COMITE MARITIME INTERNATIONAL

International Working Group on Cross-Border Insolvency

QUESTIONNAIRE

SECTION I

CROSS-BORDER MARITIME INSOLVENCY ISSUES

Part 1 General Insolvency Principles Applicable to Foreign Creditors

1. Has your country adopted any specific rules on cross-border insolvency (such as the UNCITRAL Model Law or any specific domestic, bilateral or multilateral instrument)? If so, please provide a general description based on the topics discussed in this questionnaire.

   Answer: As yet, Singapore has not adopted the UNCITRAL Model Law or other conventions for cross-border insolvency. Nonetheless, it should be added that Singapore's Insolvency Law Reform Committee has recommended that Singapore adopt the UNCITRAL Model Law.[1]

   Singapore's Companies Act (Cap 50) contains rules applicable to cross-border insolvencies. In particular, Section 337(3)(c) of Division 4 Part X of the Companies Act is a ring-fencing provision previously intended to provide for reciprocal protection of creditors in Singapore and Malaysia dealing with companies in those countries.[2]

2. Do your laws recognize the standing of a foreign creditor or other person (such as a foreign flag authority of a locally domiciled shipowner or a foreign administrator of insolvency proceedings) to start or oppose an insolvency proceeding in respect of a local ship operator or in respect of assets located locally? If so, describe in detail those rights or restrictions upon such rights of such foreign entities which differ from those of local creditors, insolvency administrators or public authorities.

   Answer: Insofar as "foreign creditor" refers to a creditor who is domiciled or based in a jurisdiction other than Singapore, Singapore insolvency law will recognise and allow that foreign creditor to commence winding up[3] and submit claims in respect of insolvency proceedings in Singapore.[4]

   Foreign flag authorities usually appear as creditors in Singapore insolvency proceedings. They have no special status beyond that of a creditor.

---

[1] See Final Report of the Insolvency Law Review Committee (2013).
[2] See *Tohru Motobayashi v Official Receiver* [2000] 3 SLR(R) 435 at [39] and *RBG Resources plc (in liquidation) v Credit Lyonnais* [2006] 1 SLR(R) 240 at [41].
[3] See *Re Projector SA* [2009] 2 SLR(R) 151.
[4] See Section 253(1) in Division 2 Part X of the Companies Act (Cap 50) which allows "any creditor" to claim.

A foreign administrator of insolvency proceedings may start insolvency proceedings either – (1) by being an approved insolvency practitioner[5], or (2) by starting insolvency proceedings in Singapore via an approved insolvency practitioner.

A foreign administrator of insolvency proceedings may oppose insolvency proceedings in Singapore. If the foreign administrator opposes as a creditor of the company, then its standing is as described above. If the foreign administrator opposes in its capacity as an administrator, then that foreign administrator must either (1) be an approved insolvency practitioner in Singapore law or (2) oppose via an approved insolvency administrator nominated by the foreign administrator.

3. Do your laws have a procedure for supervising the activities in your country of a foreign insolvency administrator?

Answer: Singapore has no known procedure. The supervision procedure[6] only applies to approved insolvency practitioners under Singapore law since they are the only persons who may be insolvency administrators in Singapore.

4. If an administrator is unwilling to pursue a claim by the insolvent ship operator, can foreign creditors apply to an insolvency tribunal for a transfer of the subject matter of the claim from the estate of the insolvent ship operator to a creditor or group of creditors?

Answer: No, a creditor who is dissatisfied with the administrator's unwillingness to pursue a claim can only apply to the Singapore High Court to review the administrator's decision not to pursue the claim.[7]

5. Do your laws permit foreign creditors to apply to a court for supervisory orders if they consider the administrator is acting inefficiently or wrongly? If so, describe the procedure generally.

Answer: Yes, this right applies to all creditors, whether incorporated or based in or outside Singapore as long as they have presented themselves as creditors within Singapore insolvency proceedings.[8] The foreign creditor makes a complaint to the Official Receiver or Minister for matters relating to the private administrator or Official Receiver, respectively.

6. Do your laws permit foreign creditors to commence legal proceedings against administrators if they consider the administrator has acted negligently or wrongly?

