IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 79

Originating Application No 1376 of 2025

Between

Aquilo Shipping Inc

… *Applicant*

And

SRTT Marine Trading &
Services Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Interlocutory order or direction — Injunction]
[Injunctions — Mandatory injunction — Interim mandatory injunction compelling seller of ship to furnish security]
[Admiralty and Shipping — Practice and procedure of action in rem — Release — Whether release can be procured by way of an interim mandatory injunction]
[Admiralty and Shipping — Sale of ships — Clause 9 of the Norwegian Saleform 2012 — Construction]
[Contract — Contractual terms — Rules of construction — Indemnities]
[Civil Procedure — Summary determination of question of law — Construction of contract]

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Aquilo Shipping Inc
v
SRTT Marine Trading & Services Pte Ltd

[2026] SGHC 79

General Division of the High Court — Originating Application No 1376 of 2025
Sushil Nair J
30 January 2026, 3 March 2026

10 April 2026

Sushil Nair J:

1 HC/OA 1376/2025 was an application by Aquilo Shipping Inc ("Aquilo") under s 12(1)(i) read with s 12A(2) and s 12A(4) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") for an interim mandatory injunction compelling SRTT Marine Trading & Service Pte Ltd ("SRTT") to:

> (a) furnish security in the sum of US$3,672,687.10 and S$300,000.00 by way of payment into court to secure the release of the MT "VAYU" ("Vessel"), formerly known as the "QIAN TAI 1", from arrest in Singapore in HC/ADM 64/2023 ("ADM 64"); or
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> (b) pay the sum of US$3,672,687.10 and S$300,000.00 to Aquilo so that a first-class bank guarantee issued by a Singapore bank may be furnished to PT Industri Nabati Lestari ("PTINL"), the arresting party in ADM 64, to secure the release of the Vessel from arrest; and

(c) in addition to [1(a)] or [1(b)], take all steps forthwith, including paying all sums as may be required or incidental to effect the release of the Vessel from arrest.

2 Having considered the parties' submissions, I dismissed the application with brief oral remarks on 3 March 2026. As the application involved an interesting question as to whether clause 9 of the Norwegian Saleform 2012 ("Saleform 2012") imposed an obligation on a seller to furnish security to procure the release of an arrested vessel, I decided to release the full grounds of my decision.

Facts

The parties

3 Aquilo is a company incorporated in Liberia. It is the registered owner of the Vessel.[1] SRTT is a company incorporated in Singapore. It describes itself as being in the business of "Port, Shipping and Maritime-Related Consultancy Services" and in the "Wholesale Trade of a Variety of Goods without a Dominant Product".[2]

Background to the dispute

The purchase of the Vessel

4 Pursuant to a Memorandum of Agreement dated 10 October 2024 ("MOA"), Aquilo purchased the Vessel, a chemical tanker registered under the

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1 Affidavit of Azeemuddin dated 4 December 2025 ("Azeemuddin's Affidavit") at para 5.

2 Azeemuddin's Affidavit at para 6.

flag of Liberia, from SRTT.[3] The MOA took the form of an amended version of the Saleform 2012,[4] which is the latest version of the Norwegian Shipbrokers' Association's standard memorandum of agreement for the sale and purchase of second-hand ships. The Saleform 2012 is the successor of the Norwegian Saleform 1993 ("Saleform 1993"), which has for many years been the most widely used standard form contract in the international shipping community for the sale of second-hand ships (Iain Goldrein KC, Matt Hannaford & Paul Turner, *Ship Sale and Purchase* (Informa Law, 6th Ed, 2012) ("*Ship Sale and Purchase*") at para 5.1.1).

5 Clause 16 of the MOA provided that the agreement shall be governed by and construed in accordance with Singapore law.[5] Clause 16 also provided that any disputes arising out of or in connection with the MOA shall be resolved by arbitration in Singapore conducted in accordance with the procedural rules of the Singapore Chamber of Maritime Arbitration ("SCMA").[6]

6 Clause 9 of the MOA, which was for all purposes and intents identical to clause 9 of the Saleform 2012, stated:[7]

> The Sellers warrant that the Vessel, at the time of delivery, is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever, and is not subject to Port State or other administrative detentions. The Sellers hereby undertake to indemnify the Buyers against all consequences of claims made against the Vessel which have been incurred prior to the time of delivery.

