

# PROPOSED AMENDMENTS TO BE SUBMITTED AT 2010 AGM

[Note: words in bold type in square brackets indicate proposed omissions from the existing Act. Words underlined with a solid line indicate proposed insertions in the existing Act. The footnotes identify the memoranda in which the proposed amendments are considered]

## ADMIRALTY JURISDICTION REGULATION ACT 105 OF 1983

(Afrikaans text signed by the State President)

*[Assented To: 8 September 1983]  
[Commencement Date: 1 November 1983]*

**as amended by:**

Admiralty Jurisdiction Regulation Amendment Act 87 of 1992  
General Law Amendment Act 139 of 1992  
[with effect from 7 August 1992]  
Wreck and Salvage Act 94 of 1996  
[with effect from 1 February 1997]  
South African Maritime Safety Authority Act 5 of 1998  
[with effect from 1 April 1998]  
Sea Transport Documents Act 65 of 2000  
[with effect from 20 June 2003]  
Judicial Matters Amendment Act 66 of 2008

### ACT

To provide for the vesting of the powers of the admiralty courts of the Republic in the provincial and local divisions of the **[Supreme] High** Court of South Africa, and for the extension of those powers; for the law to be applied by, and the procedure applicable in, those divisions; for the repeal of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, in so far as it applies in relation to the Republic; and for incidental matters.

### ARRANGEMENT OF SECTIONS

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2. Admiralty jurisdiction of **[Supreme] High** Court
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## SCHEDULE

### 1. Definitions

- (1) In this Act, unless the context indicates otherwise -

**“admiralty action”** means proceedings in terms of this Act for the enforcement of a maritime claim whether such proceedings are by way of action or by way of any other competent procedure, and includes any ancillary or procedural measure, whether by way of application or otherwise, in connection with any such proceedings;

[Definition of “admiralty action” substituted by s. 1 of Act 87/92]

**“cargo”** includes any goods carried or to be carried or which were or ought to have been carried in a ship<sup>1</sup>

**“container”** means a container for the carriage of goods by sea, including any such container which is empty or otherwise temporarily not being used for such carriage;

[Definition of “container” inserted by s. 1 of Act 87/92]

**“fund”** means a fund mentioned in section 3 (11);

[Definition of “fund” inserted by s. 1 of Act 87/92]

**“maritime claim”** means any claim, which by reason of its nature is a maritime matter<sup>2</sup>, for, arising out of or relating to -

- (a) the ownership of a ship or a share in a ship<sup>3</sup>;
- (b) the possession, delivery, employment or earnings of a ship;
- (c) any agreement for the sale of a ship or a share in a ship for any agreement with regard to the ownership, possession, delivery, employment or earnings of a ship<sup>4</sup>;
- (d) any mortgage, hypothecation, right of retention, pledge or other charge on or of a ship, and any bottomry or respondentia bond;
- (e) damage caused whether by collision or otherwise by or to a ship, or part of a ship or to the whole or any part of the equipment, furniture or stores of a ship or by or to the whole or any part of bunkers, goods or containers carried in or on or being loaded on or off the ship [whether by collision or otherwise]<sup>5</sup>;

<sup>1</sup> Memorandum III para 1; Memorandum VI para 11; Memorandum VII para 4.11

<sup>2</sup> Memorandum II para 3; Memorandum IV para 6; Memorandum VI para 1; Memorandum VII para 4.1

<sup>3</sup> In regard to subsections (a), (b), (c), (d), (e), (h), (i) and (m), see Memorandum IV paras 7 to 9; Memorandum VI para 5; Memorandum VII para 4.5

<sup>4</sup> Memorandum VI para 4.5

<sup>5</sup> Memorandum III para 3; Memorandum VI para 6

- (f) loss of life or personal injury caused by a ship or any defect in a ship or occurring in connection with the employment of a ship;
- (g) loss of or damage to goods (including the baggage and the personal belongings of the master, officers or seamen of a ship) carried or which ought to have been carried in a ship, whether such claim arises out of any agreement or otherwise;
- (h) the carriage of goods in a ship, or any agreement for or relating to such carriage<sup>6</sup>;
- (i) any container **and**<sup>7</sup> or any agreement relating to any container;
- (j) **the use, hire, employment or operation of a ship or ships or part thereof, [any charter party or the use, hire, employment or operation of a ship]**, whether such claim arises out of **any charterparty or other** agreement or otherwise<sup>8</sup>;
- (k) salvage, including salvage relating to any aircraft and the sharing or apportionment of salvage and any right in respect of property salvaged or which would, but for the negligence or default of the salvor or a person who attempted to salvage it, have been salvaged, and any claim arising out of the Wreck and Salvage Act, 1996;  

[Para. (k) substituted by s. 25 of Act 94/96]
- (l) towage or pilotage;
- (m) the supplying of goods or the rendering of services for the employment, maintenance, protection or preservation of a ship<sup>9</sup>;
- (n) the rendering, by means of any aircraft, ship or other means, of services in connection with the carrying of persons or goods to or from a ship, or the provision of medical or other services to or in respect of the persons on being taken to or from a ship;
- (o) payments or disbursements by a master, shipper, charterer, agent or any other person for or on behalf of or on account of a ship or the owner or charterer of a ship<sup>10</sup>;
- (p) the remuneration of, or payments or disbursements made by, or the acts or omissions of, any person appointed to act or who acted or failed to act -
  - (i) as an agent, whether as a shipper, clearing, forwarding or other kind of agent, in respect of any ship or any goods carried or to be carried or which were or ought to have been carried in a ship; or
  - (ii) as a broker in respect of any charter, sale or any other agreement relating to a ship or in connection with the carriage of goods in a ship or in connection with any insurance of a ship or any portion or part thereof or of other property referred to in section 3 (5); or

