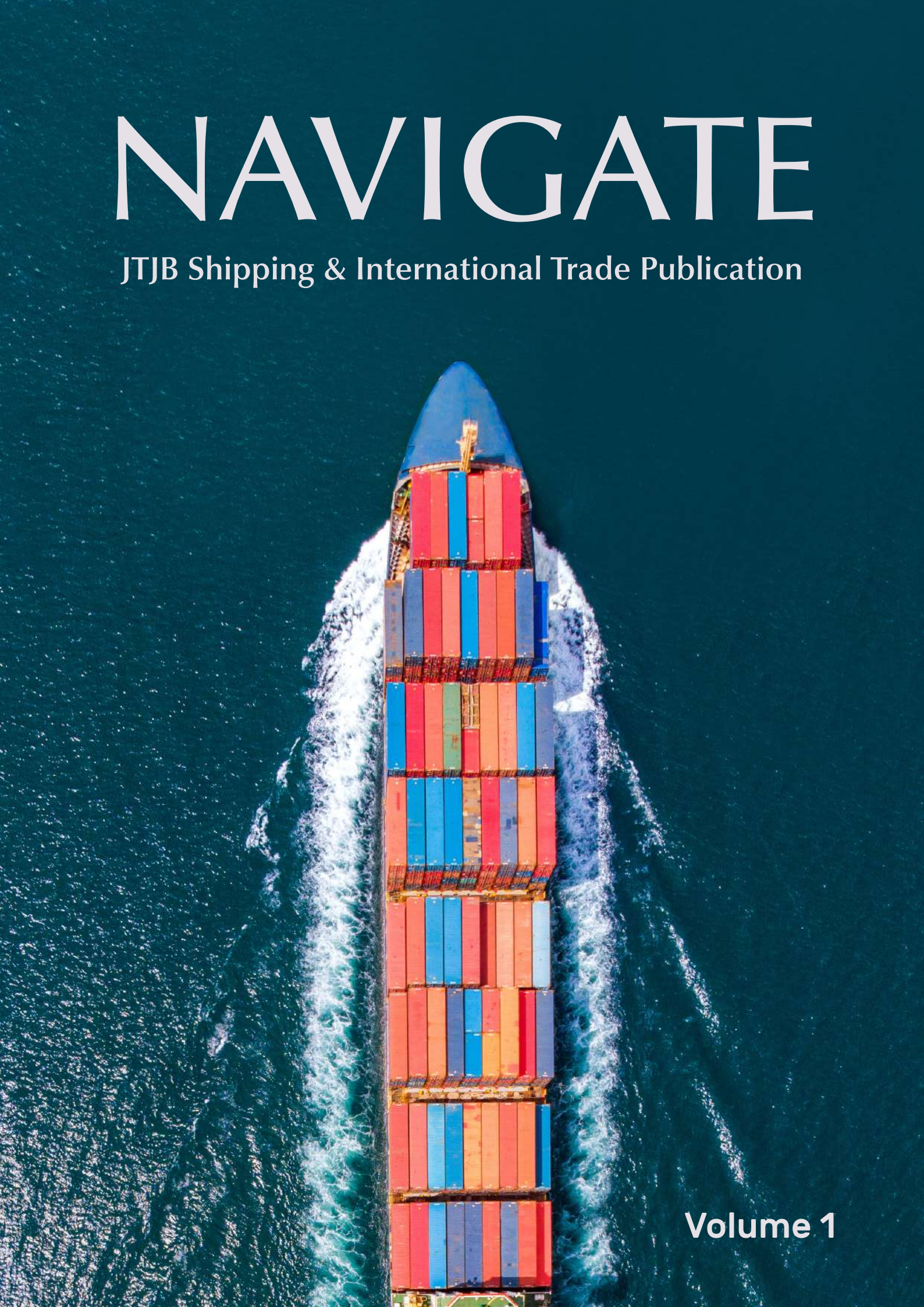
NAVIGATE

JTJB Shipping & International Trade Publication



Volume 1

Content Page

Introduction to Navigate

JTJB is pleased to introduce the first volume of Navigate, a publication dedicated to bringing you the latest updates and developments in the shipping and international trade industry. In this inaugural issue, we cover a range of topics pertinent to our industry.

This volume includes analyses of recent geopolitical and environmental challenges affecting maritime operations, legislative changes impacting the sea transport sector, and comparative perspectives on arbitration practices between Singapore and China.

A key highlight of this issue features a significant case in which our firm successfully acted for, with our Managing Partner, John Sze, Partner, Hariz Lee, and Associate, Sonia Rajendra representing the judicial managers. The article provides an in-depth examination of the nature of statutory liens and in rem writs, with the case currently on appeal.

We hope you find this update both informative and engaging as we continue to navigate the dynamic maritime landscape.

JTJB Shipping and International Trade Practice Group

About JTJB

Founded in 1988, for over 36 years, JTJB has been the trusted legal advisor of our clients worldwide. We are an award-winning law firm recognised by the major international legal directories. We place our clients' interests first in all that we do and conduct ourselves with utmost integrity. We are experts in our field, have vast experience and a track record of success.

We provide specialist legal services in the areas of Shipping & International Trade, Dispute Resolution, Conveyancing & Real Estate, Corporate & Commercial, Regulatory & Compliance, and Corporate Secretarial Services. Our practice groups are led by skilled and experienced practitioners. We are able to take on matters of any size, urgency and complexity without compromising our commitment to provide clients with personalised and dedicated service.

Our Practice Group

JTJB has one of the most experienced Shipping and International Trade practices in Asia. We have been consistently ranked by various publications as one of the top maritime law firms in Singapore and are regarded as being amongst the leading experts in the maritime field. Our lawyers are recognised individually in these international legal directories and three of our lawyers are accredited as Senior Specialists in Maritime and Shipping Law by the Singapore Academy of Law.

We provide a full range of services encompassing registration, transactional (including mortgages, sale and purchase of vessels), advisory and disputes work. Our disputes work includes matters relating to the arrest and release of vessels, collisions and the constitution of limitation funds, personal injury claims, cargo claims, charterparty claims and shipbuilding/repair claims.

