



OVERVIEW OF SINGAPORE SHIPPING LAW

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Overview

- Applicable law
 - History of admiralty jurisdiction in Singapore
 - Reception of English Law
 - Local Legislation and applied Conventions
- Carriage of goods by sea
- Court system
 - Judicial hierarchy
 - Procedure in admiralty disputes



Overview

- Arresting vessels in Singapore
- Arbitration in Singapore
 - SIAC
 - SCMA
- Registration of vessels in Singapore
 - Procedure
 - Incentives

History of Admiralty Jurisdiction in Singapore

- Singapore was founded as a British colony in 1819
- After independence in 1965, Legislature enacted Supreme Court of Judicature Act 1969
 - Vested admiralty jurisdiction to the High Court
 - High Court (Admiralty Jurisdiction) Act brought within civil jurisdiction framework of High Court

History of Admiralty Jurisdiction in Singapore

- Some English legislation directly applicable via **Application of English Law Act (Cap. 7A)**
 - Bills of Lading Act
 - Marine Insurance Act
 - Maritime Conventions Act 1911
 - Straits Settlements and Johore Territorial Waters (Agreement) Act 1928
 - Territorial Waters Jurisdiction Act 1878
- English case law persuasive due to history
 - Second Charter of Justice 1826
 - Singapore is a Common Law country and former colony

Local Admiralty Legislation and Applicable Conventions

- High Court (Admiralty Jurisdiction) Act
 - Modelled after U.K. Administration of Justice 1956
 - Amended in 2004 to allow for arrest of demise chartered vessels
- Carriage of Goods By Sea Act
 - Bills of Lading Act
 - Hague-Visby Rules

Local Admiralty Legislation and Applicable Conventions (*cont.*)

- Merchant Shipping Act
 - Prior to 2004 amendment: regime for limitation of liability based on tonnage of the vessel was that of the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships ('the 1957 Convention')
 - Post 2004 amendment: adopted the Convention on Limitation of Maritime Liability for Maritime Claims 1976 ('the 1976 Convention') - limitation figures are set higher than those under the 1957 Convention but difficult to break limitation.

Local Admiralty Legislation and Applicable Conventions (*cont.*)

Oil Pollution

- In Singapore, there are two primary statutes governing oil pollution.
- Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act ('CLC')
- Prevention of Pollution of the Sea Act ('PPSA').
 - The CLC gives effect to the International Convention on Civil Liability for Oil Pollution Damage 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992. The CLC governs oil pollution caused by any 'ship constructed or adapted for carrying oil in bulk as cargo'.
 - The PPSA gives effect to the International Convention for the Prevention of Pollution from Ships 1973 as modified and added by the Protocol of 1978 (MARPOL)

Court Procedure in Admiralty Disputes

- High Court hears all admiralty disputes, regardless of claim quantum – Section 3(1)(a-r) of *the High Court Admiralty Jurisdiction Act* ('HCAJA') and Section 17(b) of *the Supreme Court of Judicature Act* ('SCJA')
- Sections 3(1)(a)-(r) of the HCAJA are largely similar to sections 20(2)(a)-(s) of the UK Supreme Court Act, 1981

Admiralty Judges in the High Court

Justice Belinda Ang



- Appointed Judicial Commissioner on 1 February 2002
- Appointed Judge on 2 January 2003

Justice Tan Lee Meng



- Appointed Judicial Commissioner on 2 February 1997
- Appointed Judge on 1 August 1997

Justice Judith Prakash



- Appointed Judicial Commissioner on 1 April 1992
- Appointed Judge on 1 April 1995

Jud. Comm. Steven Chong



- Appointed Judicial Commissioner on 1 October 2009



Court Procedure in Admiralty Disputes (*cont.*)

- Parties who fail at first instance may appeal to the Court of Appeal – Highest Court in Singapore
 - Became Singapore's final court of appeal on 8 April 1994, when appeals to the Judicial Committee of the Privy Council were abolished
- Composition of the Court of Appeal - The civil jurisdiction of the CA shall be exercised by 3 or any greater uneven number of Judges of Appeal (Section 30(1) of the SCJA)



Arresting Vessels in Singapore

Section 4 of the HC(AJ)A permits an action in rem to be brought in 2 situations:

