

ARREST IN SINGAPORE AND ENGLAND AND WALES – A COMPARISON

ARREST PROCEDURE IN SINGAPORE

Arrest procedure in Singapore is set out in the High Court (Admiralty Jurisdiction) Act (“HCAJA”) and the Singapore Rules of Supreme Court Order 70 (“Order 70”) which deals specifically with Admiralty Proceedings.

Admiralty law and proceedings in Singapore originated from English common law but were codified in the High Court (Admiralty Jurisdiction) Act and Order 70 of the Singapore Rules of the Supreme Court – and several other statutes such as the Carriage of Goods by Sea, the Merchant Shipping Act, etc.

Arrest procedure and claims in relation to admiralty are dealt with by HCAJA and Order 70.

The admiralty jurisdiction of the Singapore High Court can be considered all-encompassing in relation to the maritime related claims – and are particularised in Section 3(1) of the HCAJA. These claims are similar to those recognised under English common law. However, the HCAJA does not set out the priorities of maritime claims and English common law is applicable in determining the order of priorities. The concept of sister ship arrest is also recognised in Singapore admiralty law – i.e. the claimant has the ability to commence an action in rem against 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. The “relevant person” refers to the person who would be liable on the claim who was when the action arose, the owner or charterer of, or in possession or in control of, the ship.

An action in rem must be begun by writ and the form of the Writ is stipulated as Form 159 (found at the back of the Rules of Supreme Court). A writ is valid for 12 months and

has to be served within that time – unless an extension of time is sought and given before the expiration of the 12 months. The form for the Warrant of Arrest is stipulated as Form 160. Before a warrant to arrest is issued, the party applying for the warrant must apply for (a) a Request in Form 161 requesting the issue of the warrant; and (b) procure a search to be carried out in the record of caveats to ascertain that there is no caveat against arrest in force in respect of the property intended to be arrested. Further, an undertaking in writing, satisfactory to the Sheriff, to pay the fees and expenses of the Sheriff must be lodged in the Sheriff's office. An affidavit is required to be made by the party (or his agent) setting out the particulars of claim and reasons for the arrest. It should be noted that the Singapore High Courts are very particular about the issue of material non-disclosure in respect of any arrests and will set aside and award damages against any arrests which are subsequently found to have been obtained by withholding or non-disclosure of material information / details. Warrants for Arrest can be obtained after office hours in the event that it is a matter of urgency as there are Duty Registrars that are on call for such situations. Arrests are carried out by solicitors of law firms under the auspice of the Sheriff's authority. Once the arrest is carried out (by sticking the relevant documents to the vessel's mast), the arrest has to be registered with the Maritime Port Authority of Singapore (MPA) so that the coastguard can keep watch on the vessel. This greatly reduces the possibility of the vessel breaking arrest.

There is a specific and separate procedure for claims in relation to collisions whereby parties must file in the appropriate registry a document in 2 parts (referred to as a preliminary act) containing a statement. Details of what are to be included in the statement are set out in Order 70 r. 17(2)(i) – (iv) and relate to the specific details of the collision – including weather, sea conditions and positions / bearings and headings of the vessels, and speeds / visibility of the vessels, etc.

Approximately the costs of obtaining an arrest in Singapore – from beginning to end – working on the basis that the vessel was released after the claim is settled or guarantee put up (i.e. no trial), is in the region of S\$8,000 – S\$15,000, depending on the complexity of the issues, the time of the arrest and also the law firm used.

ARREST PROCEDURE IN ENGLAND & WALES

Arresting a ship in England and Wales requires the commencement of court proceedings detailing the particulars of the claim and applying for a warrant of arrest through the admiralty jurisdiction to ensure that the vessel is under the control and possession of the Admiralty Marshal pending the resolution of the dispute.