Answer: Yes, any creditor can bring a claim against the administrator for negligence[9] or misfeasance.[10] The creditor must apply to court for leave before commencing action against the liquidator.[11]

---

[5] Approved liquidators are defined under Section 9 of Part II of the Companies Act, subject to the limitations under Section 11 of the Companies Act. Only an approved liquidator or the Official Assignee may be appointed to be a receiver subject to the restrictions under Section 217(1) of Division 5 Part VIII of the Companies Act. Under Section 227B(3) of Division 5 Part VIIIA of the Companies Act, a judicial manager must be a public accountant who is not the auditor of the company.
[6] See Sections 268(1) and 302 of Part X of the Companies Act.
[7] See Section 272(3) read with Section 272(2)(a) of Division 2 Part X of the Companies Act (Cap 50).
[8] See Section 265 of Division 2 Part X of the Companies Act for private administrators and Section 266 of Division 2 Part X of the Companies Act for the Official Receiver as the public administrator.
[9] Singapore follows the position in *Pace v Antlers Pty Ltd* (1998) 26 ACSR 490, see *The Royal Bank of Scotland v TT International* [2012] 2 SLR 213. Also see Sections 268(1) and 302(1) of Part X of the Companies Act
[10] Section 341 of Division 4 Part X of the Companies Act.
[11] See *Excalibur Group Pte Ltd v Goh Boon Kok* [2012] 2 SLR 999.

7. If a foreign creditor or claimant against a ship operator foresees it will suffer a loss or commercial disadvantage because of the appointment of a private receiver or the way the private receiver is acting, does such a foreign claimant have any legal remedies against the receiver, such as applying to a court for supervisory orders or to put the ship operator into bankruptcy?

Answer: Yes, but the foreign creditor or claimant must satisfy the court that the receiver, while acting in the interest of the secured creditor, is not acting according to his common law duties to the company[12] and/or statutory duties[13] and/or is guilty of misfeasance.[14]

Part 2 Subject Matter or Territorial Jurisdiction

8. Do your laws permit assertion of insolvency jurisdiction generally over any asset of an insolvent ship operator domiciled in your country, regardless of the location of the asset within or outside your country? Please comment whether this scope of jurisdiction differs between a ship of your country's registry owned by persons domiciled in your country, or a ship of another flag owned by persons domiciled in your country.

Answer: No – although Singapore's insolvency legislation and court orders are capable of extra-territorial effect, there is a general statutory presumption against extraterritoriality.[15]

The same position applies to both a Singapore-registered ship and a foreign-registered ship owned by persons domiciled in Singapore.

Part 3 Notice to Foreign Creditors

9. Do any legal or procedural requirements have to be followed to ensure the insolvent ship operator or the insolvency administrator identifies all known foreign creditors?

Answer: No, generally in insolvency proceedings, there is only a duty to advertise the insolvency of a company and to invite creditors to appear in insolvency proceedings by submitting their claims.[16]

10. Do your laws require administrators of insolvency proceedings to give notice of the proceedings to foreign creditors? As a general practice, how is such notice given to foreign creditors?

Answer: Yes, a Singapore-appointed administrator of the foreign company's insolvency proceedings in Singapore must advertise the insolvency proceedings, inviting all creditors to make their claims against the foreign company.[17]

The legislated mode is by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business prior to the liquidation.

---

[12] Singapore follows the English position in *Re B Johnson & Co (Builders) Ltd* [1955] Ch 634.
[13] An application can be made under O 30 r 6 where the receiver fails to comply with its statutory duties under Section 223-225 of Part VIII of the Companies Act Order 30 Rule 6 of the Rules of Court.
[14] See Section 227(2) of Part VIII of the Companies Act.
[15] See *Beluga Chartering GmBH (in liq) and others v Beluga Projects (Singapore) Pte Ltd (in liq) and another* [2014] SGCA 14.
[16] See Rule 24 of the Companies (Winding Up) Rules (Cap 50, R1).
[17] See Section 377(3)(a) of Division 2 Part XI of the Companies Act.

11. Do your laws require administrators of insolvency proceedings to give notice of time bars for filing of claims to foreign creditors? As a general practice, how is such notice given to foreign creditors?

Answer: Insofar as "time bar" refers to a deadline set by the administrator and not to the statutory limitation period for civil claims, Singapore's insolvency law requires notice of the deadline to all creditors via the abovementioned advertisement. The notice period must be at least 14 days prior to the deadline.

Additionally, notice in writing must be given to every person who, to the administrator's knowledge, claims to be a creditor and whose claim has not been admitted.[18] This extends to foreign creditors who have presented themselves as creditors in the winding up.

12. If the insolvent business is a shipowner, do your laws require notice of insolvency proceedings to be given to the ship registrar for domestically registered vessels?

Answer: No.

13. Do your laws require notice of insolvency proceedings to be given to diplomatic or consular officials of the flag states of foreign registered vessels which are assets of a local insolvent ship operator?

Answer: No.

14. If a foreign creditor later learns of the existence of insolvency proceedings, is the foreign creditor permitted to file late claims or have a right to claim against any of the assets of the insolvent ship operator which have not yet been distributed to creditors?

Answer: Yes, the foreign creditor has a right to file late claims[19] but will not be entitled to the dividends in any previous distribution by the administrator.