1. The offending vessel, in respect of claims brought within section 3(1) HCAJA

2. “Sister vessels” (s. 4(4)(ii) HCAJA):

- *“any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.”*

Arresting Vessels in Singapore

Procedure for Arresting a Vessel

- An admiralty action is commenced by the issuance of a writ in rem.
 - An arresting party has to apply for a warrant of arrest, in support of the application of which, an affidavit must be filed.
 - An arresting party has the duty to make full and frank disclosure to the court of all material facts (*The Rainbow Spring* [2003] 3 SLR 362; *The Inai Selasih* [2006] 2 SLR 181; *The Vasiliy Golovnin* [2007] SGHC 116).
 - The vessel is arrested when the warrant of arrest is affixed for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure (see order 70 rule 10 of the Rules of Court).
 - After a vessel is arrested, she comes under the custody of the sheriff of the High Court of Singapore.



Arresting Vessels in Singapore


Other Claimants/ Caveat against Release

- A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of Court of any money in Court representing the proceeds of sale of that property must file in the Registry a Request
- On the filing of the Request, a caveat against the issue of a release with respect to that property and the payment out of Court of that money shall be entered in the caveat BOOK




Arbitration in Singapore – Applicable Legislation

- Arbitration Act (Cap 10) (Domestic)
- International Arbitration Act (Cap 143A)
- UNCITRAL Model Law
- Party to New York Convention



International Arbitration Act (Cap 143A) - Features

- i. A framework for International Arbitration
 - UNCITRAL Model Law with amendments
 - » E.g. – default number of arbitrators where there is no provision in the arbitration agreement is 1.



International Arbitration Act (Cap 143A) - Features

Parties to an arbitration in Singapore or elsewhere can apply to Court for orders to assist arbitrations.

- A. giving of evidence by affidavit;
- B. the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute;
- C. samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
- D. the preservation and interim custody of any evidence for the purposes of the proceedings;
- E. securing the amount in dispute;**
- F. ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and**
- G. an interim injunction or any other interim measure. (including Mareva injunctions to assist both Singapore and foreign arbitrations)**



International Arbitration Act (Cap 143A)

- i. Mandatory Stay by the Court
- ii. Arrest – retention of security for arbitration
- iii. Enforceability of other arbitral awards under the New York Convention 1958



Circumstances where the arbitral award will not be enforced – Sections 31(2) and (4) of the Act

- A party to the arbitration agreement was under some incapacity at the time when the agreement was made;
- The arbitration agreement is not valid under the law to which the parties have subjected it or the law of the country where the award was made;
- No/improper notice given to a party to the proceedings
- Award contains a decision on the matter beyond the scope of the submission to arbitration;
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties
- The award has been set aside or is not binding on a party yet
- The subject-matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Singapore; or
- Enforcement contrary to public policy



Arbitration in Singapore – SIAC / SCMA

- Confidentiality
- Power to appoint a competent tribunal
- Ability to conclude the dispute resolution swiftly/procedural flexibility
- Option of securing the claim(rule B attachment/ arrest of vessel)
- Ease of enforceability
- Incentives



Arbitration in Singapore – SIAC / SCMA

- Communications and information technology infrastructure
- Availability of full time professional arbitrators, both local and foreign
- Foreign lawyers have the right to appear and conduct arbitrations
- Since 2003, foreign arbitrators fully exempted from withholding taxes
- 50% tax exemption for law firms' incremental income derived from international arbitration activities



Singapore International Arbitration Centre

- Singapore International Arbitration Centre is now one of the premier international arbitration institutions in Asia
- A neutral, efficient and reliable dispute resolution service in this important regional hub that is the centre of Asia's legal and business activity.
- Arbitration administered by the SIAC is on the increase.



SIAC arbitration on the rise

NUMBER OF INTERNATIONAL CASES ADMINISTERED BY SIAC

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
41	44	38	35	48	45	65	70	71	114

More and more parties from abroad choose Singapore, not because their contract has any connection with Singapore, but for the many advantages that Singapore has to offer as the seat of their arbitration.