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3 Claimant's Written Submissions dated 23 January 2026 ("CWS") at para 6; Defendant's Written Submissions dated 23 January 2026 ("DWS") at para 3.

4 Azeemuddin's Affidavit at para 11; DWS at para 3.

5 Azeemuddin's Affidavit at p 41.

6 Azeemuddin's Affidavit at p 41.

7 Azeemuddin's Affidavit at p 39.

7 On 13 January 2025, the Vessel was delivered into Aquilo's possession at Khor Fakkan Port in the United Arab Emirates in accordance with the terms of the MOA.[8]

The arrest of the Vessel

8 On 18 November 2025, a Warrant of Arrest (HC/WA 20/2025) ("Warrant") was issued and served on the Vessel.[9] The Warrant was issued by the General Division of the High Court ("GDHC") in exercise of its admiralty jurisdiction *in rem*, pursuant to an admiralty action commenced by PTINL in ADM 64.[10]

9 PTINL was a company incorporated in Indonesia which is engaged, *inter alia*, in the business of commodities trading.[11] In ADM 64, PTINL claimed against the owner and/or demise charterer of the Vessel ("defendants") for alleged misdelivery of a shipment of 9,999.851 metric tons of RBD Palm Olien (edible grade) ("Cargo") from Indonesia to India. PTINL's case in ADM 64 was that the defendants had released the Cargo to Arcis Global Merchants Pte Ltd ("Arcis"), their agents and/or nominees without production of the original bills of lading.[12] PTINL claimed that it suffered a loss of US$ 2,579,858.30 as a result of the alleged misdelivery by the defendants.[13]

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8 Azeemuddin's Affidavit at para 12.

9 Azeemuddin's Affidavit at para 15 and p 130; DWS at para 7.

10 Azeemuddin's Affidavit at para 15.

11 Azeemuddin's Affidavit at p 68 (para 5); Statement of Claim in HC/ADM 64/2023 dated 3 December 2025 ("ADM 64 SOC") at para 1.

12 ADM 64 SOC at paras 8-16; Azeemuddin's Affidavit at para 16; CWS at para 10.

13 ADM 64 SOC at para 15.

10 On 20 November 2025, Aquilo's solicitors (Oon & Bazul LLP) wrote to PTINL's solicitors (DennisMathiew), enquiring as to the security PTINL was demanding for the release of the Vessel.[14] On the same day, DennisMathiew responded by setting out PTINL's security demand in the quantum of US$3,672,687.10 and S$ 300,000.00.[15] DennisMathiew also informed Oon & Bazul LLP that said security may be provided by way of a guarantee from a first-class Singapore bank, a letter of undertaking from a reputable P&I club with a local office, or payment into court.[16] The breakdown of the quantum of the security demanded by DennisMathiew on behalf of PTINL was as follows:[17]

(a) US$2,759,858.30 being PTINL's principal claim amount;

(b) US$912,828.80 being interest on the principal claim amount, calculated at the rate of 5.33% per annum from the date of the alleged misdelivery (6 September 2022) until a prospective date on which a judgment and/or arbitral award will be issued (estimated at 3 years from the date after the arrest); and

(c) S$300,000.00 being costs and disbursements.

11 Upon receipt of the security demand, Aquilo approached the Vessel's P&I Club (the American Steamship Owners Mutual Protection and Indemnity Association), requesting it to provide the requisite security with a view to securing the release of the Vessel.[18] The P&I Club refused, on the basis that a

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14 Azeemuddin's Affidavit at para 17.

15 Azeemuddin's Affidavit at paras 17-18; CWS at para 11.

16 Azeemuddin's Affidavit at para 19.

17 Azeemuddin's Affidavit at para 18; CWS at para 11.

18 Azeemuddin's Affidavit at para 20; CWS at para 12.

claim for misdelivery attributable to the former owners of the Vessel fell outside the scope of the coverage provided under its insurance policy.[19]

12 On 21 November 2025, Aquilo issued a letter of demand to SRTT. In it, Aquilo invoked the indemnity clause found in the second sentence of clause 9 of the MOA and demanded that SRTT "take over the conduct and assume responsibility of the in-rem proceedings that have been commenced against the Vessel and procure, without further delay, the Vessel's immediate release from arrest".[20]

13 Aquilo did not receive a response by the stipulated deadline.[21] It issued a follow-up letter of demand to SRTT on 25 November 2025, repeating the demands made in its earlier letter. Aquilo also demanded that SRTT provide all information and/or documents in SRTT's possession, custody and control pertaining to the factual circumstances giving rise to the alleged misdelivery claim in ADM 64.[22]

14 Aquilo did not receive a response from SRTT to the follow-up letter.[23] On 3 December 2025, it filed HC/OA 1376/2025, seeking an interim mandatory injunction in the terms set out at [1] above.