Apart from court proceedings, we act in domestic and international arbitrations for maritime related matters under the various bodies such as SCMA, LMAA, KLRCA and HKIAC, as well as ad hoc arbitrations.

Global Network

We are able to assist our clients not just in Singapore but also across the world. Our JTJB Global Network spans 11 countries and we are the only Singapore member of ADVOC, a global network of independent law firms spanning over 73 countries. We work closely with our network partners to provide our clients with a seamless service across jurisdictions.

Industry Highlights

Leading Maritime Hub

Menon Economics, since its inaugural "Leading Maritime Cities of the World" biannual report in 2012, has consistently ranked Singapore as the top maritime hub. Likewise, the Xinhua-Baltic International Shipping Centre Development Index, an annual independent ranking of the world's largest cities that offer port and shipping business services, has awarded Singapore the title of top International Shipping Centre since the start of the rankings in 2014.

Innovation & Sustainability

As the world's largest bunkering port and a major transhipment hub, Singapore has a significant role to play in the decarbonisation of the shipping industry. To meet the goals of the International Maritime Centre (IMO) to reduce greenhouse gas (GHG) emissions, the Maritime Port Authority of Singapore (MPA) has rolled out initiatives such as the Maritime Singapore Green Initiative and Maritime Singapore Decarbonisation Blueprint, which outlines Singapore's commitment to achieving net-zero emissions in the maritime sector by 2050. These initiatives focus on promoting the adoption of cleaner fuels, enhancing energy efficiency, and supporting the development of green technologies.

Strategic Location & Port Infrastructure

Strategically located along the vital East-West trade route, Singapore is renowned for its world-class port and logistics services. The Port of Singapore is one of the busiest in the world, managing a significant volume of container traffic and providing connections to over 130 countries. Recognised by experts from Menon Economics, Singapore is lauded as a leading global shipping centre and a prime location for relocating shipping operations.

Maritime Arbitration

Beyond its operational capabilities, Singapore is a global leader in maritime dispute resolution. Institutions like the Singapore International Arbitration Centre (SIAC) and the Singapore Chamber of Maritime Arbitration (SCMA) are at the forefront of resolving complex maritime disputes. According to the Xinhua-Baltic International Shipping Centre Development Index, SCMA had dealt with 55 reported cases for total claims amounting to US$135 million in 2023.

The Nature of Statutory Liens:

A Look at Natixis, *Singapore Branch v Seshadri Rajagopalan and others and other Matters* [2024] SGHC 113

When a party wishes to arrest a vessel, the first step is to file an in rem writ (now known as Originating Claim) against the vessel. Upon the issuance of the writ, what rights does the holder of the *in rem* writ have?

In the recent case of ***Natixis, Singapore Branch v Seshadri Rajagopalan and others and other matters*** [2024] SGHC 113, the Singapore High Court was presented with the opportunity to consider several novel points of law, including the question of the nature of the interest that an *in rem* writ holder has in the vessel. While this issue was decided within the context of s 100(2)(a) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"), this case provided a clear analysis of, and clarified the rights of *in rem* writ claimants generally.

Brief Facts

The case concerned the applications of 3 plaintiff banks (the "**Plaintiffs**") which had commenced various admiralty actions *in rem* against the vessel "CHANG BAI SAN" (the "**Vessel**") in respect of claims for misdelivery and/or loss of cargo carried onboard the Vessel. The third defendant, Nan Chiau Maritime (Pte) Ltd (in liquidation) ("**Nan Chiau**"), was the registered owner of the Vessel and the first and second defendants were the joint and several judicial managers of Nan Chiau (the "**JMs**"). While the defendant was under judicial management, the Vessel was sailed to Gibraltar, where she was arrested by the mortgagee of the Vessel and eventually sold by the Gibraltar court.

In the case, the Plaintiffs contended that, amongst other things, by virtue of filing the *in rem* writs against the Vessel, the Vessel was a property of Nan Chiau that was "subject to a security" within the meaning of s 100(2)(a) IRDA, such that the JMs were not permitted to dispose of the Vessel without authorisation of the court.

The issue that arose for determination before the Court, and that has not previously been considered before the Singapore courts, was the nature of an *in rem* writ and whether the issuance of an *in rem* writ causes a vessel to be "subject to a security" under s 100(2)(a) IRDA.

For ease of reference, s 100(2)(a) IRDA is reproduced below:

"Power to deal with charged property

…

(2) Where, on application by the judicial manager of a company, the Court is satisfied that the disposal (with or without other assets or property) –

(a) of any property of the company subject to a security to which this subsection applies; or

…

would likely to promote one or more of the purposes of judicial management under section 89(1), the Court may by order authorise the judicial manager to dispose of the property, as if the property were not subject to the security…"

Dicussion

The Court held that the Vessel was not a property subject to "a security" within the meaning of s 100(2)(a) of the IRDA simply by virtue of the Plaintiffs issuing *in rem* writs against the Vessel. The reasons for this conclusion may be summarised as follows:

(a) There is no authority which conclusively states that the holder of an *in rem* writ which has only been issued holds or has security over the vessel.

(b) The accrual of a statutory lien, which arises upon the issuance of an *in rem* writ, has the effect of giving the claimant the means to obtain security by arresting the vessel. It does not create security.

(c) The nature of the interest that an admiralty *in rem* claimant with an accrued statutory lien has in the vessel is unlike that of a mortgagee and/or chargee for the following reasons:

a. Creation: The filing of an *in rem* writ creates the means to obtain security whereas the mortgage or charge creates security over the vessel itself upon its creation.

b. Enforcement: The *in rem* writ holder will need to arrest the vessel and enforce the security whereas the mortgagee or chargee can simply enforce the security they already have in or over the vessel.

c. Proprietary interest: The *in rem* writ claimant's right to obtain security is not defeated by any subsequent change(s) in ownership or the winding up and/or dissolution of the shipowner. A mortgagee or charge holds security over the vessel.

d. Territorial enforceability: An *in rem* writ holder (assuming a writ has only been filed in Singapore) can only arrest the vessel to obtain security in Singapore and not anywhere else in the world. A mortgagee or chargee can enforce its security in the vessel anywhere in the world.