<sup>6</sup> Memorandum II para 5; Memorandum IV para 8

<sup>7</sup> Memorandum IV para 8; Memorandum VI para 2; Memorandum VII para 4.2

<sup>8</sup> Memorandum III para 4

<sup>9</sup> Memorandum II para 6; Memorandum IV para 9

<sup>10</sup> Memorandum III para 7; Memorandum IV para 10; Memorandum VI para 3; Memorandum VII para 4.3

- (iii) as attorney or adviser in respect of any matter mentioned in subparagraphs (i) and (ii)<sup>11</sup>;
- (q) the design, construction, repair or equipment of any ship;
- (r) dock, harbour or similar dues, and any charge, levy or penalty imposed under the South African Maritime Safety Authority Act, 1998, or the South African Maritime Safety Authority Levies Act, 1998;  
[Par. (r) substituted by s. 55 of Act 5/98]
- (s) the employment of any master, officer or seaman of a ship in connection with or in relation to a ship, including the remuneration of any such person, and contributions in respect of any such person to any pension fund, provident fund, medical aid fund, benefit fund, similar fund, association or institution in relation to or for the benefit of any master, officer or seaman;
- (t) general average or any act claimed to be a general average act;
- (u) marine insurance or any policy of marine insurance, including the protection and indemnity by any body of persons of its members in respect of marine matters;
- (v) the forfeiture of any ship or any goods carried therein or the restoration of any ship or any such goods forfeited<sup>12</sup>;
- (w) the limitation of liability of the owner of a ship or of any other person entitled to any similar limitation of liability;
- (x) the distribution of a fund or escrow money or any other money or property or any portion **of a fund held by, or in accordance with the directions of, any court in the exercise of its admiralty jurisdiction, or any officer of any court exercising such jurisdiction** thereof constituting security furnished or held pursuant to:
- (i) any agreement between the parties arising out of or relating to a maritime claim; or
- (ii) the provisions of this Act or the rules promulgated in terms thereof; or
- (iii) the direction of any court in the exercise of its admiralty jurisdiction or any officer of any court exercising such jurisdiction.<sup>13</sup>
- (y) any maritime lien, whether or not falling under any of the preceding paragraphs;
- (z) pollution of the sea or the sea-shore by oil or any other substance on or emanating from a ship;

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<sup>11</sup> Memorandum II para 8; Memorandum IV para 11; Memorandum VI para 4

<sup>12</sup> Memorandum III para 5; Memorandum VI para 7; Memorandum VII para 4.7

<sup>13</sup> Memorandum III para 6; Memorandum VI para 8; Memorandum VII para 4.8

- (aa) any judgment or arbitration award relating to a maritime claim, whether given or made in the Republic or elsewhere;
- (bb) wrongful or malicious proceedings including [in respect of or involving any property referred to in section 3(5), or] the wrongful or malicious arrest, attachment or detention of any such property, wherever any such proceedings, arrest, attachment or detention took place, and whether in the Republic or elsewhere, and any loss or damage contemplated in section 5 (4)<sup>14</sup>;
- (cc) piracy, sabotage or terrorism relating to property mentioned in section 3 (5), or to persons on any ship;
- (dd) any matter not falling under any of the previous paragraphs in respect of which a court of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict c. 27), of the United Kingdom, was empowered to exercise admiralty jurisdiction immediately before the commencement of this Act, or any matter in respect of which a court of the Republic is empowered to exercise admiralty jurisdiction;
- (ee) any other matter which by virtue of its nature or subject matter is a [marine or]<sup>15</sup> maritime matter, the meaning of the expression marine or maritime matter not being limited by reason of the matters set forth in the preceding paragraphs; and
- (ff) any contribution, indemnity or damages with regard to or arising out of any claim in respect of any matter mentioned above or any matter ancillary thereto, including the attachment of property to found or confirm jurisdiction, the giving or release of any security, and the payment of interest;  
[Definition of "maritime claim" substituted by s. 1 of Act 87/92]

**“Minister”** means the Minister of Justice;

**“rules”** means the rules made under section 4 or in force thereunder;

**“ship”** means any vessel used or capable of being used on the sea or internal waters, and includes any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, floating crane, floating dock, oil or other floating rig, floating mooring installation or similar floating installation, whether self-propelled or not;

**“wreck”** includes any ship, the equipment, furniture or stores of a ship, goods bunkers and containers from a ship, or any part thereof, lost, abandoned, stranded or in distress, found on or in the sea or the shores of the sea<sup>16</sup>.

**“this Act”** includes the rules.

- (2) (a) An admiralty action shall for any relevant purpose commence -
  - (i) by the service of any process by which that action is instituted;

<sup>14</sup> Memorandum III para 7; Memorandum VI para 9; Memorandum VII para 4.9

<sup>15</sup> Memorandum III para 2; Memorandum VII para 4.10

<sup>16</sup> Memorandum II para 9; Memorandum VI para 12; Memorandum VII para 4.12

