

## Indian Admiralty Bill - Important Update

9th March 2018

On 24 July 2017, the Upper House of the Parliament of India passed the Admiralty (Jurisdiction and Settlement of Maritime Claims) Bill, 2017. The President of India has given assent to the Bill. The Bill is now the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and Mr. Harsh Pratap, Mumbai based Advocate from HP Law chambers, advises that the Act will come into force from 1 April 2018.

The new Act repeals old statutes such as (a) The Admiralty Courts Act, 1861; (b) The Colonial Courts of Admiralty Act, 1890; (c) The Colonial Courts of Admiralty (India) Act, 1891; (d) The Provisions of Letters Patent, 1865, in so far as it applies to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts.

### Key points from the Act are set out below:

1. In addition to the exercise of admiralty jurisdiction by the High Courts of Bombay, Calcutta, Madras, Gujarat, the Act extends admiralty jurisdiction to the High Courts of Karnataka, Gujarat, Orissa, Kerala and Hyderabad. The Act allows the Central Government to also extend the admiralty jurisdiction to any other High Court by notification.
2. The Act appears to restrict the admiralty jurisdiction of a Court only up to the territorial waters of its respective jurisdiction. For example, a High Court can only pass an Order for arrest of the vessel which is found within the territorial waters of its respective state. However, the Act is not clearly worded on this and it is expected that the Courts will be called upon to determine issues of jurisdiction arising from this change.
3. A vessel has been defined as including any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel. This is a welcome change as the definition is quite wide and clear.
4. Section 4 of the Act sets out a list of Maritime Claims which is similar to Article 1 of the Arrest Convention, 1999.
5. Although the Act is not entirely clear, it appears that now a vessel cannot be arrested when it is owned by an entity who is liable for the claim *in personam* as a time charterer or voyage charterer (Article 3 (2) of the Arrest Convention, 1999).
6. Section 6 clarifies when precisely a High Court can exercise admiralty jurisdiction by an action *in personam* and also provides that a claim *in personam* exists for most of the maritime claims.
7. The Act provides that the Admiralty Court can entertain a claim in respect of damage, loss of life or personal injury arising out of a collision only if (a) the cause of action arose wholly or in part in India, and (b) the entity liable for the claim carries on business, resides or personally works for gain in India. There is a proviso that such an action can also be entertained in claims where there is more than one Defendant, and where one of the Defendants does not meet the aforesaid criteria, if the Defendant is made a party with the leave of the Court or each of the Defendants acquiesces to the action.
8. The Act gives a list of the categories of Maritime Liens and their priority which is broadly:
  - a. Master and crew wages (including repatriation and social insurance contributions);

- b. Loss of life and personal injury claims;
  - c. Salvage;
  - d. Port, canal, waterways dues, pilotage and statutory dues; and
  - e. Tort claims for loss or damage due to operation of the vessel (other than for loss or damage to the cargo and containers carried on the vessel).
9. The Act provides that the maritime liens for wages, repatriation and social insurance contribution shall stand extinguished after a period of two years whereas the other types of maritime liens shall stand extinguished after a period of one year. These time limits do not apply where the vessel is sold earlier than the above time limits by judicial sale as the liens will be extinguished upon judicial sale
10. In addition to requiring the Claimant seeking an arrest to furnish a written undertaking for damage and losses sustained due to the arrest, there is now a provision for counter security (cash deposit, bank guarantee, etc.) to be demanded by the Court from the Claimant. The quantum of that security would be at the Court's discretion.

#### Local lawyer, Harsh Pratap of HP Law comments:

*"Whilst every new law faces certain teething problems, we expect this Bill to face substantially more issues because we believe that not only is the bill unclear on several aspects, but there are several contradictions which have not been fully addressed. It will be interesting to see how the Courts interpret the provisions."*

With thanks to Harsh Pratap of HP Law, Mumbai, for the above update.

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