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ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017



April 1st 2018 is going to be the most remarkable day in the history of Shipping in India. Finally the new Admiralty Bill has received the assent of the President and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall come into force on the said date, after repealing an almost 150 year old Acts namely, Admiralty Court Act, 1861, the Colonial Courts of Admiralty Act, 1890, Colonial Courts of Admiralty (India) Act, 1891 and the Provisions of the Letters Patent, 1865 which were introduced by the British to bring uniformity with their Admiralty Laws.

With the vast growing of international trade, the Shipping Industry has changed a lot in the last many years and the new decision and effort of the law framers to modify and amend the existing Admiralty Law in India is more welcoming and a boon to all those who are part of this Industry. Moreover, the provisions of the new Act are framed in such a way as to regularise many issues, including conferring the admiralty Jurisdiction to various high courts in India. The old Colonial Court of Admiralty Act, 1891 and the Admiralty Court Act, 1861 established / conferred the Admiralty Jurisdiction upon the High Court of Bombay, Madras and Calcutta. However, the new Admiralty Act, 2017, confers the Admiralty Jurisdiction not only to these above mentioned

Courts but it also extends to the High Courts of Karnataka, Gujarat, Orissa, Kerala, Hyderabad (for the state of Telangana), Andhra Pradesh etc.

Further, these Courts are also given the power to arrest a vessel within its jurisdiction, under Section 5 of the Act, for the purpose of providing security against a Maritime Claim where the court has the reason to believe that -

- The person who owned the Vessel at the time when the Maritime Claim arose is liable for the claim and is the owner of the Vessel when the arrest is effected;
- The demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected;
- The claim is based on a mortgage or a charge of the similar nature on the vessel;
- The claim relates to the ownership or possession of the vessel;
- The claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in Section 9

However, no Vessel shall be arrested if the



You have brains in your head, you have feet in your shoes, you can steer yourself any direction you choose

-Dr.Seuss



claim/dispute is regarding the possession or ownership of a vessel or the Ownership of any share therein. Under this Act, the term "Vessel" includes any Ship, Boat, Sailing Vessel or other description of vessel used or constructed for use in navigation by water, whether propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an offshore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such vessel. Further as per Section 11 of the Act, the Claimant who initiate a legal proceeding to arrest a vessel, is required to provide an unconditional undertaking to pay such amount/money as damaged or as a security for any loss or damage which may be

incurred by the Defendant as a result of wrongful / unjustified arrest.

The list of Maritime Claims upon which the High Courts may exercise its jurisdiction to hear and decide against any vessel is narrated under Section 4, in detail and the priority of the claim is determined under Clause 10 starting from the claim on the vessel where there is a maritime lien followed by mortgages and other claims. The priority of Maritime Lien is also mentioned in Clause 9 starting with Claim for wages and other sums due to Master and other members, followed by the claims in respect of loss or life or personal injury, claims for reward for salvage,

claims for Ports and Claims based on tort.

However, for the provisions that are not specified in the Act, the Court shall apply the provisions the Code of Civil Procedure Code, 1908.

Since there is a sincere effort to modify the existing Admiralty Law, after a period of more than 150 years, the various sectors of Individuals and companies in this Shipping Sector are likely to find this new Act, very useful to settle the vast area of dispute arising in this Shipping Industry every day.



The Revamped Companies (Amendment) Act, 2017

Since the beginning of 2018 several seminars, conferences and workshops have been held all over the country, to familiarize and equip stakeholders, entrepreneurs and investors on the background and intent of

many of the alterations to the Companies Act 2013.

One such engaging seminar was conducted by The Cochin Chamber of Commerce & Industry in association with

PricewaterhouseCoopers (PwC), India, on the Companies Amendment Bill, 2017 and the Insolvency and Bankruptcy Code, 2016. Ms. Deepa Bhatia Chirayath, Entity Governance and Compliance Tax & Regulatory - PwC,

India addressed the 1st part of the seminar on the Companies (Amendment) Act, 2017["Act"]; The crux of the seminar was to focus on various amendments in the Companies Act and its impact on the business industry with new rules coming into effect through notifications.

