

Arrests of ships for claims are easy to pursue in SA

SOUTH Africa remains an attractive jurisdiction within which to enforce civil maritime claims.

Ships may be arrested in respect of claims to be pursued in South Africa or elsewhere for the likes of damage to cargo, unpaid crew wages and ship mortgage debts.

In addition, it is possible to arrest what is referred to as an “associated ship” instead of the ship in respect of which the maritime claim arose.

This broadens the potential ambit of ships that may be arrested.

An associated ship is one which is owned at the time of arrest by a company controlled by a person who controlled the ship in respect of which the claim arose.

The entitlement to arrest an as-

SPONSORED COLUMN

Andrew
Clark

LAW MATTERS



sociated ship is a unique feature of South African admiralty law.

A further unique feature is what is referred to as a “security arrest”. In such an arrest, it is possible to arrest a ship in South Africa in order to obtain security for foreign legal proceedings, such as arbitration proceedings in London.

In most instances, once a ship has been arrested, security is fur-

nished for the claim by the shipowner’s Protection and Indemnity Club or by the shipowner itself by way of a bank guarantee, and the ship is released from arrest.

The advantage to the claimant is that it obtains pre-judgment security against which it can execute upon any judgment or settlement agreement in its favour.

This is a significant advantage to the maritime claimant, because in an ordinary, non-maritime claim, the claimant is not entitled to pre-judgment security, and proceeds in the litigation at risk that it may not be able to successfully execute on a judgment in its favour, as the defendant may have no assets by then.

There are times when security is not furnished on behalf of the owner after a ship has been arrested. In those circumstances, the claimant may apply to court for an order for the sale of the vessel under section 9 of the Admiralty Jurisdiction Regulation Act 105 of 1983.

Once the vessel has been sold by judicial auction, a fund is established under the control of the Registrar of the High Court and a referee is appointed to adjudicate upon claims of creditors against the fund.

South Africa has a number of ports at which ships may be arrested. Most arrests take place in Durban and Richards Bay, followed by Cape Town and Saldanha Bay.

South Africa is generally regarded

as an “arrest-friendly” jurisdiction, but it is important to note that a number of requirements need to be met in order to proceed with a ship arrest, be it for South African proceedings or foreign proceedings, and that if the claimant arrests without reasonable and probable cause, they may face a claim for wrongful arrest.

Caution does therefore need to be observed in arresting ships.

● Clark is a partner at Cox Yeats Attorneys and the head of the maritime law team. He can be reached at 031 536 8500 or aclark@coxyeats.co.za.

COX | YEATS
attorneys