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19 Azeemuddin's Affidavit at para 20; CWS at para 12.

20 Azeemuddin's Affidavit at para 23 and p 139; CWS at para 14.

21 CWS at para 15.

22 Azeemuddin's Affidavit at para 24; CWS at para 16.

23 Azeemuddin's Affidavit at para 25.

The parties' cases

The applicant's case

15 Aquilo argued that it should be granted the interim mandatory injunction for four main reasons.[24] First, Aquilo argued that the indemnity clause in the second sentence of clause 9 of the MOA had been "triggered".[25] This was because the arrest of the Vessel constituted a "consequence" of a pre-delivery claim within the indemnity clause in clause 9. As such, SRTT's obligation to indemnify Aquilo against all resultant "consequence[s]", including the provision of security to secure the Vessel's release, had been engaged.[26]

16 Second, Aquilo argued that granting the interim mandatory injunction would be the course of action which carried the lower risk of injustice.[27] As SRTT would "merely be required to perform the obligations it contractually undertook when executing the MOA", any injustice caused to SRTT by the grant of the injunction would be "low".[28] In contrast, were the application to be dismissed, Aquilo contended that it would suffer substantial prejudice as the Vessel – which is its only asset – would be "exposed to the risk of being sold by judicial process because no security [would be] furnished to procure its release from arrest".[29]

17 Third, Aquilo claimed that this court had the power under s 12A(2) of the IAA to grant an interim order in aid of arbitration even though it had not

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24 CWS at para 32.

25 CWS at para 32(a).

26 CWS at para 27.

27 CWS at para 32(b).

28 CWS at para 36.

29 CWS at para 37.

commenced arbitration.[30] In this regard, Aquilo pointed to s 12A(4) of the IAA, under which the court's power under s 12A(2) may be invoked on the application of a "proposed party to the arbitral proceedings", so long as the case is "one of urgency" and the order is "necessary for the purpose of preserving evidence or assets".[31] Aquilo urged me to find that the present case was an urgent one and that the requested injunction was necessary to preserve the Vessel. This was because, Aquilo contended, the arrested Vessel remained exposed to the risk of a *pendente lite* sale at forced-sale value if PTINL's security demand in relation to the claim in ADM 64 was not met.[32]

The respondent's case

18 SRTT resisted the application on five main fronts. First, SRTT claimed that Aquilo had failed to establish a serious question to be tried.[33] To do so, SRTT argued, Aquilo was required to "establish that the arrest of the Vessel by PTINL [had been] legitimate".[34] SRTT took the position that the Vessel had been wrongfully arrested by PTINL because, in its view, the requirements in s 4(4) of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) ("HC(AJ)A") had not been satisfied.[35] Given that the merits of PTINL's claim in ADM 64 had not yet been ascertained, and that the arrest had not been challenged by Aquilo, SRTT contended that it was "not liable to indemnify [Aquilo] for any wrongful claims".[36]

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30 CWS at para 42.

31 CWS at para 45.

32 CWS at para 48.

33 DWS at paras 27 and 38.

34 DWS at para 27.

35 DWS at paras 26 and 28.

36 DWS at para 44.

19 In response to this argument, Aquilo responded that it did not lie in SRTT's mouth to contend that it had failed to defend or challenge the arrest. As SRTT had refused to provide Aquilo with the relevant information and documents pertaining to the arrest despite Aquilo's repeated requests for the same, Aquilo argued that it was in no position to take "any meaningful steps to challenge ADM 64".[37] In any case, Aquilo argued that this application was not "the appropriate forum" to decide the merits of PTINL's claim in ADM 64. Instead, the relevant question would be whether the requirements for the grant of an interim mandatory injunction had been met.[38]

20 Moving on to SRTT's second argument, it argued that damages would be an adequate remedy for Aquilo as it had not stated "with any certainty the loss that [it would] suffer and how such a loss [would] be suffered by it" should the present application be dismissed.[39] SRTT also argued additionally that Aquilo's "losses would not be difficult to quantify" and that Aquilo had "not taken any steps to mitigate its losses".[40]

21 Third, SRTT argued that the balance of convenience lay in favour of dismissing the application, as SRTT "would not be able to recover its losses against PTINL".[41] Precisely what "loss" SRTT would suffer by the grant of the interim mandatory injunction, however, was not made clear in SRTT's submissions. Further, though SRTT claimed that it would suffer "irreparable

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37 CWS at para 51.