(d) The Court's view is consistent with the intention of Parliament and the meaning of the words "subject to a security" or "subject to security" in the context of s100(2) IRDA, which appears to indicate that s100(2) IRDA was not meant to cater to admiralty *in rem* claimants in the position of the Plaintiffs.

In coming to the conclusion above, the Court had also made reference to The "*Ocean Winner" and other matters* [2021] 4 SLR 526 ("**The Ocean Winner**") and contextualised the comments made therein on the effect of filing an admiralty *in rem* writ. In particular, the Court clarified that the holding "by filing the admiralty *in rem* writ, the plaintiff is also seeking to create its security interest in the ship, ie, a statutory lien" did not mean that the claimant held security over the vessel simply by virtue of filing an *in rem* writ. Rather, the use of the phrase "security interest" must be read and understood in its proper context. In The Ocean Winner, the context was that the claimant's right to procure a statutory lien is potentially at risk of being destroyed by the shipowners if the claimant does not file its admiralty *in rem* writ in time (ie if the shipowner sells the vessel or, in the case of a demise charter, the shipowner terminates the bareboat charter). In this context, by filing the admiralty *in rem* writ, the claimant is seeking to secure its interest in the ship by creating a statutory lien (ie, "security interest") that entitles the claimant to arrest and detain the ship as actual security for its *in rem* claim.

The Court had also contextualised the case of In ***Re Aro Co Ltd*** [1980] Ch 196 ("**Re Aro**"). In *Re Aro*, the question was whether the applicant should be given leave to continue with its action *in rem* in England against a vessel whose shipowner was under compulsory liquidation. In the course of deciding whether to grant leave to the applicant, the court held that it was prepared to treat the applicant as a "secured creditor" for the purposes of deciding whether to grant leave for the action *in rem* to be continued. The Court confined this finding to its specific purpose in *Re Aro* and took the view that this proposition cannot be extrapolated to support the Plaintiffs' argument that the mere issuance of the *in rem* writ means that the vessel in question is "subject to a security".

In the Court's view, the status of an *in rem* claimant being equated to a "security creditor" or "proprietary" is more correctly attributable to the fact that the moment the *in rem* writ is issued, the claim and right to obtain security through the arrest of the vessel is not defeated by any subsequent change in ownership or the winding up and/or dissolution of the shipowner.

Conclusion

Therefore, although the issuance of an *in rem* writ creates certain rights for its holders, such as the right to arrest the vessel, it cannot be said that statutory lien holders have security over the vessel. This is presumably still the case even if the *in rem* writ was served on the vessel, as security over the vessel is only crystallised when the vessel is arrested.

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Attacks on the Red Sea: A Singapore Perspective

Since mid-November, the Houthi militia have been launching attacks on commercial vessels transiting the Red Sea. Presently, the situation appears to be escalating, and as a result, many vessels have chosen to avoid the Red Sea route by sailing around the Cape of Good Hope. This alternate, safer route has added approximately 2 to 4 weeks of travel for vessels.

Various legal issues arose as a result such as disputes between parties in shipping contracts due to deviations by vessels from their courses, frustration of charterparties, and applicability of war risk clauses. This article seeks to address the legal complexities surrounding these issues from a Singapore perspective as this is helpful for charterparties and bills of ladings where Singapore law is the governing law. References are also made to certain UK cases as far as they appear to be relevant to the issues at hand.

War Risk Clauses

Charterparties may often include clauses that set out rights and obligations where the vessel is subjected to war risks, which will be defined and usually includes situations of war, acts of war, hostilities, acts of piracy, violence, terrorism, blockades and seizure or detention. The Houthi attacks may constitute a situation of hostility, violence or terrorism, and may fall under a war risk depending on how the clause may be construed, the contract may be cancelled or terminated. Such war risk clauses typically also provide that masters or owners of the vessel should reasonably exercise their judgment on whether the vessel is subject to war risks.

Most commonly, clauses on war risks in voyage and time charters provide that the Master and Owners of the vessel must reasonably exercise their judgment in determining whether the vessel is subject to war risks. While the widely reported conflict has provided ample evidence of such risks, the prevalence of the attacks may fluctuate, hence if parties are making an argument that a reasonable judgment has been made considering the risks, they may need to gather more current evidence in support of the hostility of the situation.

In the recent case of *MV Polar* [2024] UKSC 2, the Supreme Court held that where "special terms are agreed for transiting the Gulf of Aden in light of existing known risks, it may be inconsistent for a ship owner to be permitted to rely on more extensive rights to refuse transit on the basis of those same risks". As such, if a ship owner agrees to special terms acknowledging and mitigating the risks associated with transiting an area which is deemed to be of risk, it would be incongruous for them to subsequently exercise broader rights to refuse transit based on those same risks.

Generally, parties should understand their rights to pursue a claim as well as their liabilities based on the charterparty between them. Several cases have stated that, When determining issues of losses, the courts will look closely at what was set out in the charterparty. By preemptively clarifying their rights within the charter-party, shipowners can navigate such situations with greater assurance and minimize the likelihood of adverse financial consequences stemming from disputes with charterers.

Deviation

The question is if a vessel transits via the Cape of Good Hope instead of the Red Sea, whether it would be regarded as a deviation leading to a breach of contract. This would require a multi-faceted, case-by-case assessment, considering the facts and evidence at hand. It is crucial to emphasize the inherent risks associated with both not deviating (sailing through the dangerous waters), as well as deviating from the usual route and navigating around the Cape of Good Hope.

To begin with, parties should first look to whether there is an explicit provision that permits the deviation from the contractually stipulated route, which may be found in the charterparty or bill of lading. If there is no such provision, evidence of what was intended to be the contractual route may be tendered, as set out in the case of *Reardon Smith Line Ltd v Black Sea and Baltic General Insurance Co Ltd* [1939] AC 562 at 584. Where no contrary evidence is given, the route is presumed to be the most direct geographical route to the port at which the cargo is to be discharged, although this may be modified for navigational or other reasons such as the usage of trade or commercial exigencies. The determination of whether a vessel can deviate from its contractual route hinges on the terms of the contract between the parties. A deviation occurs when there is a voluntary change of the ship's contractual voyage, resulting in a breach of the contract. Consequently, parties should look to whether there is an explicit provision permitting deviations from the specified route, along with understanding the extent of the contractual freedom to deviate. Without such a provision incorporated into the charterparty or bill of lading, an owner opting to deviate from the agreed route risks breaching the contract of carriage established with the bill of lading holder.