SIAC arbitration on the rise

What Singapore Has to Offer

- Independent neutral third-country venue.
- Strong tradition of the rule of law.
- Maximum judicial support of arbitration, minimum intervention.
- Freedom of choice of counsel in arbitration proceedings.
- Competent arbitration professionals — lawyers, arbitrators and experts.
- Excellent support facilities and services.
- Lower cost than in almost any other major centre of arbitration.



Singapore Chamber of Maritime Arbitration

- The SCMA was originally established in November 2004 within the umbrella of the Singapore International Arbitration Centre (SIAC).
- As from May 2009, the SCMA has been reconstituted as a company limited by guarantee and separate from the SIAC.
- The aim of the SCMA is to provide a framework for maritime arbitration which is responsive to the needs of the maritime community.



Singapore Chamber of Maritime Arbitration

- SCMA provides a framework for non-institutional arbitration and has minimum involvement in the process of arbitration.
- SCMA does not charge a management fee.
- SCMA does not have a mandatory panel of arbitrators.
- SCMA does not have a schedule of required fees for arbitration.



Singapore Chamber of Maritime Arbitration – Fees


- **Fixed Arbitration Fees**
 - To Arbitrator
 - Appointment Fee:USD250
 - Booking Fee for Tribunal:USD750 per day
- **To SCMA**
 - Certifying of Documents:USD100
 - SCMA chairman appointing arbitrator in default of parties appointing:USD500



Singapore Chamber of Maritime Arbitration – Fees

- **Small Claims Procedure**

- Claims not exceeding USD75,000(excluding interest and costs).
- Sole arbitrator - Capping of fees for arbitrator
 - USD3,000 or, if there is a counterclaim, USD5,000 in total per arbitrator
- Capping of recoverable fees for lawyers
 - USD4,000 or, if there is a counterclaim, USD5,000



Singapore Judiciary and International Arbitrations

- Duty to refer parties to arbitration
- Hands off approach
- Average of 10 foreign awards enforced by the High Court every year
- No foreign arbitral award has been refused in Singapore



SETTING UP IN SINGAPORE

**Fiscal Schemes in Singapore and Legal
System Advantages of Singapore**



Scope

- Schemes under the Singapore Income Tax Act for Income Exemption
- Registration Fees: Block Registration Scheme



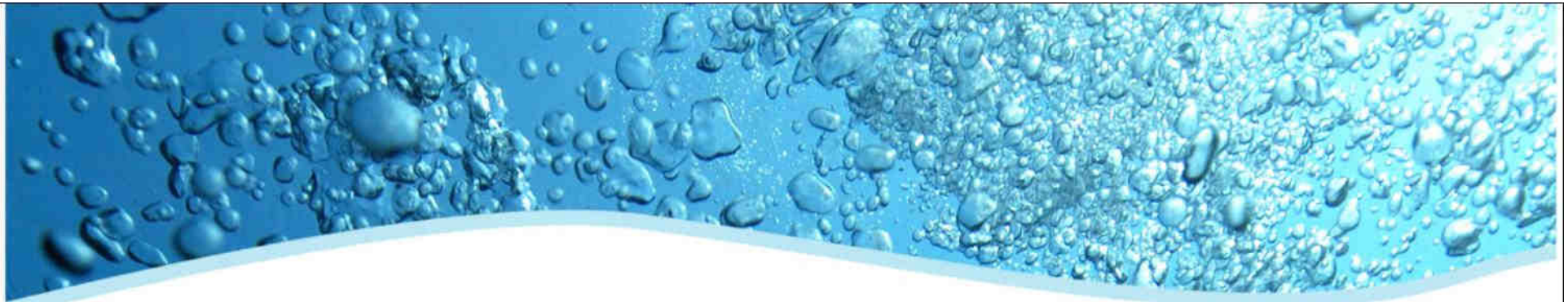
Schemes under the Income Tax Act (“ITA”)



- Income Tax

- Singapore Corporate Tax Rate: **18%**

- Gains or profits from trade
- Gains or profits from employment
- Dividends, interest or discounts
- Pension, charge or annuity
- Rents, royalties, premiums and any profits arising from property
- Gains or profits of an income nature



- **Section 13A:**
 - Exemption of shipping profits of shipping enterprise, including income derived from foreign exchange and risk management activities in connection with the operation of Singapore ships
- **Section 13F:**
 - Exemption of international shipping profits of approved international shipping enterprise. Also foreign exchange and risk management.
- **Section 13S:**
 - Exemption of income of shipping investment enterprise. Also foreign exchange and risk management.