Part 4 Recognition of Foreign Claims

15. Please describe the conflict of laws rules for recognition of foreign maritime claims in insolvency proceedings. For example, if the claim is a maritime lien under the law of the place where the claim arose but not in the country where the insolvency proceeding is being conducted, will the insolvency administrator or tribunal recognize the foreign maritime lien?

Answer: The recognition of foreign maritime claims is solely determined by the Singapore court as the *lex fori*.[20]

16. Apart from the characterization and priority of claims, are there any other procedural differences in the handling of claims between those by foreign creditors and those by local creditors? With reference to the types of claims listed in the table, please describe any differences in detail.

Answer: No.

17. Does your law recognize rights of claims to property rights, sale or enforcement given by foreign law to particular types of creditors, such as, for example, to financial institutions or

[18] See Rule 91 of the Companies (Winding Up) Rules.
[19] See *Teo Han Tong v Tecta Pacific (S) Pte Ltd (in liquidation)* [1997] 3 SLR(R) 312.
[20] See *The "Halcyon Isle"* [1979-1980] SLR(R) 538.

spouses for their entitlement to business property interests of the other spouse on separation or divorce?

Answer: Where the claim pertains to foreign immovable property, the Singapore court has no subject-matter jurisdiction to decide disputes involving the determination of title or right of possession to foreign immovable property.[21] This extends to the sale or mortgage of such property.

For local immovable property (i.e. land), Singapore law is the *lex situs* and therefore exclusively governs the property rights.[22] Property rights conferred by foreign law are not recognised to the extent that they contradict the position at Singapore law.

Where property rights in local immovable property are transferred via a contract of sale, the foreign law, insofar as it is the governing law of the contract, only applies to contractual issues. Property rights remain the exclusive ambit of Singapore law as the *lex situs*. The same applies for enforcement of property rights under a mortgage. [23]

Singapore law recognises property claims based in foreign law for movable property as long as the foreign law is the *lex situs* of the chattel.[24] For vessels, Singapore recognises the *lex situs* as the law of the flag where the vessel is on the high seas. However, where the vessel is within territorial or national waters, the *lex situs* is where the vessel is situated.[25]

18. Is the recognition of foreign arbitral awards for purposes of proof of claim in insolvency proceedings different from the recognition of foreign arbitral awards for general legal purposes? Please explain any differences.

Answer: Yes, there is a difference since Singapore insolvency practitioners may accept proof of creditor's claim by the simple production of the arbitral award without the need to register the award with the courts.

19. If the insolvent ship operator is a state-owned enterprise, are there any differences in the rights or procedures available to a foreign creditor under your country's insolvency law?

Answer: No.

Part 5 Recognition of Foreign Insolvency Proceedings

20. Do your laws permit the administrator of a foreign insolvency proceeding to publish notices of such proceedings in local news media or to communicate directly with local creditors concerning proofs of claim and payment of any recoveries in the insolvency proceedings? If there any legal restrictions on direct handling of claims by foreign administrators, please provide details.

Answer: Yes, however, the foreign administrator must either (1) be an approved insolvency practitioner, or (2) act via an approved insolvency practitioner in Singapore.

---

[21] See *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria* [2009] 1 SLR(R) 508 incorporating the *Moçambique* rule in *The British South Africa Company v The Companhia de Moçambique* [1893] AC 602.

[22] *Dicey, Morris and Collins: The Conflict of Laws* (11th Ed, 1987) represents the position in Singapore.

[23] Singapore follows the English position in *Haque v Haque (No. 2)* (1965) 114 CLR 98.

[24] See *Diamond Centre Pte Ltd v R Esmerian Inc* [1996] 3 SLR(R) 132.

[25] See *The "Andres Bonifacio"* [1993] 3 SLR(R) 71 citing *Dicey, Morris and Collins: The Conflict of Laws* (11th Ed, 1987).

21. Will your country's courts recognize a request for the recognition of foreign insolvency proceedings?

Answer: The position in Singapore is unclear. However, it should be added that the Singapore court has a tradition of noting and following principles in English case law. English case law has been developing the principle of modified universalism for the recognition of foreign insolvency proceedings.[26]

Although the Singapore courts have yet to accept modified universalism, it has generally recognised the desirability and practicality of universalism. The Singapore courts also accept the ancillary liquidation doctrine. Recently, the Singapore Court of Appeal has indicated the possibility of assisting foreign liquidation proceedings to a degree dependent on the particular circumstances.[27]

22. Will such a request be recognized if it comes directly from a foreign trustee in bankruptcy, liquidator or administrator, or does the request have to be in the form of a letter of request issued by the foreign bankruptcy tribunal?

Answer: The position in Singapore is unclear. Please see response to Question 21.

23. What legal standards do your country's courts apply for the purpose of recognition of foreign insolvency proceedings? Please provide details.