- (ii) by the making of an application for the attachment of property to found or confirm<sup>17</sup> jurisdiction;
  - (iii) by the issue of any process for the institution of an action in rem<sup>18</sup>;
  - (iv) by the giving of security or an undertaking as contemplated in section 3 (10) (a).
- (b) An action commenced as contemplated in paragraph (a) shall lapse and be of no force and effect if -
- (i) an application contemplated in paragraph (a) (ii) is not granted or is discharged or not confirmed;
  - (ii) no attachment is effected within twelve months of the grant of an order pursuant to such an application or the final decision of the application;
  - (iii) a process contemplated in paragraph (a) (iii) is not served within twelve months of the issue thereof;
  - (iv) the property concerned is deemed in terms of section 3 (10) (a) (ii) to have been released and discharged.  
[Sub-s. (2) substituted by s. 1 of Act 87/92]
- (3) (a) For the purposes of an action in rem, a charterer by demise shall be deemed to be, or to have been, the owner of the ship for the period of the charter by demise in relation to any maritime claim in respect of which the demise charterer is personally liable and which maritime claim arises from the employment of the ship by such charterer.
- (b) The provisions of (a) above shall not prevent the arrest of a ship subject to a charter by demise in respect of a claim in respect of which the owner is personally liable .  
[Sub-s. (3) added by s. 10 of Act 65/2000]

## 2. Admiralty jurisdiction of Supreme Court

- (1) Subject to the provisions of this Act each provincial and local division, including a circuit local division, of the [Supreme]<sup>19</sup> High Court of South Africa shall have jurisdiction (hereinafter referred to as admiralty jurisdiction) to hear and determine any maritime claim (including, in the case of salvage, claims in respect of ships, cargo or goods found on land), irrespective of the place where it arose, of the place of registration of the ship concerned or of the residence, domicile or nationality of its owner.
- (2) For the purposes of this Act the area of jurisdiction of a court referred to in subsection (1) shall be deemed to include that portion of the territorial waters of the Republic adjacent to the coastline of its area of jurisdiction.

<sup>17</sup> Memorandum III para 8

<sup>18</sup> For the accual of security in an action in rem, see Memorandum II para 2; Memorandum IV para 5; Memorandum VI para 15; Memorandum VII para 4.13

<sup>19</sup> Memorandum III para 9

### 3. Form of proceedings

- (1) Subject to the provisions of this Act any maritime claim may be enforced by an action in personam.
- (2) An action in personam may only be instituted against a person -
  - (a) resident or carrying on business at any place in the Republic;
  - (b) whose property within the court's area of jurisdiction has been attached by the plaintiff or the applicant, to found or to confirm jurisdiction;  
[Para. (b) substituted by s. 2 of Act 87/92]
  - (c) who has consented or submitted to the jurisdiction of the court;
  - (d) in respect of whom any court in the Republic has jurisdiction in terms of Chapter IV of the Insurance Act, 1943 (Act No. 27 of 1943);
  - (e) in the case of a company, if the company has a registered office in the Republic.
- (3) An action in personam may not be instituted in a court of which the area of jurisdiction is not adjacent to the territorial waters of the Republic unless -
  - (a) in the case of a claim contemplated in paragraph (a), (b), (j) or (u) of the definition of "maritime claim", the claim arises out of an agreement concluded within the area of jurisdiction of that court;  
[Para. (a) substituted by s. 21 of Act 139/92]
  - (b) in the case of a claim contemplated in paragraph (g) or (h) of that definition, the goods concerned are or were shipped under a bill of lading to or from a place within the area of jurisdiction of that court;
  - (c) the maritime claim concerned relates to a fund within, or freight payable in, the area of jurisdiction of that court.
- (4) Without prejudice to any other remedy that may be available to a claimant or to the rules relating to the joinder of causes of action a maritime claim may be enforced by an action in rem -
  - (a) if the claimant has a maritime lien over the property to be arrested; or
  - (b) if the owner of the property to be arrested would be liable to the claimant in an action in personam in respect of the cause of action concerned; or
  - (c) if the claim is for the vindication of the property arrested<sup>20</sup>.
- (5) An action in rem shall be instituted by the arrest within the area of jurisdiction of the court concerned of property of one or more of the following categories against or in respect of which the claim lies:

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<sup>20</sup> Memorandum III para 10

- (a) The ship, or any part of the ship [with or without its equipment, furniture, stores or bunkers]<sup>21</sup>;
  - (b) the whole or any part of the equipment, furniture, stores or bunkers of a ship;
  - (c) the whole or any part of the cargo;
  - (d) the freight or passage money or any part thereof or a right in and to such freight or passage money<sup>22</sup>;
  - (e) any container, or part thereof<sup>23</sup>, if the claim arises out of or relates to the use of that container in or on a ship or the carriage of goods by sea or by water otherwise in that container;  
[Para. (e) added by s. 2 of Act 87/92]
  - (f) a fund or any part thereof<sup>24</sup>;  
[Para. (f) added by s. 2 of Act 87/92]
  - (g) a wreck<sup>25</sup>.
- (6) Subject to the provisions of subsection (9), an action in rem, other than such an action in respect of a maritime claim contemplated in paragraph (d) of the definition of "maritime claim", may be brought by the arrest of an associated ship instead of the ship in respect of which the maritime claim arose.  
[Sub-s. 6 substituted by s. 2 of Act 87/92]
- (7) (a) For the purpose of subsection (6) an associated ship means a ship, other than the ship in respect of which the maritime claim arose -
- (i) owned, at the time when the action is commenced, by the person who was the owner of the ship concerned at the time when the maritime claim arose; or
  - (ii) owned, at the time when the action is commenced, by a person who controlled the company which owned the ship concerned when the maritime claim arose; or
  - (iii) owned, at the time when the action is commenced, by a company which is controlled by a person who owned the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose.
- (b) For the purposes of paragraph (a) -
- (i) ships shall be deemed to be owned by the same persons if the majority in number of, or of voting rights in respect of, or the greater part, in value, of, the shares in the ships are owned by the same persons;

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<sup>21</sup> Memorandum III para 11