The necessity of vessel deviation during the Red Sea Attacks stems from a crucial need to safeguard both the vessel and its cargo. This involves a factual analysis, considering factors such as the vessel's flag, its condition and the

> **The necessity of vessel deviation during the Red Sea Attacks stems from a crucial need to safeguard both the vessel and its cargo. This involves a factual analysis, considering factors such as the vessel's flag, its condition and the nature of the cargo.**

nature of the cargo. Adapting to the shifting risk scenario in the region is essential, and carriers must provide convincing evidence to support any deviations.

Further, parties should also consider the incorporation of charterparty terms into the bills of lading. While charterparties may contain express liberty clauses granting the carrier the right to deviate from the agreed route under specific circumstances, parties should be aware of the applicability of charterparty terms and terms explicitly outlined in bills of lading. The automatic incorporation of charterparty terms into bills of lading is not guaranteed, and a carrier must navigate the potential disparity between these two sets of contractual obligations. In the absence of explicit provisions within the bills of lading, the carrier may nonetheless rely on Article IV, rule 4 of the Hague/Hague-Visby Rules to justify deviation. However, cargo interests may not be bound by the liberty to deviate granted in the charterparty, posing challenges for the carrier in enforcing such rights and emphasizing the significance of clarity in contractual arrangements to avoid disputes and legal complexities.

Termination of Charterparty in a Pre-Charter Situation

In the context of pre-charter scenarios, where charterparties include clauses mandating owners to deliver the vessel and cargo within a specified timeframe, the failure of the vessel to arrive within this stipulated period due to unforeseen circumstances such as deviations can lead to the right to terminate the charterparty. This becomes particularly relevant when parties have outlined conditions for the termination of the charterparty in such situations. The right to cancel may be exercised if the ship fails to be delivered by the specified cancellation date, which can either be a fixed date or within a laycan period agreed upon by both parties. The length of this laycan period is typically subject to mutual agreement between the contracting parties, providing a mechanism for terminating the charterparty if delivery cannot be fulfilled within the agreed-upon timeframe.

Frustration / Force Majeure

Voyage charterparties may contain force majeure clauses that set out specific situations which will, upon the occurrence of an event, not require further performance of the contract, discharging the obligations of the parties. In the alternative, where force majeure clauses are not available, the parties may invoke the doctrine of frustration, where their claim may be based on the Frustrated Contracts Act. The question here, is whether the delays caused by such attacks would be sufficient to invoke a force majeure clause, or in the alternative, frustrate the contract.

Force Majeure Clauses

Typically, parties may prescribe certain procedures in the charterparty upon the declaration that a force majeure event has occurred. This refers to contractual terms that the parties have agreed upon to deal with situations that might arise over which the parties have little or no control that may impede or obstruct the performance of the contract. Whether such a situation arises, where it arises, the rights and obligations that follow depend on what the parties have stipulated in their contract.

In Singapore, it was suggested by the Court of Appeal in *Holcim (Singapore) Pte Ltd v Precise Development Pte Ltd* [2011] 2 SLR 106 that where a party to a contract is seeking to rely on the protection of a force majeure clause which would excuse non-performance on occurrence of an event whose occurrence was "beyond the control" of the party (or parties, as the case may be), in such a case, the party seeking to rely on such a clause would not only have to show that the occurrence of the event in question had been "beyond the control" of the parties as specified by the clause, but would also have to show that even though it had taken reasonable steps to mitigate or avoid the effects of such event, it still suffered substantial adverse consequences beyond its control. As such, for a court to determine that a force majeure event has occurred, it is likely insufficient for a party to show that it is more difficult or expensive for them to discharge their obligations. Rather, they must show it is impossible or impractical to fulfil their obligations, as well as establish the reasonable measures they took to avoid such adverse consequences.

While an event such as the Red Sea attack may be beyond the control of parties involved and pose challenges in fulfilling their contractual obligations, parties may have to establish that they have considered the feasibility of alternative routes and the reasonable steps taken to go by this route, but they must also demonstrate that the alternative routes were either unavailable or would result in similarly detrimental consequences. It may be possible however, for parties that may be carrying perishable goods on their vessels to show that by travelling via an alternate route would lead to added time which would cause their goods to be perished, in showing the impossibility of fulfilling their contractual obligations.

Frustration

What is sufficient to frustrate the contract?

The applied test to invoke the doctrine of frustration is that of a 'radical change in obligation where the law recognises that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which the performance is called for would render it a thing radically different from that which was undertaken by the contract.'

Whether a delay in performance is sufficient to frustrate the charterparty?

Whether a delay may result in the performance of a charterparty being radically different from originally envisaged depends on the effect of the delay suffered, and likely to be suffered. The delay must thus likely be of considerable length and of an uncertain duration.

In the case of *Ocean Tramp Tankers Corp v V/O Sovfracht (The Eugenia)* [1964] 2 QB 226, a vessel was trapped in the Suez Canal for several weeks after the Canal was closed as a result of hostilities after the Canal was nationalized by the Egyptian Government. As the canal remained closed, the vessel had to sail to India via the Cape of Good Hope. The question in this case was whether the longer and more expensive voyage made the adventure fundamentally