Answer: The position in Singapore is unclear. However, English case law suggests that the court should strive towards recognition of foreign insolvency proceedings and universalism in insolvency as long as there is no undue prejudice to "local creditors".[28]

24. Do your laws have a procedure for a request for the recognition by a foreign insolvency administrator or insolvency court of a local insolvency proceeding? Are such requests generally made by the administrator or the insolvency court? Generally describe the procedure.

Answer: No known procedure exists.

25. Can an administrator of insolvency proceedings request the courts of your country for assistance in obtaining recognition of insolvency proceedings of foreign insolvency administrators or foreign courts? Generally describe the procedure.

Answer: No known procedure exists.

26. Will your courts enforce any compulsory transfer of a contractual obligation involving a vessel formerly owned by an insolvent ship operator, if this contractual obligation affects parties located in your country?

Answer: Singapore law recognises an assignment of benefits but not obligations. Nonetheless, where the compulsory transfer is based on the *lex contractus*, Singapore law will recognise the assignment.

---

[26] See *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigation Holdings plc and others* [2007] 1 AC 508 and *In re HIH Casualty and General Insurance Ltd* [2008] 1 WLR 852, c.f. *Rubin and another v Eurofinance SA and others* [2013] 1 AC 236.

[27] See *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014[SGCA 14.

[28] See *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigation Holdings plc and others* [2007] 1 AC 508 and *In re HIH Casualty and General Insurance Ltd* [2008] 1 WLR 852, c.f. *Rubin and another v Eurofinance SA and others* [2013] 1 AC 236.

27. Does your legal system have a procedure for the coordination of concurrent insolvency proceedings involving maritime assets, insolvent ship operators or creditors in your country and abroad? Is this procedure set out in laws or regulations or has it been developed through practice of insolvency tribunals? Please provide details including any generally used precedent forms of procedural orders.

Answer: No known procedure exists.

28. Is your country a party to any bilateral or multilateral agreements for the coordination of multi-country insolvency proceedings or the recognition of foreign insolvency proceedings? Please list such agreements.

Answer: Singapore is not a party to any formal bilateral or multilateral agreements. Singapore and Malaysia previously had an informal bilateral agreement for the coordination of dual-country insolvency proceedings. This did not translate to any known formal bilateral agreements – see answer to Question 1.

Part 6 Need for Reform

29. Have any provisions of your insolvency law created legal uncertainty or difficulties in the administration of cross-border maritime insolvencies? Please refer to any legal commentary or case law.

Answer: *Re TPC Korea Co Ltd* [2010] 2 SLR 617 represents an area of difficulty in the administration of cross-border maritime insolvencies. The issue addressed was whether the Singapore court could assist a foreign company which applied for foreign rehabilitation by imposing an interim moratorium on local proceedings under Section 210(10) of the Companies Act. In particular, the foreign company was concerned with possible arrests against its vessels which regularly plied Singapore.

The court held that it could not order an interim moratorium under Section 210(10) of the Companies Act in aid of foreign unregistered companies with no assets in Singapore. The court further held that ships which regularly ply the Singapore port do not constitute assets within the jurisdiction.

The practical effect of *Re TPC Korea* allows ship arrests to take place in Singapore resulting in the depletion of the foreign company's assets. This would be problematic for the the utility of the main foreign administration proceedings.

SECTION II

GENERAL MARITIME INSOLVENCY ISSUES

Part 7 General Insolvency Issues Applicable to Ship Operators and Maritime Property

30. Are ships registered in your country or ship operators incorporated in your country subject to insolvency laws of general application or do your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators?

Answer: Singapore-registered ships and Singapore incorporated ship owners are subject to general insolvency laws. Singapore has no specific rules pertaining to insolvent ship operators.

31. If your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators or ships under your registry as distinct from assets of commercial enterprises generally, please provide details of how these rules applying to ships or ship operators differ from general insolvency administration.

Answer: N.A. – please see response to Question 30.

32. Is there a monetary or asset value threshold for the application of various forms of insolvency procedure? For example, is there a form of simplified insolvency administration for ship operators with assets of limited value?

Answer: No known procedure exists.

33. Do rights to commence insolvency proceedings or insolvency procedures differ if the debtor ship operator is a natural person as distinct from a legal entity? Describe any differences generally.

Answer: The jurisdictional requirements differ. For corporations, the court has jurisdiction to wind up foreign companies provided the following are satisfied – (1) the company has assets in Singapore or sufficient nexus or connection with Singapore, and (2) the winding up will benefit local creditors.[29] For natural persons, in addition to domicile and the presence of assets in Singapore, the court has jurisdiction over the debtor where the natural person has been ordinarily resident or has a place of residence or carried on business in Singapore for 1 year preceding the date of the bankruptcy application.[30]

34. If creditors are asserting claims against all or substantially all the assets of an insolvent ship operator, does this result in distinct or additional procedural or legal requirements?