38 CWS at para 52.

39 DWS at para 45.

40 DWS at para 46.

41 DWS at para 47.

harm should the injunction be granted", no particulars of any such alleged "harm" were advanced in its submissions or affidavit.[42]

22 Fourth, SRTT pointed out that Aquilo had not, despite all its grievances, commenced arbitration pursuant to clause 16 of the MOA. It also pointed out that Aquilo had not yet made known its position on whether it would be commencing arbitration against SRTT. Further, it also asserted that Aquilo would not commence arbitration if the injunction were to be granted. If SRTT were to proceed to furnish security on the pain of contempt following the grant of the injunction, the Vessel would be released from arrest.[43] However, SRTT argued that this would leave Aquilo with no incentive whatsoever to defend ADM 64.[44] Consequently, granting the injunction would have "the practical effect of putting an end to the action" between the parties.[45]

23 Lastly, SRTT contended that Aquilo's application was not "urgent" as Aquilo had not commenced arbitration.[46] In this regard, I took SRTT to be arguing that the requirement in s 12A(4) of the IAA had not been met.

The applicable legal principles

Requirements to be met for the grant of interim orders under the IAA

24 Section 12A of the IAA confers on the GDHC the power to make interim orders in aid of an international arbitration "irrespective of whether the place of arbitration is in the territory of Singapore" (s 12A(1)(*b*) of the IAA). This has

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42 DWS at para 55.

43 DWS at paras 59(i) and 50.

44 DWS at para 47.

45 DWS at paras 59(iii) and 68.

46 DWS at paras 69 and 62-63.

been achieved by extending to the GDHC the powers that have been conferred on arbitral tribunals to make orders as to the matters set out in ss 12(1)(*c*) to 12(1)(*j*) of the IAA (s 12A(2) of the IAA).

25 As the opening words of s 12A(2) make clear, the power of the GDHC therein is subject to the "constraints" set out in ss 12A(3) to 12A(6) of the IAA (*Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [33] ("*Maldives Airports*")). As a preliminary matter, I noted that given the contemplated arbitration in the present case was a Singapore-seated arbitration, the constraint in s 12A(3) of the IAA was not relevant. Additionally, as arbitration had not yet commenced as at the time of the present application, I found that s 12A(5) of the IAA was similarly not relevant. The constraints on the GDHC's power under s 12A of the IAA which were relevant in the present case, therefore, were ss 12A(4) and 12A(6) of the IAA, which I set out below for ease of reference:

> (4) If the case is one of urgency, the [GDHC] may, on the application of a party or proposed party to the arbitral proceedings, make such orders under subsection (2) as the [GDHC] thinks necessary for the purpose of preserving evidence or assets.
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> …
>
> (6) In every case, the [GDHC] is to make an order under subsection (2) only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

Section 12A(4) of the IAA

26 I turn first to s 12A(4) of the IAA, which has two distinct requirements an applicant must satisfy: (a) the case must be one of urgency; and (b) the order must be necessary for the purpose of preserving evidence and assets (*Five Ocean Corp v Cingler Ship Pte Ltd* [2016] 1 SLR 1159 ("*Five Ocean*") at [41]).

27 Whether the case is one of urgency may be assessed by reference to the likely prejudice that would be occasioned to the applicant if he had to wait for the tribunal to act (Darius Chan, Paul Tan & Nicholas Poon, *The Law and Theory of International Commercial Arbitration in Singapore* (Academy Publishing, 2022) ("*Law and Theory*") at para 6.57). This is necessarily a question of fact. Further, given that the court may make orders for interim relief under s 12A(2) on the application of a "proposed party to the arbitral proceedings", the fact that the arbitration had not yet been commenced or the arbitral tribunal had not yet been constituted is not a bar to the exercise of the court's power under s 12A of the IAA (see *Five Ocean* at [59] and *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd* [2020] 5 SLR 634 ("*Sulzer Pumps*") at [103])