<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> Memorandum VII para 4.15

- (ii) control of a company shall be constituted by the power to direct its affairs whether that power is expressed directly or indirectly **[a person shall be deemed to control a company if he has the power, directly or indirectly, to control the company]**<sup>26</sup>;
- (iii) a company includes any other juristic person and any body of persons, irrespective of whether or not any interest therein consists of shares.
- (c) If at any time a ship was the subject of a charterparty the charterer or subcharterer, as the case may be, shall for the purposes of subsection (6) and this subsection be deemed to be the owner of the ship concerned in respect of any relevant maritime claim for which the charterer or the subcharterer, and not the owner, is alleged to be liable.  
[Sub-s. (7) substituted by s. 2 of Act 87/92]
- (d) If the ownership of a ship at the time when the maritime claim arose has become vested in another owner who is the owner of the same ship at the time when the action is commenced, and if both owners are or were controlled at the relevant times by the same person, then the ship may be arrested as if it were an associated ship<sup>27</sup>.
- (8) Subject to the provisions of section 5(2)(d), property shall not be arrested or attached<sup>28</sup> and security therefor shall not be given more than once in respect of the same maritime claim by the same claimant.
- (9) The Minister may, by notice in the *Gazette* and subject to such conditions as he may prescribe, exclude from the provisions of subsection (6) any ship owned by a company named in the notice or by a company in which the shares are owned or controlled by a company so named.
- (10) (a) (i) Property shall be deemed to have been arrested or attached and to be under arrest or attachment at the instance of a person if at any time, whether before or after the arrest or attachment, security or an undertaking has been given to him to prevent the arrest or attachment of the property or to obtain the release thereof from arrest or attachment.
- (ii) Any property deemed in terms of subparagraph (i) to have been arrested or attached, shall be deemed to be released and discharged therefrom if no further step in the proceedings, whether such proceedings are in the Republic or elsewhere with regard to a claim by the person concerned, is taken within one year of the giving of any such security or undertaking, unless there is no further step that can be taken by such person during such period or such other time as the court may direct.<sup>29</sup>  
[Para. (a) substituted by s. 2 of Act 87/92]
- (b) That security shall for the purposes of sections 9 and 10 be deemed to be the freight or the proceeds of the sale of the property.

<sup>26</sup> Memorandum IV para 4; Memorandum VI para 17; Memorandum VII para 4.16

<sup>27</sup> Memorandum II para 14; Memorandum VII para 4.17

<sup>28</sup> Memorandum III para 12

<sup>29</sup> Memorandum III para 13

- (11) (a) There shall in any particular case be a fund consisting of -
- (i) any security or undertaking given in terms of subsection (10) (a), unless such security or undertaking is given in respect of a particular claim by a particular person;
  - (ii) the proceeds of the sale of any property mentioned in subsection (5) (a) to (e), either in terms of any order made in terms of section 9, or in execution or otherwise.
- (b) A fund shall, for all purposes, be deemed to be the property sold or the property in respect of which the security or an undertaking has been given.
- (c) If an action in rem is instituted against or in respect of a fund in terms of subsection (5), the plaintiff shall give notice of the said action to the registrar of the court or other person holding the fund, and to all persons known by the plaintiff to be interested in the fund.
- (d) The interest of any person in, or any claim by any person against, a fund shall be capable of attachment to found jurisdiction.

[Sub-s. (11) added by s. 2 of Act 87/92]

#### 4. Procedure and rules of court

- (1) Subject to the provisions of this Act, the provisions of the Supreme Court Act, 1959 (Act No. 59 of 1959), and the rules made under section 6 of the Rules Board for courts of law (Act 107 of 1985) [ section 43 of that Act] shall *mutatis mutandis* apply in relation to proceedings in terms of this Act except in so far as those rules are inconsistent with the Admiralty Jurisdiction Rules as published in Government Notice R571 contained in Gazette No. 17926 of 18 April 1997 as amended from time to time [rules referred to in subsection (2)]<sup>30</sup>.
- (2) The rules of the courts of admiralty of the Republic in force in terms of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, immediately before the commencement of this Act, shall be deemed to be rules made under section 43 (2) (a) of the Supreme Court Act, 1959, and shall apply in respect of proceedings in terms of this Act.
- (3) The power of the Chief Justice to make rules under section 43 of the Supreme Court Act, 1959, shall include the power to make rules prescribing the following:
- (a) The appointment of any person or body for the assessment of fees and costs and the manner in which such fees and costs are to be assessed;
  - (b) measures aimed at avoiding circuitry or multiplicity of actions;

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<sup>30</sup> Memorandum III para 14

- (c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.
- (4) (a) Notwithstanding anything to the contrary in any law relating to attachment to found or confirm jurisdiction, a court in the exercise of its admiralty jurisdiction may make an order for the attachment of the property concerned although the claimant is not an incola either of the area of jurisdiction of that court or of the Republic.
- (b) A court may make an order for the attachment of property not within the area of jurisdiction of the court at the time of the application or of the order, if such property is likely to come into the jurisdiction of the court after the making of the order, and such an order may be carried into effect when that property comes within the area of jurisdiction of the court.
- (c) Subject to the provisions of section 3 (3) -
- (i) a court may make an order for the arrest or attachment, to found or confirm the jurisdiction of that court, of property not within the area of jurisdiction of the court, but which is in the Republic or is likely to come into the Republic after making the order if no court in the Republic otherwise has jurisdiction in connection with the claim or can otherwise acquire such jurisdiction by an arrest or an attachment to found or confirm jurisdiction.
- (ii) A court may further make an order for the arrest or attachment of property not within the area of the jurisdiction of the court, but which is in the Republic or is likely to come into the Republic or is likely to come into the Republic after making the order, to provide security or additional security for the claim, if other property within the jurisdiction of the court has been or is about to be arrested or attached to found or to confirm jurisdiction in connection with the same claim.
- (iii) Any such order may be executed and any arrest or attachment pursuant thereto effected at any place in the Republic as contemplated in section 26(1) of the Supreme Court Act, 1959 (Act 59 of 1959)<sup>31</sup>.