Answer: No known procedure exists. Nevertheless, it is permissible for a creditor to commence proceedings against a ship which is the sole asset of the insolvent ship operator. He does so by arresting that ship in enforcement of a claim where the creditor is allowed to continue proceedings depends on whether the proceedings commenced before or after liquidation. If the writ in rem is served before liquidation, it is likely that creditor will be allowed to continue. If the writ in rem takes place after liquidation, it is likely that it is not allowed to continue.[31]

---

[29] See *Re Projector SA* [2009] 2 SLR(R) 151.
[30] See Section 60 of Part VI of the Bankruptcy Act (Cap 20).
[31] See *The "Hull 308"* [1991] 2 SLR(R) 643.

35. Are insolvency procedures administered by courts of general jurisdiction, or by specialised courts or tribunals exercising commercial or insolvency jurisdiction?

Answer: Insolvency procedures are administered by the High Court.[32]

36. Describe generally the threshold tests set out in your law for the status of insolvency.

Answer: The status of insolvency is defined as the company's inability to pay its debts as they fall due.[33] **Although there is no single test for insolvency, there are two main tests – (1) whether there is a deficit after balancing the company's overall assets and liabilities and (2) whether the company is able to pay current debts as they fall due.** [34] **The court will take contingent and prospective liabilities into account.**[35]

The court will also consider all the circumstances of the case[36] **such as the company's liabilities and assets and the prospect of a fresh injection of capital.** [37]

37. If the threshold tests for insolvency proceedings in your country differ for a foreign ship operator with assets in your country which wishes to begin insolvency proceedings in your country, describe these differences in detail.

Answer: The threshold tests are the same.

38. Do your laws permit a private creditor to obtain a court order to begin insolvency proceedings against a ship operator? If so, describe generally what facts or legal grounds the creditor must show to obtain such an order.

Answer: Yes, private creditors may commence insolvency proceedings against a ship operator – see first paragraph of response to Question 2.

In addition to the factual grounds of insolvency described in the response to Question 36, the company can be deemed insolvent in the following instances – (a) failure to comply with a statutory demand under the Companies Act[38] **or (b) where the company has not satisfied execution proceedings brought pursuant to a court judgment or order.**[39]

39. Do your laws permit a public authority to obtain a court order or to exercise its own jurisdiction to begin insolvency proceedings against a ship operator other than procedures available to private creditors? If so, describe generally what are the factual or legal grounds for such public authority to begin such insolvency process?

Answer: No known formal procedures exist.

40. Does a ship operator have rights to defend or oppose an insolvency proceeding begun by private creditors or public authorities? If so, describe generally what defences are available.

---

[32] See Section 17 of the Supreme Court of Judicature Act (Cap 322) and Section 3 of Part II of the Bankruptcy Act.
[33] See Section 254(1)(e) of Division 2 Part X of the Companies Act and Section 351(c)(ii) of Division 5 Part X of the Companies Act.
[34] See *Re Great Eastern Hotel* [1989] 1 MLJ 161 and *Re Sanpete Builders (S) Pte Ltd* [1989] 1 SLR(R) 5.
[35] See Section 254(2)(c) of Division 2 Part X of the Companies Act.
[36] See *Chip Thye Enterprises Pte Ltd (in liquidation) and Phay Gi Mo and others* [2004] 1 SLR(R) 434.
[37] See *Re Great Eastern Hotel* [1989] 1 MLJ 161 and *Re Sanpete Builders (S) Pte Ltd* [1989] 1 SLR(R) 5.
[38] See Section 254(2)(a) of Division 2 Part X of the Companies Act and Section 351(2)(a) of Division 5 Part X of the Companies Act.
[39] See Section 254(2)(b) of Division Part X of the Companies Act and Section 351(2)(c) of Division 5 Part X of the Companies Act.

Answer: Yes, the ship operator can oppose insolvency proceedings by proving it is not insolvent, disputing the underlying debt[40] or proving a cross-claim against the debtor.[41]

41. Do your laws permit a ship operator to voluntarily begin an insolvency proceeding? If so, describe generally what facts or legal grounds a ship operator must demonstrate to begin voluntary insolvency proceedings.

Answer: Yes – the ship operator must demonstrate that it is unable to pay its debts.[42] The same applies to unregistered companies.[43] See responses to Questions 36 and 38.

42. Do creditors or any other persons with legal standing (such as public authorities, shareholders or employees of a ship operator) have rights to oppose a ship operators' voluntary insolvency proceeding? If so, describe generally what classes of persons other than creditors have such legal standing and what grounds of opposition are available.

Answer: Yes – where creditors are of the view that the company can be rehabilitated or that a more advantageous realisation of assets may be achieved, they may commence competing applications for the company to enter into a scheme of arrangement or judicial management.