28 However, any delay in commencing arbitration, from the point the dispute arose to the date of application for interim relief, is highly relevant in determining whether the case is "one of urgency" for the purposes of s 12A(4) of the IAA. The relevance lies in the fact that a delay on the part of the applicant in commencing arbitration may be indicative of his lack of "genuine intention to commence arbitration" (*NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 ("*NCC International*") at [70]). The lack of genuine intention to commence arbitration, in turn, may constitute grounds for inferring that: (a) the orders sought are not urgent; (b) the applicant would not suffer inordinate prejudice in waiting for the arbitral tribunal to be constituted; and/or (c) the application is an abuse of process (*NCC International* at [74] and [76]). For example, the fact that an applicant had taken "absolutely no steps to commence arbitration even after the lapse of more than seven months from the time the dispute arose" was held by the Court of Appeal ("CA") to be grounds for inferring that there was there was no urgency in the interim

mandatory injunction sought (*NCC International* at [76]). In contrast, the fact that no arbitration had been commenced four months after the grant of an *ex parte* interim prohibitory injunction was observed by Xu J not to be a basis for discharging the injunction at the *inter partes* stage (*Sulzer Pumps* at [103]).

29 In my view, it would be good practice for an applicant, who applies for interim relief under s 12A despite a delay in commencing arbitration, to explain the reasons for the delay in its supporting affidavit. The simple reason for this is that, consistent with the policy of minimal curial intervention, the court will only order interim relief under s 12A of the IAA "where this will aid, promote and support arbitration proceedings" (*NCC International* at [41]). Put differently, the court's power to grant interim measures under s 12A should be "employed only to the extent that the exercise of such powers would essentially aid arbitration proceedings being or to be diligently pursued" (*NCC International* at [30]). In the absence of any reasons for such a delay, the court may find it difficult to arrive at a conclusion on whether the interim order is in fact sought in *aid* of arbitration. On the contrary, the court may, as the CA did in *NCC International*, infer that the applicant lacked a "genuine intention to commence arbitration" and dismiss the application (*NCC International* at [70]).

30 I move to the next requirement in s 12A(4) of the IAA, namely, that the order must be "necessary for the purpose of preserving evidence or assets". Though orders associated with the purpose of preserving assets usually take the form of a Mareva injunction or an Anton Piller order, the types of orders that may fulfil such a purpose is not so limited (*Maldives Airports* at [34]). The question is whether, "without the order in question, the evidence or asset which is sought to be preserved would be lost". If there are other "reasonably available alternatives for securing the evidence or asset", then the order sought is not

necessary for the preservation of the relevant evidence or asset (*Maldives Airports* at [44]; *Five Ocean* at [60]).

Section 12A(6) of the IAA

31 S 12A(6) of the IAA contains a mandatory direction to the effect that the court, in "every case", is to make an order under s 12A(2) "only if or to the extent" that the arbitral tribunal or institution "has no power or is unable for the time being to act effectively". This restriction on the court's power to make interim orders under s 12A of the IAA is clearly premised on the policy of minimal curial intervention in arbitral proceedings. In the Second Reading of the International Arbitration (Amendment) Bill in 2009, the Minister of Law listed at least four distinct scenarios where the requirement in s 12A(6) may be met (Singapore Parl Debates; Vol 86, Sitting No 12; Col 1627; 19 October 2009 (Minister K Shanmugam, Minister for Law)):

(a) first, where the foreign arbitral tribunal has power to make an interim order, but that order cannot otherwise be enforced in Singapore apart from an application under s 12A of the IAA.

(b) second, where a party seeks interim relief from the court "before the arbitral tribunal has been fully or properly constituted".

(c) third, where a party seeks interim relief from the court "against a non-party to the arbitration, which the arbitral tribunal has no power over".

(d) fourth, where the arbitral tribunal is "unable to hear an urgent application for interim relief sufficiently quickly".

32 I saw no reason on the facts of the present case to engage in an in-depth discussion in relation to the situations set out by the Minister, save to say that those situations were not intended to be an exhaustive enumeration of the circumstances that may conceivably satisfy s 12A(6) of the IAA. I note also the suggestion made by the learned authors of *Law and Theory* that the availability of emergency arbitrations "may diminish the need to seek interim relief from the court", save for those cases where the orders sought are so urgent that an *ex parte* application is required (*Law and Theory* at para 6.71). Given, however, that the relevant institutional rules in the present case (*ie*, the SCMA) did not make provision for emergency arbitrations,[47] I will say no more on this point.