In this article we shall mainly concentrate on the key inputs from the seminar with regard to major amendments to the Act.

To begin, the changes in the definitions can be seen in Section 2 of the Act. Some definitions that require attention are that of 'Associate Company', 'Holding Company' & 'Subsidiary Company'. To determine if a company is an associate company one will now need to examine the factor of 'significant influence' and not merely 'total share capital'. The definition of holding company now includes a 'Body Corporate'. While the definition of a subsidiary company is now dependant on the criteria of 'control' which is determined by the 'voting power' and not by 'share capital'.

The definition of 'Related Party' is given a broader interpretation with its replacement of the use of 'Body Corporate' instead of Company and would thus include ventures in its ambit.

In the region of Transactions & Fund raising, the term Transaction will need to be looked into in relation to Section 188 of the Act, in addition the rights of 'Beneficial Interest' with regard to transfer of voting rights, transfer of dividends, pledge of shares etc which is yet to be notified will also play a vital role. Another aspect which is yet to be notified is the Register of Significant Beneficial Owner, once notified this will also add to the compliance requirements on the part of the Body Corporate.

Further there are amendments to the concept of Key Managerial Personnel. The provisions on Loans to Directors, is yet to be notified wherein a special resolution will be required for approval of such loans in applicable circumstances.

There are also certain logistical amendments, like for instance, the residency requirements for 'Resident Director' are to be computed on the current financial year, as opposed to the previous calendar year that was in use. Further in Section 149 it has been stated that a person who has stayed in India for a minimum period of 182 days in the previous financial year shall be considered as a resident.

With regard to 'Net Worth' as per the definition while calculating net worth, debit and credit balance in the profit and loss account, are to be considered.

In relation to 'Small Company' under Section

2(85) the limit up to which maximum paid up share capital and turnover of a small company can be prescribed has been increased from INR 5 crore and INR 20 crore to INR 10 crore and INR 100 crore, respectively. There is also a clarification provided in relation to computing turnover, wherein profit and loss account of immediately preceding financial year shall be considered.

As per Section 3A of the Act, all members shall be severely liable in case the company carries on business for more than 6 months while the number of members is reduced below 7 in case of a public company or 2 in case of a private company.

According to the newly added provisions the Registrar will reserve the name of a new company for 20 days only under Section 4. Further the timeline for having a registered office by a new company and reporting of shifting of registered office to the Registrar has been increased from 15 days to 30 days in accordance with Section 12.

Section 21 with regard to Authentication of Documents states that documents and contracts can be authenticated by KMP or an officer or employee of the company duly authorized by the Board.

There are major changes in relation to the Process of Private Placements contained in Section 42.

Section 73 on Acceptance of Deposits and Section 74 on repayment schedule of Deposits have also undergone changes. The important factor is the penal aspect brought in to deal with contraventions, which is seen in Section 76A of the Act, which proposes a fine not less than INR 1 crore which may extend up to INR 10 crore on the Company and in relation to the contravening Officer, imprisonment up to 7 years and a fine not less than INR 25 lakh, which may extend up to INR 2 crore or both.

The requirements for filing 'Annual Returns' under Section 92 have also been thoroughly amended.

Once Section 96 is notified it will be a welcomed change, as the AGM would not need to be held at the registered office of the company within India and could even be held abroad, subject to approval by majority votes.

Under the amended Section 134 dealing with Board Reports - Financial Statements / Board Reports can now be signed by the CEO, who need not be a Director of the Company.

There is a clarification amendment with regard to Section 135 on Corporate Social Responsibility (CSR) wherein, net worth, turnover or net profit of immediately preceding financial year shall be considered for CSR computation and applicability. Further in Section 384 it is provided that provisions of section 135 shall

also apply to Foreign Companies.

