the date when the damage, loss or injury that was caused by the ship or the salvage services were rendered.