43. Do your laws provide for a time bar for filing of claims in insolvency proceedings which is different from limitation periods or prescription for commencement of maritime claims generally? If insolvency proceedings have different time bars for filing of claims, are these time bars set out in legislation or are they decided by insolvency administrators or tribunals on a case-by-case basis?

Answer: Yes, time bars are generally decided by insolvency administrators. However, the time bar must at least be 14 days after notice of the time bar has been given to all creditors (see response to Question 11).

44. Do your laws permit an insolvency administrator to carry on the ship operator's business for a temporary period in order, for example, to complete voyage or charter party commitments?

Answer: The insolvency administrator is entitled to carry on the ship operator's business temporarily for a period of up to 4 weeks after the winding up order to the extent necessary for the benefit of the winding up. Thereafter, the insolvency administrator must obtain court approval or approval from the committee of inspection[44] by showing that it is necessary to benefit the winding up.[45]

45. Do your laws permit an insolvency administrator to disclaim or otherwise set aside future contractual obligations such as charter parties or contracts of affreightment?

Answer: Yes, the insolvency administrator can disclaim unprofitable contracts after obtaining leave from the committee of inspection or from the court within a 12-month period after the commencement of winding up.[46]

---

[40] See *Pacific Recreation Pte Ltd v S Y Technology* [2008] 2 SLR(R) 491.
[41] See *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2009] 4 SLR(R) 83.
[42] See Section 254(1)(a) of Division 2 Part X of the Companies Act.
[43] See Section 351(1)(c)(ii) of Division 5 Part X of the Companies Act.
[44] A committee of inspection comprises of creditors and contributors of the company or their appointed representatives – See Section 278 of Division 2 Part X of the Companies Act.
[45] See Section 272(2)(a) of Division 2 Part X of the Companies Act.
[46] See Section 332(1)(c) of Division 4 Part X of the Companies Act.

46. Do your laws permit or require an insolvency administrator to compulsorily transfer contractual obligations such as contracts of affreightment or employment agreements with crew from the insolvent ship operator to the purchaser of the vessel from the estate of the insolvent owner?

Answer: No – Singapore law recognises an assignment of benefit but not obligation.

Part 8 Acceleration of Remedies

47. Do your laws permit a creditor to contract for immediate repayment of an entire debt, such as future obligations under a ship mortgage, if a ship owner becomes insolvent?

Answer: No, insofar as the creditor is unsecured, contracting for immediate repayment would be viewed as contracting out of the *pari passu* and anti-deprivation rules. Attempts to contract out of the *pari passu* and anti-deprivation rules will be struck down by the court.[47]

48. If there are differences in the application of these laws to acceleration remedies by foreign creditors as distinct from local creditors, describe these differences in detail.

Answer: Acceleration remedies are equally unavailable to both local and foreign creditors.

Part 9 Classes of Claims and Creditors

49. Do your insolvency laws apply differently to differing types of claims or creditors? Please respond to this question using the attached table. For example, is a bank or financial institution permitted to enforce a ship mortgage by procedures outside of an insolvency which would not be available to a ship mortgagee other than a bank or financial institution?

Answer: See attached table in response to the first part of the question.

Ship mortgagees are secured creditors and are entitled to enforce their security outside the insolvency regime as long as the writ in rem is served prior to the insolvency (see response to Question 50 below). No known procedures are available exclusively to ship mortgagees which are banks or financial institutions.

50. Does the existence of an insolvency proceeding under your country's law alter the priority of creditors' claims against a ship owned or operated by an insolvent person? Please respond to this question with reference to the types of claims listed in the attached table.

Answer: If the ship is served with a writ *in rem* prior to the commence of winding up, creditors with claims secured by maritime liens and statutory liens[48] against the ship, fall outside the insolvency regime as secured creditors.[49] They are entitled to realise their security through arrest and judicial sale of the vessel.[50]

If the writ *in rem* is not served prior to the commencement of liquidation, creditors with such claims are no longer entitled to assert security against the ship.[51] Insofar as such

---

[47] See *Joo Yee Construction Pte Ltd (in liquidation) v Diethelm Industries Pte Ltd and others* [1990] 1 SLR(R) 171.
[48] See Section 4 of the High Court (Admiralty Jurisdiction) Act (Cap 123)
[49] Singapore follows the English position in *In re Aro Co* [1980] Ch 196. See *The "Hull 308"* [1991] 2 SLR(R) 643 and *Lim Bock Lai v Selco (Singapore) Pte Ltd* [1987] SLR(R) 466.
[50] See Section 327 of Division 4 Part X of the Companies Act read with Section 76(3) of the Bankruptcy Act. See also the procedures for judicial sale at Order 70 of the Rules of Court.
[51] See *The "Hull 308"* [1991] 2 SLR(R) 643.

creditors do not have alternative security, they remain unsecured creditors and are subject to prove *in pari passu* with other unsecured creditors.