The amendment to Section 164 of the Act on Disqualification of Directors, ensures that a newly appointed Director of a company in default shall not be disqualified for a period of 6 months from his appointment.

In Section 165 the 'Maximum Directorship' has been capped at twenty Companies, which does not include dormant companies.

It is also a sigh of relief to the existing Directors of the Company, as the mandatory requirement of Filing Form DIR-11 by a Director who has resigned from the Company have been done away with in Section 168 of the Act.

Under Section 180 there are restrictions on the powers of the Board in relation to borrowing money without obtaining the share holders approval.

The onus of approving 'Managerial Remuneration' in relation to Public Limited Companies now rests with the shareholder rather than the Central Government under Section 197.

In relation to Section 366 on Companies capable of being registered the requirement of having 7 members for conversion has now been reduced to 2 of more members.

There is a Fee for delay in filing requirements envisaged under Section 403 of the Act.

As per Section 441 of the Act the Tribunal has been given the power to compound offences that are punishable with fine as well as imprisonment or both.

In brief there are over 45 notable amendments to the Act of 2013, with another 40 or so, yet to be notified; all of these amendments will impact the working of a Company and its Directors, with the aim of strengthening corporate governance, while stringently dealing with defaulting companies. Presently the amendments have come under criticism from stakeholders due to their ambiguity, which has led to the issuance of various clarificatory amendments. Further, though the intent of the amendments are to ensure the ease of doing business, and to promote start up's, veterans in the industry, who are closely related to the overseeing company affairs, have eyed the amendments as expensive and cumbersome to fulfilling compliance requirements, thereby thwarting business growth. Only time will tell if the intent of the legislature transcends into effectively accomplishing its purpose.



TIPS & HOT NEWS

10 Tips For Staying Safe In The Summer Heat

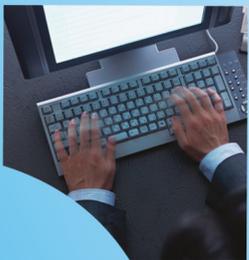
As we move closer to vacation time many of us will be planning to make the most of the hot weather. If you're thinking about your next barbecue or day at the beach then you'll also need to stock up on the sunscreen and get prepared to stay safe in the heat. Here are some tips on how to protect yourself in hot weather and avoid heat-related illness.

1. Drink more fluids, but make them non-alcoholic. This is important whether you are outside being active or simply relaxing in the sun. Also, don't wait until you're thirsty to drink.
2. As well as avoiding alcohol, also avoid sugary drinks, as both can actually cause you to lose more body fluid. And very cold drinks, because they can cause stomach cramps.
3. When it's very hot, stay indoors and, if possible, somewhere air-conditioned. If your home does not have air conditioning, go to the shopping mall or public library – even a few hours spent in air conditioning can help your body stay cooler when you go back into the heat.
4. If you have to head outside, limit your time outdoors to morning and evening hours if you can.

5. Electric fans can help you feel cooler and more comfortable, but when the temperature gets really high – think 95 °F / 35 °C and above – fans will not prevent heat-related illness. Instead, take a cool shower or bath, or move to an air-conditioned place to reduce body temperature.
6. Wear lightweight, light-coloured, loose-fitting clothing to help you keep cool.
7. Protect yourself from the sun by wearing sunglasses and a wide-brimmed hat, which will also keep you cooler, and by putting on sunscreen of SPF 15 or higher that offers "broad spectrum" and "UVA/UVB protection".
8. NEVER leave anyone or any animals in a closed, parked vehicle.
9. Cut down on exercise. If you must exercise, drink two to four glasses of cool, nonalcoholic fluids each hour. A sports drink can also replace the salt and minerals you lose in sweat.
10. During the heat try to rest often in shady areas.

Although anyone at any time can suffer from heat-related illness, some people are at greater risk than others. For more information contact a medical professional.

– Huffington Post



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