**[(aa) (aaa) that property is in the Republic or is likely to come into the Republic after the making of the order; and**  
**(bbb)no court in the Republic otherwise has jurisdiction in connection with the claim or can otherwise acquire such jurisdiction by an arrest or attachment to found jurisdiction; or**

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<sup>31</sup> Memorandum III para 15

**(bb) other property within the area of jurisdiction of the court has been or is about to be arrested or attached to found jurisdiction in connection with the same claim;**

**(ii) any such order may be executed and any arrest or attachment pursuant thereto effected at any place in the Republic as contemplated in section 26(1) of the Supreme Court Act, 1959 (Act No. 59 of 1959)**

(iv) ~~iii~~ the arrest or attachment of any property pursuant to any such order shall be an arrest or attachment which shall found the relevant jurisdiction of the court ordering the arrest or attachment.

[Para. (c) added by s. 3 of Act 87/92]

(d) A court may make an order for the arrest or attachment, to found or confirm jurisdiction, of any ship which, if the action concerned had been an action in rem, would be an associated ship with regard to the ship in respect of which the maritime claim concerned arose.

[Para. (d) added by s. 3 of Act 87/92]

## 5. Powers of court

(1) A court may in the exercise of its admiralty jurisdiction permit the joinder in proceedings in terms of this Act of any person against whom any party to those proceedings has a claim, whether jointly with, or separately from, any party to those proceedings, or from whom any party to those proceedings is entitled to claim a contribution or an indemnification, or in respect of whom any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between the party and the person to be joined and which should be determined in such a manner as to bind that person, whether or not the claim against the latter is a maritime claim and notwithstanding the fact that he is not otherwise amenable to the jurisdiction of the court, whether by reason of the absence of attachment of his property or otherwise.

[Sub-s. (1) substituted by s. 4 of Act 87/92]

(2) A court may in the exercise of its admiralty jurisdiction -

- (a) consider and decide any matter arising in connection with any maritime claim, notwithstanding that any such matter may not be one which would give rise to a maritime claim;
- (b) order any person to give security for costs or for any claim;
- (c) order that any arrest or attachment made or to be made or that anything done or to be done in terms of this Act or any order of the court be subject to such conditions as to the court appears just, whether as to the furnishing of security or the liability for costs, expenses, loss or damage caused or likely to be caused, or otherwise;

- (d) notwithstanding the provisions of section 3 (8), order that, in addition to property already arrested or attached, further property be arrested or attached in order to provide additional security for any claim, and order that any security given be increased, reduced or discharged, subject to such conditions as to the court appears just;

[Para. (d) substituted by s. 4 of Act 87/92]

- (dA) on application made before the expiry of any period contemplated in section 1 (2) (b) or 3 (10) (a) (ii), or any extension thereof, from time to time grant an extension of any such period;

[Para. (dA) inserted by s. 4 of Act 87/92]

- (e) order that any matter pending or arising in proceedings before it be referred to an arbitrator, **lor** referee or any person or body of persons for decision or report and may provide for the appointment, remuneration and powers of such person or body, and may make such order in regard thereto as it deems fit **the arbitrator or referee and for the giving of effect to his decision or report**<sup>32</sup>;

- (f) make such order as to interest, the rate of interest in respect of any sum awarded by it and the date from which interest is to accrue, whether before or after the date of the commencement of the action, as to it appears just;

- (g) subject to the provisions of any law relating to exchange control, order payment to be made in such currency other than the currency of the Republic as in the circumstances of the case appears appropriate, and make such order as seems just as to the date upon which the calculation of the conversion from any currency to any other currency should be based.

- (3) (a) A court may in the exercise of its admiralty jurisdiction order the arrest of any property described in section 3(5)<sup>33</sup> for the purpose of providing security for a claim which is or may be the subject of an arbitration or any proceedings contemplated, pending or proceeding, either in the Republic or elsewhere, and whether or not it is subject to the law of the Republic, if the person seeking the arrest has a claim enforceable by an action in personam against the owner of the property concerned or an action in rem against such property or which would be so enforceable but for any such arbitration or proceedings.

- (aA) Any property so arrested or any security for, or the proceeds of, any such property shall be held as security for any such claim or pending the outcome of any such arbitration or proceedings.

- (b) Unless the court orders otherwise any property so arrested shall be deemed to be property arrested in an action in terms of this Act.

[Sub-s. (3) substituted by s. 4 of Act 87/92]

- (4) Any person who makes an excessive claim or requires excessive security or without reasonable and probable cause obtains the arrest of property or an order of court, shall be liable to any person suffering loss or damage as a result thereof for that loss or damage.

[Sub-s. (4) substituted by s. 4 of Act 87/92]

<sup>32</sup> Memorandum II para 15; Memorandum VII para 4.18

<sup>33</sup> Memorandum VII para 4.19

- (5) (a) A court may in the exercise of its admiralty jurisdiction at any time on the application of any interested person or of its own motion -
- (i) if it appears to the court to be necessary or desirable for the purpose of determining any maritime claim, or any defence to any such claim, which has been or may be brought before a court, or any other person or body of persons [arbitrator or referee] in the Republic or elsewhere, make an order for the examination, testing or inspection by any person of any ship, cargo, documents or any other thing and for the taking of the evidence of any person on commission or otherwise<sup>34</sup>;
  - (ii) in making an order in terms of subparagraph (i), make an order that any person who applied for such first-mentioned order shall be liable and give security for any costs or expenses, including those arising from any delay, occasioned by the application and the carrying into effect of any such order;
  - (iii) grant leave to any such person to apply for an order that any such costs or expenses be considered as part of the costs of the proceedings;
  - (iv) [in exceptional circumstances, make such an order as is contemplated in subparagraph (i) with regard to a maritime claim which has been or may be brought before any court, arbitrator, referee or tribunal elsewhere than in the Republic, in which case sub paragraphs (ii) and (iii) shall *mutatis mutandis* apply.]**

[Para. (a) substituted by s. 4 of Act 87/92]

- (b) The provisions of this Act shall not affect any privilege relating to any document in the possession of, or any communication to or the giving of any evidence by, any person.