An arrest can take place within a matter of hours depending on the urgency and availability of court officers to effect the arrest. Court papers can be filed at the local District Registry court before being transferred to the High Court in London so that the matter can be overseen by the Admiralty Court, Queen's Bench Division. Prior to issuing the arrest and claim the arrestor should check the Register to determine whether there is a caution against arrest in force with respect to the ship in question by contacting the Admiralty and Commercial Registry.

The arrestor must ensure that its claim in rem includes the warrant of arrest (in form ADM9) which is accompanied by an admiralty claim form (ADM1) detailing the particulars of the claim, together with a signed declaration (ADM5) confirming the ownership of the ship, the level of security sought and confirmation that the claim has not been satisfied. A signed undertaking (ADM4) from the solicitor must also be submitted to cover the Admiralty Marshal's expenses in serving the arrest warrant and the claim form. Service of the arrest and claim form is traditionally effected by attaching the papers to the mast of the ship. Details of court procedures are contained in the Civil Procedure Rules Part 61.5 and accompanying Practice Direction.

Maritime claims subject to section 20(2) of the Supreme Court Act 1981 are within the admiralty jurisdiction of the High Court and in respect of which a vessel may be arrested. Typical claims that could result in an arrest include sums owed pursuant to a mortgage agreement; salvage costs; unpaid crew and master wages; goods supplied and services rendered to a ship; personal injury and loss of life; and collision claims.

It is not possible to arrest a ship if it is no longer owned by the party that would be subject to the claim in personam, save for an arrest that is within the small category of maritime liens. Maritime claims are therefore dependant upon the ownership of the ship and the party who was the owner at the time that the cause of action arose is still the owner at the time of the arrest. On the other hand, maritime liens can be enforced irrespective of ownership and include claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia. The latter items are claims in which the ship is pledged as security in return for money advances and usually in times of distress. Today they are uncommon as a result of modern mortgage agreements.

If it transpires that the ship connected to the cause of action has changed ownership and the claim is not a maritime lien, the arrestor could arrest a sister ship. The arrestor can do so as long as the sister ship was owned by the same party who was the owner of the relevant ship at the time the cause of action arose.

Similar to Singapore time limits, the warrant of arrest is valid for 12 months but may only be executed if the claim form has been served or remains valid for service at the date of execution.

The costs of executing arrest will depend on the nature, complexity and size of the claim. For example, a £50,000 claim will incur a court issue fee of £630 whereas claims exceeding £300,000 will be subject to a fixed fee of £1,530. All claims will be charged the same arrest fee, which is currently £200. Overall costs from preparing the arrest papers and applying to the court for an order that the ship be appraised and sold would in the region of £10,000 - £15,000. Costs will be significantly higher if the arrest was contested by the owner.

A COMPARISON

The influence of English common law in the Singapore admiralty system is self evident and the procedures remain alike. The concept of beneficial ownership is also apparent in both systems to ensure that a claim in rem can only be effected for most maritime claims if the arrestor was able to pursue a claim in personam. Both the English and Singaporean systems employ English common law to determine the priority of maritime claims and as such, parties would be comfortable using both systems and the main priority would be the sea route of the vessel and its location. One's claim would not be affected as it would be in other jurisdictions with differing priorities.

There is a general obligation in the England and Wales to disclose information where possible and cost sanctions rather than award of damages are applicable if any party fails to provide sufficient information. In Singapore, the allegation of material non-disclosure in obtaining an arrest is taken very seriously. If such material non-disclosure is established, arrests can be set aside and damages can be awarded.

Unlike Singapore, there is no separate procedure in for arrests in connection with collisions. The procedure in England and Wales is uniform and fairly straightforward without the requirement of a hearing before the arrest takes place. In Singapore, an arrest warrant will not be granted without an audience with the Registrar on duty. The claim and full disclosure has to be presented to the Registrar before an arrest warrant can be obtained.

Both the English and Singaporean procedure / application for arrest are regimented in that template forms are used and strict steps have to be followed to procure an arrest.

By

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Juanita May Low

Lily Chan