Principles on the grant of interim injunctions

33 The principles governing the grant of an interim injunction are well established and may be traced back to Lord Diplock's judgment in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") at 407–409 (*Maldives Airports* at [53]). To obtain an interim injunction, the applicant must satisfy the court that: (1) there is a serious question to be tried; and (2) the balance of convenience lies in favour of granting the injunction (*American Cyanamid* at 407G–408F; *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2025] 3 SLR 1315 ("*Group Lease*") at [39]). The "fundamental principle", in this regard, is that the court should take whichever course that appears to carry the lower risk of injustice if that course should ultimately turn out to have been "wrong" – in the sense of an injunction having been granted when it should have been refused, or an injunction having been refused when it should have been granted (*Chuan Hong Petrol Station Pte Ltd v Shell Singapore*

[47] Transcript of Hearing on 26 January 2026 ("Transcript") at p 6, lines 18-19.

(Pte) Ltd [1992] 2 SLR(R) 1 ("*Chuan Hong*") at [88]; *Maldives Airports* at [53]).

34 SRTT, in its submissions, argued that an interim mandatory injunction is "a very exceptional discretionary remedy", the grant of which requires "a much higher threshold to be met" as compared to its prohibitive variant (see, in this regard, *NCC International* at [75] and *RGA Holdings International Inc v Loh Choon Phing Robin* [2017] 2 SLR 997 at [31]).[48] Aquilo, on the other hand, made reference to *Group Lease* where, following a comprehensive review of the authorities, Goh Yihan J held that the same "fundamental principle" of the path of least injustice underlines the grant of both types of injunctions (*Group Lease* at [59]). In the learned judge's view, the suggestion that an interim mandatory injunction should be granted only where a "much higher threshold" has been met is "less a firm principle of law than a *heuristic tool*" that serves to remind the decision-maker of the more invasive nature of a mandatory injunction [emphasis in original] (*Group Lease* at [49]). In the final analysis, the ultimate task of the court, regardless of the form of injunction sought, is to take the course that involves the least risk of injustice if it turned out to be wrong (*Group Lease* at [49]; see also *Chuan Hong* at [88]–[89]).[49]

35 I noted that, notwithstanding SRTT's position that the grant of a mandatory injunction entailed "a much higher threshold to be met" than a prohibitory injunction, it made no arguments with a view towards impugning Goh J's reasoning on this point in *Group Lease*. In fact, SRTT appeared to agree that the fundamental principle governing the grant of both types of injunctions – namely, that the court should take whichever path that would be likely to

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48 DWS at para 48.

49 CWS at paras 21-22.

involve the least risk of injustice – was the same.[50] In the premises, I saw no reason to depart from the position taken by the learned judge in *Group Lease* that the same set of rules apply to the grant of mandatory and prohibitory injunctions (*Group Lease* at [59]) – a position that was, in any case, reasonably clear from the authorities (*Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd* [1994] 3 SLR(R) 114 at [21]–[22], citing *Chuan Hong* at [80]–[90]; see also *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd* [2009] 1 WLR 1405 ("*NCB Jamaica*") at [19]).

Serious question to be tried

36 The first step in any application for an interim injunction is for the applicant to show that there is a serious question to be tried on the merits of the applicant's claim. This simply requires the court to be satisfied that the applicant's claim is "not frivolous or vexatious" (*American Cyanamid* at 407G; *Group Lease* at [40]). This has been described as "a low threshold" that will be satisfied by the applicant demonstrating that his claim has "prospects of success, which, in substance and reality, exist" (*Challenger Technologies Ltd v Courts (Singapore) Pte Ltd* [2015] 5 SLR 679 at [17]). Given that this requirement "goes towards enlivening the court's jurisdiction to grant an interim injunction", applications premised on a claim that fail to surmount this low standard will be culled *in limine* (*Group Lease* at [41]; *NCB Jamaica* at [12]).

37 Today, it is established law that the court should not, at the stage where an interim injunction is sought, conduct a protracted examination of the merits of the dispute between the parties based on affidavit evidence which has not been tested by cross-examination. To do so otherwise would in fact be anathema

[50] DWS at para 5.

to the very notion of an "interim injunction" – which is "an injunction made in the meantime and until something is done, *eg* the final disposal of the matter" (*Tay Long Kee Impex Pte Ltd v Tan Beng Huwah* [2000] 1 SLR(R) 786 at [46]). This applies with greater force to interim injunctions sought in aid of arbitration under s 12A(2) of the IAA, where the prevailing policy is to minimise curial intervention in light of the parties' agreement to arbitrate their disputes. Put simply, it is not part of the court's function at this stage to "resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations" – for those are matters more appropriately left to the trial judge (or arbitrator) (*American Cyanamid* at 407H).