Section 13A ITA

Exemption of Shipping Profits

- **Income Exemption**

- S. 13A(1): Income of a **shipping enterprise** derived or deemed to be derived from the **operation** of **Singapore ships** or **foreign ships** shall be exempt from tax.
- “**Shipping Enterprise**”: any company owning or operating Singapore ships or foreign ships



- **“Operation”**: means:
 - In relation to a Singapore ship:
 - Carriage of passengers, mails, livestock or goods outside the limits of Singapore;
 - Towing or salvage operations outside the limits of the port of Singapore;
 - The charter of the ship for use outside the limits of the port of Singapore;
 - For the year of assessment 2007 onwards, the use outside port limits of Singapore of the ship as a dredger, seismic ship or vessel used for offshore oil or gas activity;
 - **“Singapore ship”**: ship registered (other than provisionally) under MSA.



- In relation to a Foreign ship:
 - Carriage of passengers, mails, livestock or goods in Singapore, except where such carriage arises solely from transshipment from Singapore
 - Does not include:
 - Income derived from freight uplifted from Singapore.
 - Charter fees and carriage arising solely from transshipment from Singapore.
 - “**Foreign ship**”: ship other than a Singapore ship.



- **Capital Allowances / Losses**

- S. 13A(3): Capital allowances & losses incurred shall only be deducted against exempt income, and balances not available as deductions against any other income.

- **Separate Accounts**

- S. 13A(2) & (6): Separate accounts for income derived or deemed to be derived from the operation of each Singapore or foreign ship.
- S. 13A(2A): Common expenses not directly attributable to a ship may be allocated on reasonable basis.
- Accounts to be produced to Comptroller whenever required in writing.



- **Dividends**

- S. 13A(6): Dividends paid out of exempt income to be debited to separate income account.

- **Election**

- S. 13A(13): Shipping enterprise may elect to be taxed at corporate tax rate.
- S. 13A(14): Election shall be irrevocable.
- S. 13A(15): Capital allowances / losses & balances incurred during exempt period cannot be carried over as deductions.



- **Filing / Preparing tax computations**

- No need to apply to Income and Revenue Authority (IRAS) for exemption under S. 13A ITA.
- Exempt shipping income to be reported in annual Income Tax Form and tax computation.
- Certificates of Singapore Registry for each Singapore ship to be submitted.
- Separate operational accounts to be prepared for each Singapore ship and foreign ship in order that income and direct expenses of each ship can be separately identified.



- Tax computation to:
 - Show income and expenses for each ship.
 - Distinguish between exempt and non-exempt income.
 - Allocate common expenses (eg. administrative expenses) that cannot be directly identified to each ship on a reasonable basis (eg. turnover basis).
- Capital Allowances:
 - Capital allowances on common fixed assets (both exempt and non-exempt income) apportioned on turnover basis.
 - Capital allowances on fixed assets directly identifiable against particular exempt or non-exempt income to be deducted against that income.
 - Company can choose not to claim capital allowance attributable to exempt income.



Section 13F ITA

Exemption of International Shipping Profits

– S. 13F(1):