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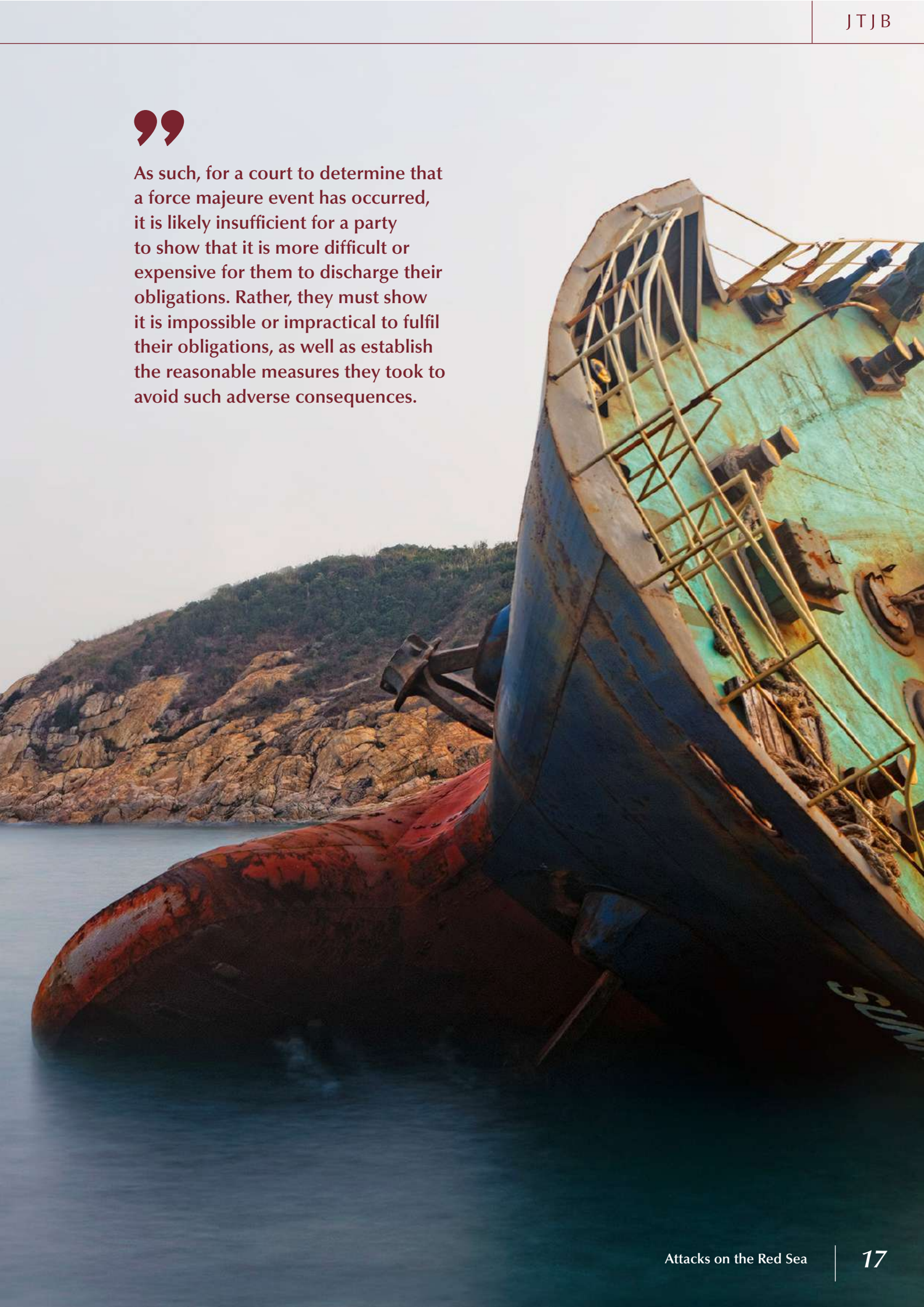

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different from what was contemplated under the contract. The English Court of Appeal held that the delay and additional costs did not frustrate the charterparty. This was because the cargo of iron and steel would not have been adversely affected by the longer voyage, and there was no special reason to warrant their early arrival.

Even in *Palmco Shipping Inc v Continental Ore Corp (the Captain George K)* [1970] 2 Lloyd's Rep 21, the charterparty was not frustrated despite the length of the voyage being doubled. In that case, the freight for the carriage of a cargo of sulphur from Mexico to India was fixed on the basis of a voyage through the Suez Canal. However, by the time the vessel reached the canal, the canal was closed, and the vessel had to sail back up to proceed via the Cape of Good Hope, where the voyage instead of 52 days, had taken 95. However, as the Judge was bound by The Eugenia, it was held the voyage charterparty was not frustrated, and the shipowners were not entitled to additional freight for the voyage round the Cape.

In *Lim Kim Som v Sheriffa Taibah bte Abdul Rahman* 1 SLR(R) 233; [1994] SGCA 15, the judge quoted The Eugenia, stating that a key concept of frustration, is that parties must not have foreseen the event happening and thus had not made any provisions for it. Whereas, if the parties had foreseen the event, they would be expected to make a provision for it. As such, it is important to assess whether the delay or change in circumstances was within the contemplation of the parties at the time of entering into the charterparty. Where the delay was unforeseeable and not beyond the reasonable contemplation of the parties, it may then form a basis for a claim of frustration.

Whether a change in profitability is sufficient to frustrate the charterparty?

A mere change in profitability is also unlikely to be sufficient to frustrate the charterparty. In *Glahe International Expo AG v ACS Computer Pte Ltd and another appeal* [1999] 1 SLR(R) 945, the Court of Appeal reiterated that the mere change in the profitability of a contract or an increase of the burden upon a party under a contract is not enough to discharge him from further performance of the contract. While there may be cases that render a contract so unprofitable that performance of the contract becomes commercially impracticable, the focus of the inquiry is on the nature of the obligation and not the degree of profitability.

Conclusion

In summary, the recent escalation of attacks in the Red Sea has posed legal challenges to parties in shipping contracts. Navigating such issues would require parties to understand their contractual obligations, in order to avoid situations that they may be liable for damages or losses caused to the vessel or cargo. Thus, it is crucial for parties to clarify their rights within their charterparties to minimise the potential disputes. Where disputes arise, parties should also gather evidence to document the dispute in preparation to claim for any losses.

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The "Eco Spark" Conundrum

In the recent case of *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel "ECO SPARK",* [2023] SGHC 353, the High Court of Singapore was faced with the question of whether a floating fish farm is considered a "ship" within section 2 of the High Court (Admiralty Jurisdiction) Act ("**HCAJA**") which renders it liable to be arrested for maritime claims.