51. If a shipowner commences proceedings to establish a limitation fund under the LLMC Convention or to establish a limitation fund under domestic law, describe the relationship between such fund and any insolvency proceedings involving that shipowner. For example, can creditors begin insolvency proceedings if a limitation fund has been established? Can an insolvent shipowner establish a limitation fund?

Answer: As yet, there is no existing case law suggesting that the fund is inaccessible to creditors during insolvency proceedings or that claims cannot be made against the fund during insolvency proceedings.

Nonetheless, creditors can begin insolvency proceedings despite the establishment of a limitation fund.

As a matter of general insolvency law, whether an insolvent shipowner can establish a limitation fund may depend on whether it was instituted before or after insolvency proceedings. The position seems analogous to the issue of whether maritime claims can be enforced via ship arrest during a winding up.[52] Where the limitation fund was established prior to insolvency proceedings, it is likely that creditors can claim in respect of the fund since the court may find that they are entitled to have the fund preserved for their benefit. Where the limitation fund was established after the commencement of insolvency proceedings, it may amount to an unlawful disposition of the company's assets which will be automatically voided unless the court orders otherwise.[53]

Part 10 Proposals for Reorganization or Compromise

52. Do your laws permit an insolvent ship operator to make a proposal for the reorganization of its business or compromise of claims in which the ship operator would continue to operate into the future if the proposal is approved?

Answer: Yes, the procedure is under Section 210 of Part VII of the Companies Act.

53. Do your laws permit such proposals to be conducted through private contractual arrangements between an insolvent ship operator and some of its creditors, or do such proposals need to be conducted under supervision of a court or with approval of all identifiable creditors?

Answer: Yes, Singapore law permits informal restructuring to take place via private contractual arrangements.[54]

54. If it is lawful to conduct a proposal through private contractual arrangements, are such private contractual arrangements affecting a ship legally binding on other claimants against that ship who have not participated in such private contractual arrangements?

Answer: No, informal restructuring does not apply to creditors who have not participated in the contractual arrangement.[55]

55. If a proposal is required to be conducted under supervision of a court or approval of all known creditors, please provide a general description of the reorganization procedure.

---

[52] See *The "Hull 308"* [1991] 2 SLR(R) 643.
[53] See Section 259 of Division 2 Part X of the Companies Act.
[54] See Chapter II of Andrew Chan, *Law and Practice of Corporate Insolvency* (LexisNexis).
[55] See Para 351 of Chapter II of Andrew Chan, *Law and Practice of Corporate Insolvency* (LexisNexis).

Answer: **The reorganization procedure commences with an application to the court by the company, creditor, member or liquidator for the court to order a meeting of creditors.[56] The company directors must send a notice of meeting accompanied by an explanatory statement to all creditors of the company as well as to invite creditors to submit proof of debts.[57]**

The scheme is put before the court-ordered creditors meeting where the creditors must vote in approval (75% majority in value and simple majority in number).[58] Having obtained the requisite creditor approval, the court may sanction the scheme subject to alterations or conditions as it thinks just.[59]

56. Are secured creditors of an insolvent shipowner subject to court orders approving a reorganization or compromise?

Answer: **Yes, the scheme applies to all creditors and members of the company.[60]**

57. Do your laws permit an insolvent ship operator to transfer an insolvency proceeding into a proceeding for reorganization or compromise?

Answer: **Yes, the liquidator has *locus standi* to apply for a scheme of arrangement under Section 210(1) of Part VII of the Companies Act.**

Part 11 Receiverships

58. Does your law permit a private creditor such as a ship mortgagee to take over the business of a ship operator or to sell part or all of its fleet or generally act to recover a debt without needing to commence insolvency proceedings for the benefit of all creditors?

Answer: **Yes – only where the terms of the debenture confer a charge over the business or undertaking of the company and vests the debenture holder with the right to appoint a receiver and manager.[61]**

59. Does your law set out minimum requirements which a private receiver of an insolvent shipowner must follow such as giving notice to other registered ship mortgagees, the procedure for sale, etc.

Answer: **Yes, the private receiver must give notice of his appointment to the company insolvent shipowner immediately[62] and to the Registrar within 7 days after his appointment.[63] A similar notice must be given by his appointer.[64]**

The private receiver must lodge an account of his receipts and payments with the Registrar every 6 months[65] verified by an affidavit.[66]

---

[56] See Section 210(1) of Division 2 Part X of the Companies Act.
[57] See Section 211 of Division 2 Part X of the Companies Act.
[58] See Section 210(3) of Division 2 Part X of the Companies Act.
[59] See Section 210(4) of Division 2 Part X of the Companies Act.
[60] See Section 210(3) of Part VII of the Companies Act and *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121.
[61] Singapore follows the English position in *Whitley v Challis* [1892] 1 Ch 64.
[62] See Section 223(1)(a) of Part VIII of the Companies Act.
[63] See Section 221(2) of Part VIII of the Companies Act.
[64] See Section 221(1) of Part VIII of the Companies Act.
[65] See Section 225(1) of Part VIII of the Companies Act.
[66] See Section 225(2) of Part VIII of the Companies Act.