## 6. Law to be applied and rules of evidence<sup>35</sup>

- (1) Notwithstanding anything to the contrary in any law or the common law **[contained]** a court, in the exercise of its admiralty jurisdiction, shall -
- (a) apply the general principles of admiralty law applicable in the Republic immediately prior to the commencement of this Act together with those principals as developed in the Republic since such commencement and, where appropriate, may supplement or modify the said principles as it deems fit [with regard to any matter in respect of which a court of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, had jurisdiction immediately before the commencement of this Act, apply the law which the High Court of Justice of the United Kingdom in the exercise of its admiralty jurisdiction would have applied with regard to such a matter at such commencement, in so far as that law can be applied];

<sup>34</sup> Memorandum III para 16

<sup>35</sup> The proposed amendment below is that dealt with and annexed to Memorandum VII (para 3). The primary motivation for the amendment proposed by the Committee is set out in Memorandum I. The Durban Chapter's views on the amendment of the section are set out in Memorandum IV (para 2) and the Durban Chapter proposal is annexed to the memorandum. A response to the Durban Chapter proposal is set out in Memorandum V

- (b) save as set out above, apply the law applied by the courts in the exercise of their ordinary jurisdiction **[with regard to any other matter, apply the Roman Dutch law applicable in the Republic]**;
- (c) in exercising its powers in terms of sub-paragraph (a) above, the court shall have due regard to the provisions of this Act, the Admiralty Rules and the origins and development of admiralty law in the Republic.
- (2) The provisions of subsection (1) shall not derogate from the provisions of any law of the Republic **[applicable to any of the matters contemplated in paragraph (a) and (b) of that subsection]**.
- (3) A court may in the exercise of its admiralty jurisdiction receive as evidence statements which would otherwise be inadmissible as being in the nature of hearsay evidence, subject to such directions and conditions as the court thinks fit.
- (4) The weight to be attached to evidence contemplated in subsection (3) shall be in the discretion of the court.
- (5) The provisions of subsection (1) shall not supersede any agreement relating to the system of law to be applied in the event of a dispute.

## 7. Disputes as to venue or jurisdiction

- (1) (a) A court may decline to exercise its admiralty jurisdiction in any proceedings instituted or to be instituted, if it is of the opinion that any other court in the Republic or any other court or any arbitrator, tribunal or body elsewhere will exercise jurisdiction in respect of the said proceedings and that it is more appropriate that the proceedings be adjudicated upon by any such other court or by such arbitrator, tribunal or body.  
[Para. (a) substituted by s. 5 of Act 87/92]
- (b) A court may stay any proceedings in terms of this Act in the event of there being an agreement between the parties<sup>36</sup> **[if it is agreed by the parties]** concerned that the matter in dispute be referred to arbitration in the Republic or elsewhere, or if for any other sufficient reason the court is of the opinion that the proceedings should be stayed.
- (2) When in any proceedings before a provincial or local division, including a circuit local division, of the Supreme Court of South Africa the question arises as to whether a matter pending or proceeding before that court is one relating to a maritime claim, the court shall forthwith decide that question, and if the court decides that -
- (a) the matter is one relating to a maritime claim, it shall be proceeded with in a court competent to exercise its admiralty jurisdiction, and any property attached to found jurisdiction shall be deemed to have been attached in terms of this Act;

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<sup>36</sup> Memorandum III para 7

- (b) the matter is not one relating to a maritime claim, the action shall proceed in the division having jurisdiction in respect of the matter: Provided that if jurisdiction was conferred by the attachment of property by a person other than an incola of the court, the court may order the action to proceed as if the property had been attached by an incola, or may make such other order, including an order dismissing the action for want of jurisdiction, as to it appears just.
- (3) The provisions of subsection (2) shall not affect any other objection to the jurisdiction of any court.
- (4) No appeal shall lie against any decision or order made under subsection (2).
- (5) The Minister may, on the recommendation of the judge president of any provincial division of the High<sup>37</sup> **[Supreme]** Court of South Africa, submit the question as to whether or not a particular matter gives rise to a maritime claim, to the Supreme Court of Appeal<sup>38</sup> **[Appellate Division of the Supreme Court of South Africa]** and may cause that question to be argued before that Division so that it may decide the question for future guidance.

## **8. Arrests**

- (1) Where property has been attached to found or to confirm jurisdiction at common law, that property may nevertheless be arrested in connection with a maritime claim, subject to such directions as the court thinks fit.
- (2) Where property has been attached to found or to confirm jurisdiction relating to a maritime claim, sections 9, 10 and 11 of this Act shall apply as if the property had been arrested in an action in rem, whether or not the property has been arrested in terms of this Act.

## **9. Sale of arrested property**

- (1) A court may in the exercise of its admiralty jurisdiction at any time order that any property which has been arrested in terms of this Act be sold.
- (2) The proceeds of any property so sold shall constitute a fund to be held in court or to be otherwise dealt with, as may be provided by the rules or by any order of court.
- (3) Any sale in terms of any order of court shall not be subject to any mortgage, lien, hypothecation, or any other charge of any nature whatsoever.