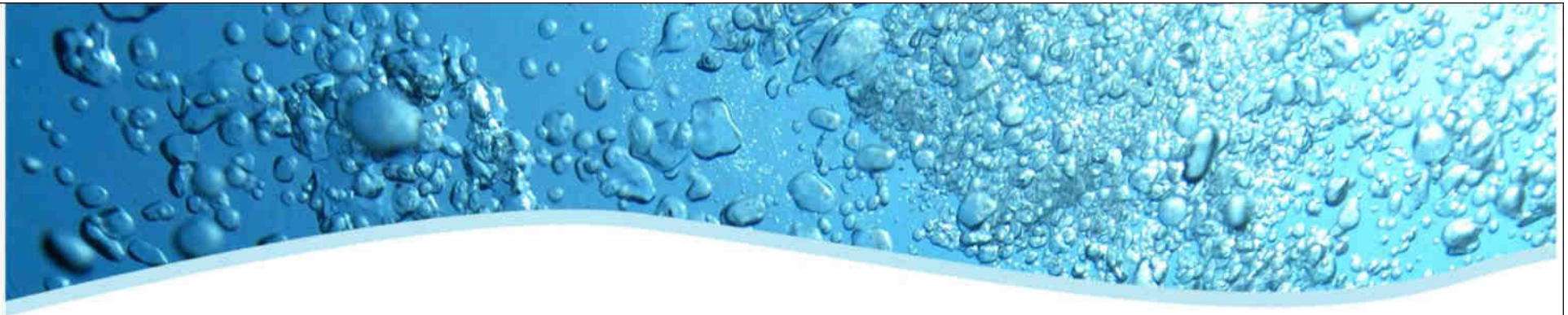
- Income of an **Approved International Shipping Enterprise** derived from the following activities are exempt from tax:



- Carriage of passengers, mails, livestock or goods from outside the port limits of Singapore by any foreign ship;
- Charter of any foreign ship to any person where such ship is used by the person for carriage of passengers, mails, livestock or goods outside the port limits of Singapore ;
- Carriage of passengers, mails, livestock or goods by any foreign ship to Singapore solely for the purpose of transshipment;
- The operation outside port limits of Singapore of any dredger, seismic ship or any vessel used for offshore oil or gas activity;

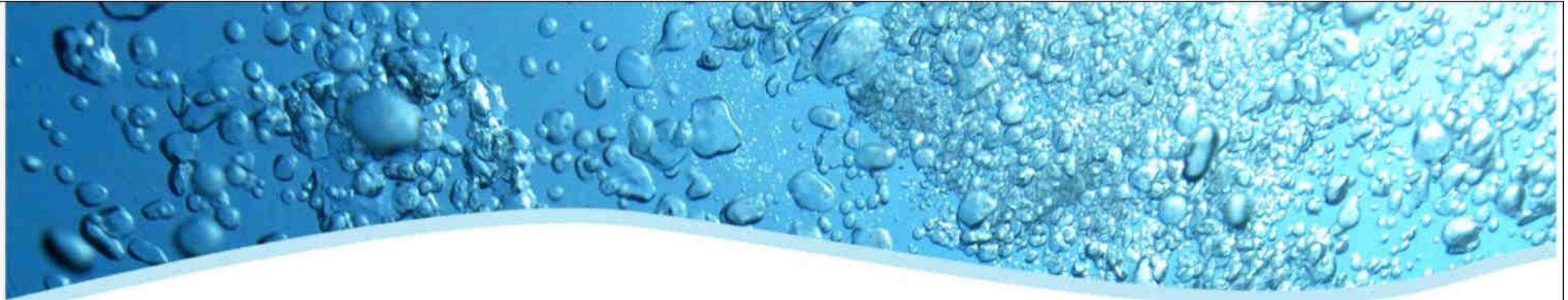


- The charter of any foreign dredger, foreign seismic ship, or any foreign vessel used for offshore oil or gas activity to any person used by such person for his operation outside port limits of Singapore;
- Towing or salvage operations carried out from outside the port limits of Singapore by any foreign ship;
- Charter of any foreign ship to any person where such ship is used by the person for towage and salvage operations carried out outside port limits of Singapore.



- **Exemption Period**

- S. 13F(2): for a period not exceeding 10 years, which can be extended for further periods of 10 years at a time.



- “Approved International Shipping Enterprise”
(AIS):
 - Any company resident in Singapore owning or operating Singapore ships or foreign ships and approved by the Minister (or such persons as appointed) subject to conditions.