The private receiver must pay preferential creditors under Section 328 of Division 4 Part X of the Companies Act in priority to discharging the private creditor's debt.[67]

[67] See Section 226 of Part VIII of the Companies Act.

Type of claim arising	**Secured Claim (enforcement may be continued by claimant outside bankruptcy administration)**	**Preferred Claim (administered as part of bankruptcy process but in higher priority to general creditors)**	**Unsecured Claim (administered as part of bankruptcy process with same ranking as other claims)**	**Exempt Claim (claim is not subject to bankruptcy or continues to be an obligation of ship operator after bankruptcy administration concluded)**	**Additional Comments**
Title, possession or ownership of a ship or any part interest in a ship	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[1]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		Property not owned by the company is not part of the pool of assets available for distribution in an insolvency.
between co-owners of a ship including use or earnings of the ship	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[2]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
mortgages or hypotecs on a ship or share in a ship	Mortgagees are secured creditors and are entitled to realise their security.				
bottomry or other contractual liens on a ship	The claimant with a bottomry bond holds a maritime lien on the vessel,[3] rather than a contractual lien.				
wages, benefits, or repatriation of master or crew	The master and crew hold a maritime lien on the vessel for their claims on wages and	If a writ in rem cannot be served on the vessel, the master and crew are entitled to be paid their			

[1] See Section 3(1)(a) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[2] See Section 3(1)(b) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[3] See *The Halcyon Isle* [1981] AC 221.

	benefits.	wages and benefits in priority to other claims.[4]			
loss of life or personal injury in connection with operation of a ship	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[5]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
salvage awards	The claimant is a secured creditor since he holds a maritime lien on the vessel.				
unpaid suppliers of goods or services to a ship	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[6]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
general average collision	The answer pertains to general average acts. The claimant obtains security only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[7]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
other types of tortious or delictual physical damage caused by ship	The answer pertains to types of tortious or delictual physical damage caused by the ship. The claimant is a secured creditor since he				

[4] See Section 328(1)(b) of Division 4 Part X of the Companies Act. Even where the master or crew were hired by the ship manager, they are likely to fall within the definition of "employees" under Section 328(2B)(a)(i) of Division 4 Part X of the Companies Act.
[5] See Section 3(1)(f) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[6] See Section 3(1)(l) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[7] See Section 3(1)(p) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.

	holds a maritime lien on the vessel.				
cargo loss or damage	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[8]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
contracts of carriage, including charterparties, other than for cargo loss or damage	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[9]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
towage (other than salvage)	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[10]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
pilotage	Only insofar as the claimant has served a writ in rem on the vessel and obtains a statutory lien.[11]		Where no writ in rem has been served prior to insolvency, the claimant is only entitled to claim as an unsecured creditor.		
hull insurance			The claimant holds the status of an unsecured creditor.		
P&I insurance			The claimant holds the status of an unsecured creditor.		
port, canal and harbour dues					Where the ship is under arrest and subject to

[8] See Section 3(1)(g) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[9] See Section 3(1)(h) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[10] See Section 3(1)(j) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.
[11] See Section 3(1)(k) read with Section 4(4) of the High Court (Admiralty) Jurisdiction Act.

					judicial sale, claims arising from port dues have paramount priority to all other maritime claims.[12]
wreck removal by public authorities					The public authority which removes the wreck is entitled to sell any ship or part thereof and recover the expenses incurred.[13]
environmental damage			The claimant holds the status of an unsecured creditor.		
unpaid contributions for social benefits programs (workers' compensation, health etc)	The definition of wages may expand to include social benefits mandated by statute or under the contract. Therefore, master and crew hold a maritime lien on the vessel for their claims on wages and benefits.	If the writ in rem cannot be served, the employee must prove in general insolvency proceedings. Unpaid contributions for social benefit programmes are entitled to be paid in priority to other claims.[14]			
criminal or regulatory fines or penalties			The claimant holds the status of an unsecured creditor.		
fraud or intentional wrongdoing in connection with operation of ship			The claimant holds the status of an unsecured creditor.		

[12] See *The Felicie* [1992] 1 SLR 175.
[13] See Section 161 of Part IX of the Merchant Shipping Act (Cap 179).
[14] See Section 328(1)(d) of Division 4 Part X of the Companies Act. Even where the master or crew were hired by the ship manager, they are likely to fall within the definition of "employees" under Section 328(2B)(a)(i) of Division 4 Part X of the Companies Act.