[S. 9 substituted by s. 6 of Act 87/92]

## **10. Vesting of property in trustee, liquidator or judicial manager excluded in certain cases**

Any property arrested in respect of a maritime claim or any security given in respect of any property, or the proceeds of any property sold in execution or under an order of a court in the exercise of its admiralty jurisdiction, shall not, except as provided in section 11 (13), vest in a trustee in insolvency and shall not form part of the assets to be administered by a liquidator or

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<sup>37</sup> Memorandum III para 18

<sup>38</sup> *ibid*

judicial manager of the owner of the property or of any other person who might otherwise be entitled to such property, security or proceeds, and no proceedings in respect of such property, security or proceeds, or the claim in respect of which that property was arrested, shall be stayed by or by reason of any sequestration, winding-up or judicial management with respect to that owner or person.

[S. 10 amended by s. 7 of Act 87/92]

#### **10A. Power of court regarding claims against fund**

- (1) The court may make an order with regard to the distribution of a fund or payment out of any portion of a fund or proof of claims against a fund, including the referring of any of or all such claims to a referee in terms of section 5 (2) (e).
- (2) (a) If an order is made referring all such claims to a referee or if the court so orders, all proceedings in respect of claims which are capable of proof for participation in the distribution of the fund shall be stayed and any such claim shall be proved only in accordance with such order.
  - (b) The costs of any proceedings already instituted but which have been stayed in terms of paragraph (a) shall be added to any relevant claim proved in accordance with any such order.
- (3) (a) Notwithstanding the provisions of section 11 (2) and (9), any claimant submitting as proof of a claim a default judgment may be required by the referee or other person to whom the claim is submitted or by any person having an interest in the fund, to furnish evidence justifying the said judgment.
  - (b) If a claimant is in terms of paragraph (a) required to furnish such evidence, the judgment alone shall not be sufficient proof of the claim.
  - (c) Any person other than a referee so requiring a claimant to furnish such evidence shall be liable for any costs incurred by such claimant in so doing, unless the claimant fails to justify the said judgment or a court otherwise orders.
- (4) (a) A claim which is subject to a suspensive or resolutive condition or otherwise not yet enforceable or is voidable may be proved, where appropriate, on the basis of an estimate or valuation, but no distribution shall be made in respect thereof until it has become enforceable or no longer voidable.
  - (b) The court may make an order as to the time when a claim contemplated in paragraph (a) which has not become enforceable or is voidable shall no longer be taken into account for the purposes of the distribution in question or no longer be regarded as voidable.

[S. 10A inserted by s. 8 of Act 87/92]

#### **11. Ranking of claims**

- (1) (a) If property mentioned in section 3 (5) (a) to (e) is sold in execution or constitutes a fund contemplated in section 3 (11), the relevant maritime claims mentioned in subsection (2) shall be paid in the order prescribed by subsections (5) and (11).

- (b) Property other than property mentioned in paragraph (a) may, in respect of a maritime claim, be sold in execution, and the proceeds thereof distributed, in the ordinary manner.
- (2) The claims contemplated in subsection (1) (a) are claims mentioned in subsection (4) and confirmed by a judgment of a court in the Republic or proved in the ordinary manner.
  - (3) Any reference in this section to a ship shall, where appropriate, include a reference to any other property mentioned in section 3 (5) (a) to (e).
  - (4) The claims mentioned in subsection (2) are the following, namely -
    - (a) a claim in respect of costs and expenses incurred to preserve the property in question or to procure its sale and in respect of the distribution of the proceeds of the sale;
    - (b) a claim to a preference based on possession of the property in question, whether by way of a right of retention or otherwise;
    - (c) a claim which arose not earlier than one year before the commencement of proceedings to enforce it or before the submission of proof thereof and which is a claim -
      - (i) contemplated in paragraph (s) of the definition of "maritime claim";
      - (ii) in respect of port, canal, other waterways or pilotage dues, and any charge, levy or penalty imposed under the South African Maritime Safety Authority Act, 1998, or the South African Maritime Safety Authority Levies Act, 1998;  
[Sub-para. (ii) substituted by s. 56 of Act 5/98]
      - (iii) in respect of loss of life or personal injury, whether occurring on land or on water, directly resulting from employment of the ship;
      - (iv) in respect of loss of or damage to property, whether occurring on land or on water resulting from delict, and not giving rise to a cause of action based on contract, and directly resulting from the operation of the ship;
      - (v) in respect of the repair of the ship, or the supply of goods or the rendering of services to or in relation to a ship for the employment, maintenance, protection or preservation thereof;
      - (vi) in respect of the salvage of the ship, removal of any wreck of a ship, and any contribution in respect of a general average act or sacrifice in connection with the ship;
      - (vii) in respect of premiums owing under any policy of marine insurance with regard to a ship or the liability of any person arising from the operation thereof; or