The vessel was formerly a barge known as "WINBUILD 73" and underwent conversion into a "Special Service Floating Fish Farm." The claimant was engaged to carry out the conversion. The vessel was launched in Batam in February 2022. The vessel was then towed by an ocean tug to Singapore. Disputes subsequently arose as to the sums payable to the claimant.

The claimant filed an admiralty originating claim in rem against the vessel and the vessel was arrested. The defendant disputed that the vessel was a "ship" within section 2 of the HCAJA and sought release of the vessel from arrest along with damages for wrongful arrest. The defendant argued, among others, that the vessel's conversion and stationary position rendered it immovable and ineligible for classification as a ship.

The court considered as a starting point the definition of a ship under the HCAJA. "ship" is defined as "includes any description of vessel used in navigation". No definition of "vessel" is however found in the HCAJA. The court then turned to the Interpretation Act ("**IA**"). The IA defines certain terms and expressions used in the written law of Singapore. The definitions therein are to apply unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided in the written law. Under the IA, "vessel" is defined as "includes floating craft of every description".

The court proceeded to embark on a comprehensive examination of various factors, including the vessel's actual use, classification, registration, and physical characteristics. The court outlined several factors for consideration and held that, "The inquiry is necessarily multi-factorial". The more characteristics that a vessel can check against them, the more likely the vessel is a ship. At the same time, the failure to tick some of the boxes does not necessarily mean that the vessel cannot constitute a ship. Some of these factors are discussed below.

Actual Use and Capability for Navigation

One of the central issues addressed by the court was the vessel's actual use and its capability for navigation i.e., whether she is navigable and built to withstand the perils of the sea, irrespective of its actual use. The court emphasized that the vessel's capability for navigation, rather than its frequency of
use was paramount. The court stated,

> *The question is whether the degree of stationariness of a vessel is such as to render the vessel incapable of being used in navigation.*

In this instance, while the vessel is currently being spudded down into the seabed, the court found that the spuds are removable and retractable such that the vessel is not permanently stationary. The defendant has also been able to move other similar floating fish farms to another site by de-spudding them.

Characteristics of the Vessel

The court meticulously examined the physical attributes of the vessel, including its past use as a barge and subsequent conversion into a floating fish farm. Despite lacking traditional navigational features, the vessel retains its structural integrity and capability for navigation as evidenced by its past voyages and certifications. The court emphasise,

> *The installation of the 'Special Service Floating Farm' atop the barge structure did not result in such a significant change to the physical structure or design of the Vessel such as to render the Vessel (post-conversion) to no longer be navigable.*

Classification and Certification

The court also considered the vessel's classification and certification, viewing them as essential indicators of its status as a ship. The court noted,

> *The undisputed evidence is that when the Vessel was undergoing her voyage under tow from Batam to Singapore in February 2022, she was classed with BV and flew the Singapore flag.*

While the vessel subsequently did not maintain her class status, this was found to be attributable to the defendant's failure to do so and not because the vessel is incapable of being classed.

By considering various factors such as past use, physical structure, navigability, and regulatory compliance, the court ensures a nuanced understanding of each vessel's unique circumstances. This approach fosters flexibility, allowing for the inclusion of diverse maritime structures under admiralty jurisdiction while upholding legal standards.

Registration and Flag

While registration to a flag state was not deemed determinative, it served as an important factor in the vessel's classification. The court recognized the significance of flag registration in maritime law, as it signifies a vessel's adherence to regulatory frameworks and international conventions. The court emphasized,

> *The fact that the MPA (as the maritime and port regulator) required the Vessel to be classed and maintained in class…point[s] to the Vessel being a ship for the purposes of s 2 of the HCAJA."*

Conclusion

Having considered the various factors, the court found that the vessel was a ship within the meaning of section 2 of the HCAJA. Although the vessel did not possess some of the 'usual attributes' associated with a ship, the absence of these attributes did not represent a drastic departure to disqualify the vessel from being considered as a "vessel used in navigation" and thus a "ship" under section 2 of the HCAJA. The defendant's application to set aside the arrest was accordingly dismissed.

The Singapore court's analysis sheds light on the complexities of defining a vessel's status. By considering various factors such as past use, physical structure, navigability, and regulatory compliance, the court ensures a nuanced understanding of each vessel's unique circumstances. This approach fosters flexibility, allowing for the inclusion of diverse maritime structures under admiralty jurisdiction while upholding legal standards. It underscores the importance of a case-by-case evaluation and stakeholders are advised to consider the potential implications that might attract a particular sea-going structure.

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New Law Affecting Key Firms in Singapore's Sea Transport Sector Passed

A new law that aims to bolster the resilience of key firms in the air, sea, and land transport sectors was passed on 8 May 2024. The objective of the Transport Sector (Critical Firms) Act is to enhance the resilience of essential transport services in Singapore and protect it against possible future disruptions.

The sea transport sector is identified as one of the key pillars of the Singapore economy, together with the air transport and land transport sectors. Essential services under the sea transport sector include port and marine services and facilities, as well as services which support the provision of sea transport, such as water supply and bunkering.

Key entities that are strategically important within the sea transport sector can be designated by the Maritime & Port Authority of Singapore. A designated entity is one that either: (a) directly provides essential transport services in Singapore (i.e. a "designated operating entity"), or (b) is an entity that holds equity interest in the former (i.e. a "designated equity interest holder"). Due to significant market share or expertise, the services provided by these entities are not readily replaceable. Designated entities may include firms owned by the government. The list of designated entities will be finalised by the end of 2024. Designated entities will be subject to ownership, management appointments, operations and resourcing controls.

Ownership Controls

Individuals or organisations must notify or seek approval from the relevant authorities if there is any significant change in effective control of the designated entities:

a) Any person who becomes a 5% controller of the designated entity, which is when the person is considered to be a substantial shareholder, must notify the relevant Authority within 7 days after becoming a 5% controller.

b) Any person who intends to become, or cease being a 25%, 50% or 75% controller of the designated entity must seek the relevant authority's approval. The rationale is that at these levels, shareholders have significant influence over a company.