- **AIS Scheme:**

- Administered by Maritime Port Authority of Singapore (MPA).
- By way of application to MPA for approval, providing:
 - Proposed business structure;
 - Details of parent company / HQ, group financials, subsidiaries / related companies worldwide, fleet, area of operations;
 - Details of existing Singapore operations (if any);



- Details of proposed Singapore operations, including:
 - Proposed Singapore-registered vessels over next 5 years;
 - Fleet operated from Singapore over next 5 years;
 - Projected annual business spending over next 5 years;
 - Implementation schedule.
- Details of usage of Singapore banking / finance facilities for past 3 years and proposed for next 5 years.
- Estimated remittance of dividends from overseas subsidiaries



- Approved Network Company (ANC) under the AIS
 - Refers to companies which are part of the income network of the AIS company.
 - To be provided to MPA:
 - Details of ANC – structure, fleet, financials;
 - Written undertaking from AIS company confirming that foreign dividends remitted or profits repatriated to the AIS company are declared out of qualifying shipping profits and that the overseas network company is strategically / commercially managed from the AIS company in Singapore.



- Conditions under AIS scheme:
 - Proposed and approved business plans to be implemented;
 - Only qualifying income under S. 13F ITA eligible for exemption – non-qualifying income of the AIS is not exempt.
 - Exemption of withholding tax on charter payments of charter hire vessels for qualifying activities of AIS only in respect of chartered vessels declared to MPA (whether from ANCs, unrelated non-resident companies, or for “pooled” arrangements).
 - All charters from related or non-related parties to be conducted at arms-length basis.
 - Group to support and make significant use of Singapore infrastructure.



- Performance review end of 5th year – to submit business plans for subsequent 5 years.

- Reporting requirements to MPA of AIS group:
 - Changes in shareholding and operations of group companies;
 - Maintain proper records and accounts of all transactions for verification;
 - Submit copy of annual audited accounts and statement for actual total business spending incurred in Singapore;
 - Disclose such information as requested by Government;
 - Permit inspection of premises by Government officers.



- ANC granted exemptions on basis:
 - That AIS status not withdrawn or revoked;
 - AIS to report actual amount of dividends / share of profits remitted from ANCs and give written undertaking that foreign dividends / share of profits from ANC declared out of shipping operations.
 - In event actual dividends / share of profits differs from projections, right by IRAS to clarify from AIS.
 - AIS required to submit to MPA projections of future dividend remittances every 3-year period.



Section 13S ITA

Exemption of Shipping Investment Enterprise

- S. 13S: Income derived by an approved shipping investment enterprise from the chartering or finance leasing of the following is exempt from tax:



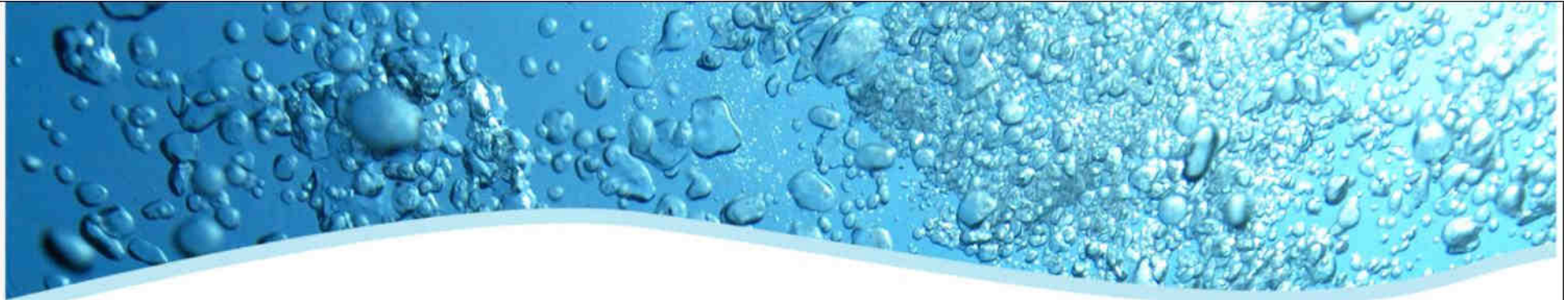
- any sea-going ship for use outside Singapore port limits and acquired during the period of approval to:
 - a person who is neither resident in nor a permanent establishment in Singapore;
 - an approved international shipping enterprise (see S. 13F)
- any sea-going Singapore ship for use outside Singapore port limits acquired during period of approval to a shipping enterprise within meaning of S. 13A.



- **Period of Approval**

- S. 13S(4): period specified not to exceed in the case of:

- any ship used for the carriage of goods or passengers, towage or salvage – 30 years; or
- any dredger, seismic ship or any ship used for offshore oil or gas activity – 40 years.