- (viii) by any body of persons for contributions with regard to the protection and indemnity of its members against any liability mentioned in subparagraph (vii);
- (d) a claim in respect of any mortgage, hypothecation or right of retention of, and any other charge on, the ship, effected or valid in accordance with the law of the flag of a ship, and in respect of any lien to which any person mentioned in paragraph (o) of the definition of *ōmaritime claimō* is entitled;
- (e) a claim in respect of any maritime lien on the ship not mentioned in any of the preceding paragraphs;
- (f) any other maritime claim.
- (5) The claims mentioned in paragraphs (b) to (f) of subsection (4) shall rank after any claim referred to in paragraph (a) of that subsection, and in accordance with the following rules, namely -
- (a) a claim referred to in the said paragraph (b) shall, subject to paragraph (b) of this subsection, rank before any claim arising after it;
- (b) a claim of the nature contemplated in paragraph (c) (vi) of that subsection, whether or not arising within the period of one year mentioned in the said paragraph, shall rank before any other claim;
- (c) otherwise any claim mentioned in any of the subparagraphs of the said paragraph (c) shall rank *pari passu* with any other claim mentioned in the same subparagraph, irrespective of when such claims arose;
- (d) claims mentioned in paragraph (d) of subsection (4) shall, among themselves, rank according to the law of the flag of the ship;
- (e) claims mentioned in paragraph (e) of subsection (4) shall, among themselves, rank in such order as the court may prescribe<sup>39</sup> **[their priority according to law]**;
- (f) claims mentioned in paragraph (f) of subsection (4) shall rank in their order of preference according to the law of insolvency;
- (g) save as otherwise provided in this subsection, claims shall rank in the order in which they are set forth in the said subsection (4).
- (6) For the purposes of subsection (5), a claim in connection with salvage or the removal of wreck shall be deemed to have arisen when the salvage operation or the removal of the wreck, as the case may be, terminated, and a claim in connection with contribution in respect of general average, when the general average act occurred.
- (7) A court may, in the exercise of its admiralty jurisdiction, on the application of any interested person, make an order declaring how any claim against a fund shall rank.

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<sup>39</sup> Memorandum II para 16; Memorandum VII para 4.20

- (8) Any person who has, at any time, paid any claim or any part thereof which, if not paid, would have ranked under this section, shall be entitled to all the rights, privileges and preferences to which the person paid would have been entitled if the claim had not been paid.
- (9) A judgment or an arbitration award shall rank in accordance with the claim in respect of which it was given or made.
- (10) Interest on any claim and the costs of enforcing a claim shall, for the purposes of this section, be deemed to form part of the claim.
- (11) In the case of claims against a fund which consists of the proceeds of the sale of, or any security or undertaking given in respect of, a ship (hereinafter referred to as the ship giving rise to the fund) which is an associated ship in relation to the ship in respect of which the claims arose, the following rules shall apply, namely -
  - (a) all claims which fall under paragraphs (b) to (e) of subsection (4) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3 (7) (a) (i), shall rank immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned and after any claims which fall under paragraph (f) of subsection (4) and which arose from, or are related directly to, the operation of (including the carriage of goods in) the ship giving rise to the fund concerned;
  - (b) all claims which fall under the said paragraphs (b) to (e) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3 (7) (a) (ii) or (iii) shall rank immediately after any claims mentioned in paragraph (a) of this subsection or, if there are no such claims, immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned; and
  - (c) the provisions of subsections (5) and (9) shall apply with regard to any claim mentioned in paragraph (a) or (b).
- (12) Notwithstanding the provisions of this section, any undertaking or security given with respect to a particular claim shall be applied in satisfaction of that claim only.
- (13) Any balance remaining after the claims mentioned in paragraphs (a) to (e) of subsection (4) and the claims mentioned in subsection (11) have been paid, shall be paid over to any trustee, liquidator or judicial manager who, but for the provisions of section 10, would have been entitled thereto or otherwise to any other person entitled thereto.

[S. 11 substituted by s. 9 of Act 87/92]

## 12. Appeals

A judgment or order of a court in the exercise of its admiralty jurisdiction shall be subject to appeal as if such judgment or order were that of a provincial or local division of the High<sup>40</sup> [Supreme] Court of South Africa in civil proceedings.

**13. Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976 and section 1 of Act 3 of 1981.**

Section 2 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), is hereby amended by the substitution in subsection (2) for the definition of "superior court" of the following definition:

"superior court" means a division of the High<sup>41</sup> [Supreme] Court of South Africa, save in sections 43, 45, 89, 292, 330 and 356 (1) (xxxv), where it means a court exercising its admiralty jurisdiction under the Admiralty Jurisdiction Regulation Act, 1983;ö.

**14. Jurisdiction of magistrates' courts not affected**

This Act shall not serve to confer admiralty jurisdiction on the magistrates court, but shall not derogate from the jurisdiction which a magistrates' court has under the provisions of any other statute and a magistrates' court shall not be deprived of jurisdiction in any matter merely by reason of the fact that such a matter is a maritime claim in terms of this Act<sup>42</sup> [sections 131, 136 and 151 of the Merchant Shipping Act, 1951].

**15. Act to bind the State**

This Act shall bind the State.

**16. Repeal of laws**

- (1) The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.
- (2) Proceedings instituted before the commencement of this Act shall be proceeded with as if this Act had not been enacted.
- (3) For the purposes of subsection (2) proceedings shall be deemed to have commenced upon service of the writ of summons.

**17. Short title and commencement**

This Act shall be called the Admiralty Jurisdiction Regulation Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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<sup>40</sup> Memorandum III para 19

<sup>41</sup> *ibid*

<sup>42</sup> Memorandum III para 20

**Schedule**

| <b>Number and year of law</b> | <b>Title of law</b>                         | <b>Extent of repeal</b>   |
|-------------------------------|---|---|
| UNITED KINGDOM                |   |   |
| Chapter 27, 1890              | Colonial Courts of Admiralty Act, 1890      | The whole, in so far as it applies in relation to the Republic, except in so far as it relates to prize matters |
| REPUBLIC OF SOUTH AFRICA      |   |   |
| Act No. 57 of 1951            | Merchant Shipping Act, 1951                 | Sections 51A, 329 and 332   |
| Act No. 5 of 1972             | Admiralty Jurisdiction Regulation Act, 1972 | The whole   |