

Seizing Ship's Certificates – New Laws Mooted for Vessel Arrests in Australia

Nathan Cecil, Partner

New laws presently being mooted provide for the seizure of original ship's Certificates for arrested vessels.

Offshore Arrest and Increased Flight Risk

In November 2010 the Federal Court of Australia issued guidelines applicable to the arrest of vessels offshore (ie at anchor, rather than at berth) in which the Court expressed its preference for vessels to be arrested offshore or shifted offshore after arrest. The preference for offshore arrest arises from the lack of lay berths or harbour moorings at many Australian ports and also considerations of disruptions if vessels arrested at working berths prevent port operations.

A concern arising from holding vessels offshore is increased flight risk. In order to address this risk, the Court expressed that in some circumstances it might be appropriate for a party or the Admiralty Marshal to apply to remove the ship's original Certificates and hold them effectively as security against flight.

Concerns Arising

Concerns were raised about the practicalities arising from the seizure of original ship's Certificates that are required to be kept on board and/or presented to relevant authorities upon demand. In some instances, a failure to have the Certificates on board or present them upon demand may constitute a technical breach of relevant legislation, for which fines may be payable. There was also some concern raised that the Admiralty Rules did not expressly provide a basis for the seizure of ship's Certificates or any proper mechanism in relation to the safe custody and return of the same upon the release of a vessel from arrest.

Practical concerns were also raised. For example, in very remote ports at which Admiralty Marshals are not based, there could be significant delay in returning seized Certificates. Similarly, for vessels arrested offshore, adverse weather or the unavailability of launch or

helicopter transport might result in difficulties returning seized Certificates. Any delay in sailing could result in significant costs to vessel and cargo interests and result in disputes as to the liability for those costs.

If a released ship was forced to sail for commercial reasons prior to the return of its Certificates, it may be that the laws of other jurisdictions impose even greater penalties on Owners for failing to have or present original Certificates than apply in Australia.

The New Laws

New amendments to the *Admiralty Rules* presently being mooted provide for the Admiralty Marshal to demand and take possession of original ship's Certificates whenever the Marshal considers it appropriate. Arresting parties may request that the Marshal does so. The Certificates covered include Class, survey, registration and SOLAS certificates.¹ The draft new laws provide for the return of the Certificates as soon as practicable after the vessel is released from arrest. The draft new rules do not (and perhaps could not) deal with the concerns described above.

The draft new laws are presently under discussion. If adopted, they will be referred to the legislature for formal enactment. This process may take some months.

Implications

Whilst the seizure of original Certificates would not appear automatically to invalidate Class or other insurances, the potential loss of or delays in returning seized Certificates could have significant commercial implications which would need to be considered in advance by Owners and operators of vessels trading to Australia.

Owners, charterers, vessel operators and their insurers should be aware of the possibility that new laws may shortly be introduced which permit the Admiralty Marshal to seize original ship's Certificates during an arrest. The seizure and any difficulties in returning the

¹ The non-exhaustive list is Classification Certificate (hull and machinery), Survey Certificate, Registration Certificate, Safety Equipment Certificate, Safety Radio Certificate, Safety Management Certificate, Safety Construction Certificate, International Tonnage Certificate, International Load Line Certificate and International Ship Security Certificate.

Certificates could result in delays to vessels sailing once released from arrest. Owners, charterers and vessel operators trading to Australia and their insurers should start to give consideration to their charterparties or contracts of carriage to see whether any amendments are necessary to allocate responsibility for any delays or other losses.

We will keep you advised if the proposed new laws are adopted.

* * *

If you have any queries or require further information, please contact:

Contact

Nathan Cecil Partner	+61 2 9230 9450	nathan.cecil@nortonwhite.com
Robert Wilson Partner	+61 2 9230 9475	robert.wilson@nortonwhite.com
Claire Morgan Foreign Registered Solicitor	+61 2 9230 9412	claire.morgan@nortonwhite.com