

SHIPOWNER'S LIABILITY FOR WRECK REMOVAL UNDER SINGAPORE LAW

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Introduction

How does Singapore deal with wreck removals?

A “wreck” is defined as (a) a sunken or stranded ship; (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken (see section 2 of the Merchant Shipping (Wreck Removal) Act (“**Wreck Removal Act**”)) and includes “*jetsam(s), flotsam(s), lagan and derelict found in or on the shores of the sea or any tidal water*” (see section 145 of the Merchant Shipping Act).

When dealing with maritime claims such as wreck removals, one of the pertinent questions by shipowners is whether liability can be limited.

Limitation of Liability in Wreck Removal Claims

Prior to 2005

Before 2005, a shipowner could not enjoy any limitation of liability if there was a statutory debt arising from wreck removal, but the claim by an owner of damages against the vessel that caused it to sink would be subject to limitation of liability.

This was provided for in section 295 of the Merchant Shipping Act (1970) (“**1970 MSA**”) (now section 136), which used to include the following provisions:

“(4) For the purposes of subsection (1) of this section, where any obligation or liability arises —

(a) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned or of anything on board such a ship; or

(b) in respect of any damage (however caused) to harbour works, basins or navigable waterways, the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of that subsection, and the obligation or liability as a liability to damages.

(8) The Minister may by order to be published in the Gazette make provision for the setting up and management of a fund, to be used for the making to the harbour or conservancy authority of payments needed to compensate it for the reduction in accordance with paragraph (a) of subsection (4) of this section, of amounts recoverable by it in respect of the obligations and liabilities mentioned in that paragraph and to be maintained by contributions from the harbour or conservancy authority raised and collected by it in respect of vessels in like manner as other sums so raised by it; and any such order may contain such incidental and supplementary provisions as appear to the Minister to be necessary or expedient.”

[emphasis added]

Sections 295(4) and 295(8) of the 1970 MSA were repealed in 1981 following Singapore’s accession to the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships 1957 (“**1957 Convention**”) with a reservation that the shipowner should not be entitled to limit liability for the claims covered by Article 1(1)(c), which included, among others, wreck removal claims.

Singapore’s legislative aim in making the reservation and repealing the said provisions was to make the shipowner wholly liable for the cost of wreck removal and of repairs to facilities at the Port of Singapore Authority (which then existed as a statutory body).¹

This was extensively discussed in *The “Seaway”* [2004] SGCA 57, which clarified that claims for wreck removal were treated in the same manner as claims for damage to harbour works, basins or navigable airways and that the shipowner is to be wholly liable for the cost of wreck removal and of repairs to facilities at the Port of Singapore Authority whenever there is an accident in the port authority’s waters.²

2005

In 2005, Singapore became a party to the Convention on Limitation of Liability for Maritime Claims in 1976 (“**LLMC 1976**”) with reservations made to the articles on wreck and cargo removal expenses.

Singapore subsequently acceded to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, which raised the limits of liability of a shipowner for maritime claims covered under the LLMC 1976.³

¹ *The “Seaway”* [2004] SGCA 57 at [10] and [15]; *Singapore Parliamentary Debates, Official Report* (6 March 1981), vol 40 at col 322.

² *The “Seaway”* at [50] and [60].

³ Part 8; s 134 of the MSA. See also *Implications of Singapore’s Implementation of the Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims, 1976* [2020] SAL Prac 12 at [9].

Article 2 paragraph 1(d) and Article 2 paragraph 1(e) of the LLMC 1976 generally do not apply in Singapore (“**Excluded Articles**”):

“Subject to Articles 3 and 4, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability: ...

*(d) **claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;***

*(e) **claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship ...***

[emphasis added]

Article 2, paragraph 2, of the LLMC 1976 goes on to clarify that:

“Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.”

After Singapore became a party to the LLMC 1976, the Merchant Shipping Act was amended to repeal the whole of Part VIII (which included the pre-2005 version of section 136 of the Merchant Shipping Act and section 136 was replaced) with the following:

“136.—(1) Subject to this Part, the provisions of the Convention, other than paragraph 1(d) and (e) of Article 2 of the Convention, shall have the force of law in Singapore.