Additionally, the relevant authority's approval must be sought for:

a) Any person intending to become an indirect controller, meaning someone that is able to exert control over the directors or trustee managers of the designated entity; or

b) Any person intending to acquire and continue operating without disruption, any part of the designated operating entity's business relating to the provision of essential transport services. This is to provide the relevant authority with oversight over all acquisitions of the entity, or parts of the entity, regardless of whether there are significant changes to its service provisions.

> **A developed framework consisting of ownership and management appointment controls promote good corporate governance which is valued by investors. Having established operations and resourcing controls in place help to enhance the crisis management capabilities of maritime entities and results in a strong industry reputation.**

Management Appointment Controls

These controls allow the relevant authorities to remain informed of any changes to key personnel responsible for the management of critical transport firms and operations affecting the continued provision of the essential transport service.

There will be approval requirements for the appointments of CEOs and board chairpersons for designated entities. Designated operating entities who are also licensees will need to seek the relevant authority's approval for the appointment of its CEO, Chairperson, as well as all directors of its board.

Operations and Resourcing Controls

Designated entities will be required to notify the relevant authority of events that could materially impede or impair the provision of essential transport services in Singapore. For example, if a designated operating entity faces material events or legal proceedings that may impair or impede the provision of essential transport services in Singapore. A set of advisory guidelines will be issued by the relevant authorities to provide practical guidance for these notification requirements.

Parties may appeal to the Minister for Transport regarding decisions made by the relevant authorities on designation and applications for approval on ownership or management appointments.

Singapore relies heavily on our sea hub to ensure the flow of critical supplies and our maritime hub is a key node in the global supply chain. It is therefore important that our maritime entities are resilient to disruptions and remain adaptable to the evolving regulatory landscape. A developed framework consisting of ownership and management appointment controls promote good corporate governance which is valued by investors. Having established operations and resourcing controls in place help to enhance the crisis management capabilities of maritime entities and results in a strong industry reputation.

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A Comparative Note on Ad Hoc Arbitration in Singapore and China

The Recent Development of Ad Hoc Arbitration in China

1. International commercial arbitration can generally be divided into two forms based on the extent of involvement of an arbitration institution: *ad hoc* arbitration and institutional arbitration. The difference between the two forms is that in *ad hoc* arbitration, parties choose not to submit the arbitration to the administration of any particular arbitral institution. This means that parties either specify their own rules and procedures that govern the arbitration, usually by adopting a particular set of existing arbitration rules, or simply omit any such specifications. As *ad hoc* arbitrations do not involve administration by a specified arbitration institution, there are potential savings in fees for the services of the external arbitration body.

2. In that regard, there has been a gradual acceptance and recognition of *ad hoc* arbitration across the globe and significantly, in the international maritime disputes sphere in China. In fact, for a long time, *ad hoc* arbitration has not been legally recognised in Mainland China (hereinafter referred to as "China," excluding Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan, for the purpose of this Note). Feng Won, Brenda Wang and Junming He from Shanghai United Law Firm ("**SULF**") discuss this development by way of a comprehensive legal analysis, can be found on our *website here.*

https://jtjb.com/recent-development-and-prospects-of-ad-hoc-arbitration-system-in-mainland-china/

3. In summary, the legal analysis details the reasons why the current Chinese legal system does not recognise *ad hoc* arbitration within its territory, primarily due to China's relatively chaotic market economic order, with unclear property rights definitions for state-owned assets, widespread local government-mandated loans and instructed bankruptcy debt evasion, low costs of dishonesty, and difficulties in selecting arbitrators with the same level of social credibility as permanent arbitration institutions, making it unrealistic for the state to recognise and enforce rulings made by *ad hoc* arbitration tribunals. However, in recent years, there has been a growing indication of a tendency to establish an *ad hoc* arbitration system in China.

4. On a national level, some regions in China have recently begun to experiment with the *ad hoc* arbitration system, which has established a solid foundation of local legislation for the practice of *ad hoc* arbitration in China. These experimental legislations are summarised in SULF's legal analysis. SULF's legal analysis also details four actual cases of *ad hoc* arbitration in China. It is hoped that these specific and feasible attempts to construct an *ad hoc* arbitration system will lay a solid foundation of local legislation and actual cases for a future comprehensive revision of China's Arbitration Law to formally accept the *ad hoc* arbitration system at a national level.

Singapore's Approach to Ad Hoc Arbitration

5. Singapore's approach to legislating the conduct of arbitration are largely driven by western concepts which recognise that arbitration is a private dispute resolution process, where parties are granted a significant amount of autonomy to decide how their dispute should be resolved. Parties are free to choose to pursue the institutional route, and there are many options on which institution to choose to administer the arbitration, or the *ad hoc* route. Singapore's adoption of the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**"), which is found in the First Schedule of the International Arbitration Act 1994 ("**IAA**"), provides an internationally recognised framework for the conduct of arbitration and the circumstances where court intervention may be allowed, and facilitates arbitrations to be conducted smoothly and fairly, even where no institutional rules apply.

6. If parties decide to go down the ***ad hoc*** route, guidance can be obtained from the IAA as well as the Model Law. The IAA and Model Law provide a basic framework for parties to arbitration, but this framework is not as detailed or precise as the rules specified in the arbitral institute rules. For example, the IAA and Model Law prescribe a process for appointing arbitrator(s) if parties do not agree and also set out the broad powers of an arbitral tribunal in the conduct of arbitration. Parties to an *ad hoc* arbitration can use the IAA and Model Law as a general framework for the arbitration, and agree amongst themselves on the more specific rules to apply to the arbitration.

7. Alternatively, parties are free to adopt the rules of existing arbitration institutions, without actually having their arbitration conducted under a particular institution, or modify the existing institution's rules. Creating such bespoke or tailored rules can help parties to achieve a form of arbitration suited to the transactions and the parties' needs and preferences.

8. The Singapore International Arbitration Centre ("**SIAC**") is one of the arbitration institutions in Singapore which offers the service of appointing arbitrators for *ad hoc* arbitrations seated in Singapore and pertinently, the President of the Court of Arbitration of SIAC is the default appointing authority in Singapore under the IAA. There is therefore a mechanism in Singapore to consider and appoint a suitable arbitrator(s) for ad hoc arbitrations where parties fail to agree on the appointment of an arbitrator. The SIAC maintains a Panel of Accredited Arbitrators composed of a regional panel and an international panel of experts. In 2023, SIAC was called upon to make 23 *ad hoc* appointments of an arbitrator.