- “approved international shipping enterprise” has same meaning as in S. 13F, ie. AIS;

- “shipping investment enterprise” means
 - a company incorporated and resident in Singapore, or
 - a registered business trust.

- “finance leasing” means leasing of any sea-going ship which has the effect of transferring substantially the obsolescence, risks or rewards incidental to ownership of the sea-going ship to the lessee;

- “sea-going ship” includes dredger, seismic ship, or offshore oil or gas vessel;



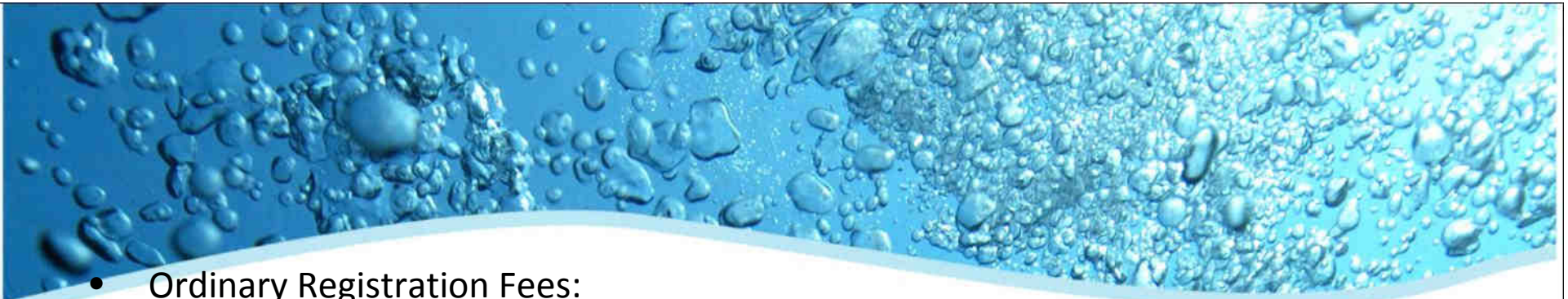
- Approved Ship Investment Vehicle (ASIV) Scheme
 - Administered by MPA



Registration Fees: Block Transfer Scheme (BTS)



- Ship may be registered as Singapore ship by either Citizens / Permanent Residents of Singapore, or foreign- or local-owned Singapore Companies:
 - Local-owned: more than 50% of equity owned by citizens of Singapore / other local-owned companies
 - minimum paid-up S\$50,000; or
 - for tug-&-barge owning company, paid-up capital pegged at 10% of value of first registered tug or barge (subject to minimum S\$10,000) or S\$50,000 maximum paid-up, whichever is lower.
 - Foreign-owned: more than 50% of equity owned by non-citizens of Singapore.
 - Minimum paid-up capital of S\$50,000;
 - Vessel must be at least 1,600 gross tonnage and self-propelled – may be waived if registered under BTS or by application.



- Ordinary Registration Fees:
 - S\$2.50 per NT (to nearest ton).
 - Minimum sum of S\$1,250.00 (500 NT) and maximum of S\$50,000.00 (20,000 NT).

- Registration under BTS:
 - S\$0.50 per NT.
 - Minimum sum of S\$1,250.00 (2,500 NT) and maximum of S\$20,000.00 (40,000 NT) per vessel.

- Annual Tonnage Tax:
 - S\$0.20 per NT
 - Minimum of S\$100.00, maximum of S\$10,000.00

Examples of Registration Fees under Ordinary Registration and BTS

NT	Ordinary Registration (S\$2.50 per NT)	BTS (S\$0.50 per NT)
500	S\$1,250	S\$1,250
900	S\$2,250	S\$1,250
5,000	S\$12,500	S\$2,500
10,000	S\$25,000	S\$5,000



BTS requirements:

- 2 ships aggregate tonnage 40,000 NT;
 - 3 ships aggregate tonnage 30,000 NT;
 - 4 ships aggregate tonnage 20,000 NT; or
 - 5 ships of any aggregate tonnage.
- Registration of fleet must be within a reasonable period of time.
 - Owners to write in to request for consideration, specifying total number of vessels, NT, and approximate date of registration.



THANK YOU!

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