(2) For the purposes of paragraph 3 of Article 6 of the Convention, it is hereby provided that a claim in respect of damage to harbour works, basins, waterways or aids to navigation has priority over any other claim under paragraph 1(b) of that Article.

(3) Notwithstanding paragraph 2 of Article 1 of the Convention, the right to limit liability under the Convention applies in relation to any ship whether seagoing or not, and “shipowner” in that paragraph has a corresponding meaning.”

This meant that there was no limitation of liability for maritime claims in respect of wreck removal, regardless of the basis of the liability.

2017, 2019 and 2021

Since then, section 136 had minor clarificatory and/or editorial amendments in 2019 and 2021. Section 136 of the Merchant Shipping Act, which retains the clarity of the Excluded Articles currently provides as follows:⁴

⁴ See also Halsbury’s Laws of Singapore – Shipping at [220.0276], specifically excluding the claims under the Excluded Articles.

- (a) Section 136(1) of the Merchant Shipping Act states that:
“*Subject to this Part, the provisions of the Convention, **other than paragraph 1(d) and (e) of Article 2 of the Convention, have the force of law in Singapore.***”
[emphasis added]
- (b) Section 136(2) of the Merchant Shipping Act goes on to explain that:
“*In paragraph 2 of Article 2 of the Convention —
(a) the reference to paragraph 1 is a reference to paragraph 1(a), (b), (c) and (f) of that Article; and
(b) the **reference to paragraph 1(d), (e) and (f) is a reference to paragraph 1(f) of that Article.***”
[emphasis added]

Therefore, the general rule is that wreck removal claims are not limitable in Singapore.

Exceptions to the General Rule

In 2017, the Singapore parliament passed the Merchant Shipping (Wreck Removal) Bill to give effect to the Nairobi International Convention on the Removal of Wrecks (the “**Nairobi Convention**”) (which was adopted by the International Maritime Organization in May 2007 and entered into force in April 2015).⁵

As explained by Mr Khaw Boon Wan at the second reading of the Bill on 8 May 2017, the Nairobi Convention, among other things: (a) provides a set of international rules for state parties to remove wrecks in their exclusive economic zones that pose a danger to navigation or to the marine environment; (b) allows state parties to recover the costs of locating, marking and removing wrecks from the shipowners; and (c) requires state to parties to certify that insurance or other forms of financial security for such liability is in force for ships under their registry.⁶

The Wreck Removal Act codified the limitation of liability under the Excluded Articles for wreck removal claims brought by the Director of Marine. Section 12 of the Wreck Removal Act states that:

“*If a registered owner of a ship incurs liability under section 10, that liability may be limited in accordance with and in the manner provided in Part 8 of the Merchant Shipping Act 1995, **as if paragraph 1(d) and (e) of Article 2 of the Convention on Limitation of Liability for Maritime Claims, 1976 has the force of law in Singapore.***” [emphasis added]

⁵ *Singapore Parliamentary Debates, Official Report* (8 May 2017), <<https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=08-05-2017>> (accessed 21 August 2024) (Mr Khaw Boon Wan, Coordinating Minister for Infrastructure and Minister for Transport).

⁶ *Singapore Parliamentary Debates, Official Report* (8 May 2017), <<https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=08-05-2017>> (accessed 21 August 2024) (Mr Khaw Boon Wan, Coordinating Minister for Infrastructure and Minister for Transport).

The liability referred to under section 10 refers to costs incurred by the Director of Marine for locating, marking and removing the wreck.

Conclusion

Therefore, a shipowner can only limit its liability for wreck removal claims if they were brought by the Director of Marine for costs that the Director incurred in locating, marking and removing the wreck. Otherwise, wreck removal claims in Singapore would not be limitable.

Further information

Should you have any questions on how this article may affect you or your business, please get in touch with the following persons:

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