9. The variations of *ad hoc* arbitration are not circumscribed, and parties have complete autonomy to decide how they want their dispute to be resolved, subject, of course, to agreement between the parties to the arbitration.

10. In Singapore, the most popular forums for maritime arbitrations are conducted under the London Maritime Arbitrators Association ("**LMAA**") and the Singapore Chamber of Maritime Arbitration ("**SCMA**") regimes. While both arbitration bodies have a set of rules that govern the arbitration proceedings, the arbitration is managed primarily on an *ad hoc* basis, meaning that these institutions do not manage or oversee the arbitration proceedings conduct under their respective rules. Parties have a great deal of autonomy to appoint their own arbitrators, even if not within the institutions' panel, and to amend the rules by agreement. The conduct of the arbitration is also primarily led by the Tribunal, and there is generally no involvement by the institutions in the conduct of the arbitration itself. Essentially, the arbitration is conducted under the rules of the relevant arbitration institution, but parties and the arbitrators have autonomy to carry the arbitration forward by themselves and determine how the arbitration should proceed.

Conclusion

11. China's recent development in *ad hoc* arbitration is a welcomed one, especially in the space of maritime and international trade law, where parties are quite comfortable with *ad hoc* arbitrations. We also note that the gradual adoption of *ad hoc* arbitrations in China is also in the realm of maritime and international trade law and do not think this is a coincidence given the familiarity of players in the maritime and international trade space with *ad hoc* arbitrations. We look forward to, and will be closely monitoring the growth of *ad hoc* arbitrations in China. Lastly, it leaves us to thank SULF for preparing the detailed and comprehensive analysis of the development of *ad hoc* arbitrations in China.

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Special Thanks To

Feng Wang, Brenda Wang, Junming HE, and Elly Chen
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IN THE NEWS

Our lawyers have been featured and quoted in prominent media outlets, sharing their expertise and insights on key legal developments and industry trends. From maritime law to cross-border mergers, here are some of the notable appearances where our team has contributed their perspectives:

JTJB on Evolving Maritime Law

In an exclusive interview with Asia Business Law Journal, where Managing Partner, John Sze shares his strategic insights on the evolving maritime landscape and our firm's tailored client approach for the future.

Read the full interview her *https://law.asia/jt-jb-john-sze-maritime-law-sin-gapore/*

Expert Insights on Regionalisation

Featured in the March issue of Asian Legal Business, where Managing Partner, John Sze and Senior Partner, Chi Yen, Ting share their expert insights on Singapore firms' regionalisation strategy in South East Asia.

Read the full article here: *https://www.legalbusinessonline.com/features/briefs-competition-heating-home-sg-firms-pursue-regional-growth*

Successful Client Representation

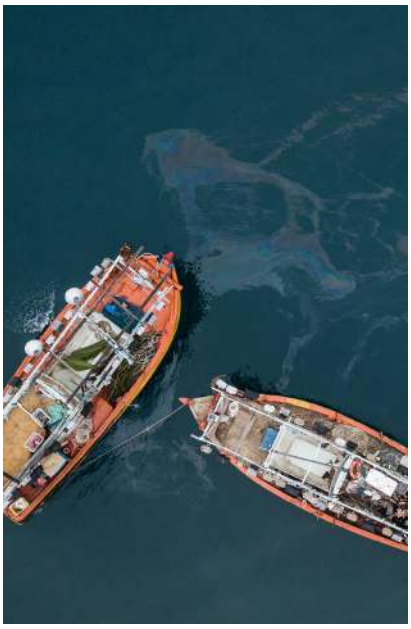
Featured on The Straits Times and Business Times, Partner, Hariz Lee, successfully represented our client in a major case involving a public listed company. Managing Partner and lead Counsel on the matter, John Sze comments that this decision marks a pivotal turning point in the restructuring of Falcon Energy Group, reflecting the courts' stance on companies showing genuine efforts in rehabilitation.

Read more about the case here:
https://www.straitstimes.com/business/companies-markets/high-court-orders-falcon-energy-to-wind-up-after-multiple-failed-restructuring-attempts

Expert Commentary on ABSD Probes

Senior Partner and Head of our Conveyancing and Real Estate Practice Group, Mabel Tan, was recently featured in The Business Times and Singapore Law Watch. Mabel provided her expert commentary on the ongoing ABSD probes, leveraging over 30 years of experience in real estate law.

Read the full article here:
https://www.businesstimes.com.sg/property/some-home-buyers-facing-99-1-absd-probes-blaming-it-advice-real-estate-agents



"Polluters Pays" Principle

Featured in The Straits Times, Managing Partner John Sze delves into the "polluter pays" principle and its application to maritime incidents emphasizing its role in ensuring timely compensation for claimants.

Read the full article here:
https://www.straitstimes.com/singapore/transport/st-explains-why-does-stationary-vessel-have-to-shoulder-claims-for-recent-oil-spill

Scan me to view the link to the articles

Awards & Recognitions

JTJB is recognised as an industry leader with numerous awards and accolades for our outstanding work and commitment to excellence. Here are some of our recent accolades that highlight our achievements and reinforce our position as a leading firm in the legal industry.

These awards are a testament to the hard work and dedication of our exceptional team, whose expertise and professionalism drive our continued success. We are honored to be recognized and remain committed to providing unparalleled service to our clients.

2024 Chambers & Partners, Asia Pacific and Global

Singapore > Shipping: Domestic

2024 The Straits Times Singapore Best Law Firms

Maritime
Banking
Company & Commercial

2024 Asia Pacific Legal 500

Singapore > Shipping

2024 Asialaw Profiles

Singapore > Aviation & Shipping
Banking & Finance
Corporate and M&A
Dispute Resolution
Restructuring and Insolvency

2024 Benchmark Litigation Asia Pacific

Singapore > Shipping
International Arbitration
Commercial and Transactions
Insolvency

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