38 This, however, does not mean that the merits of the parties' cases are altogether irrelevant in an application for an interim injunction. It may, subject to certain restrictions (see [52] below), be relevant in determining where the balance of convenience lies. In *Group Lease*, Goh J went further and noted that the proposition that the court should not undertake an examination of the merits of the parties' cases has "much greater force vis-à-vis disputes of fact rather than disputes of law" (*Group Lease* at [43]). Particularly, there would be "no reason why discrete issues of law that do not implicate any factual dispute between the parties cannot be well ventilated before a court an interlocutory stage" (*Group Lease* at [44]). Such an approach may potentially result in savings in time and costs, and the case law indicated that the courts had not "shied away from determining novel points of law at an interlocutory stage" (*Group Lease* at [44]-[45], citing *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 ("*Ng Chee Tian*") at [81]–[85] and *Farooq Ahmad Mann v Xia Zheng* [2025] 4 SLR 277).

39 I respectfully agree and make two additional observations of my own. First, as Goh J alluded to in *Group Lease* at [44]–[45], such an approach, adopted in the appropriate cases, would be consistent with the furtherance of the Ideals in O 3 r 1 of the Rules of Court 2021 ("ROC"), which are "akin to constitutional principles by which the parties and the court are guided in conducting civil proceedings" (Civil Justice Commission, *Civil Justice Commission Report*, 29 December 2017 at p 6). Particularly, where the determination of the relevant question of law which arises at the interlocutory stage would remain impervious to "what a trial court may make of the facts" (*Ng Chee Tian* at [82]), it is likely that its determination will result in savings in time and costs (O 3 r 1(2)(c)). It may even eliminate the need for a trial, particularly where the question of law that falls to be determined is dispositive of the entire case. That would save valuable court time and judicial resources (O 3 r 1(2)(d)). It may also have the beneficial effect of narrowing the (legal) issues in dispute between the parties, which may consequently nudge them towards a settlement, or at the very least, assist them "in focussing on the *true* issues" in play [emphasis in original] (*Group Lease* at [45]). This, in turn, would promote "fair and practical results suited to the needs of the parties" (O 3 r 1(2)(e)) and "expeditious proceedings" (O 3 r 1(2)(b)).

40 Second, while the courts have on several instances been willing to resolve questions of law at an interlocutory stage (see [38] above), the basis of the court's power to do so has not been as clear. That power, in my view, is to be found in O 9 r 19(1) of the ROC, which reads follows:

> **Decision on questions of law or construction of documents (O. 9, r. 19)**
>
> **19.**—(1) Upon a party's application or *on the Court's own accord*, the Court may decide any question of law or the construction of any document arising in any action without a

> trial or hearing on the facts, whether or not such decision will fully determine the action.
>
> [emphasis added]

41 As the opening words of O 9 r 19(1) make clear, the court may act on its own initiative to rule on a question of law or the construction of a document even if neither party had requested for such a ruling (*Chong Hon Kuan Ivan v Levy Maurice* [2004] 4 SLR(R) 801 at [39], in relation to O 14 r 12 of the Rules of Court (2004 Rev Ed)). The court may also exercise its power in O 9 r 19(1) "whether or not such decision will fully determine the action". This is unlike its predecessor (*ie*, O 14 r 12 of the Rules of Court (2014 Rev Ed) ("ROC 2014")), where the determination of the question of law had to "fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein" (*Samsonite IP Holdings Sarl v An Sheng Trading Pte Ltd* [2017] 4 SLR 99 at [40(c)], citing O 14 r 12(1)(b) of the ROC 2014).

42 Under O 9 r 19(1), therefore, the court may determine a question of law or construction "even though the resolution of the point will not bring the proceedings to an end" (*Singapore Court Practice 2024* (Jeffrey Pinsler gen ed) (LexisNexis, 2024) at para 9.19.5) ("*Singapore Court Practice*")). Indeed, even under O 14 r 12(1) of the ROC 2014, the court retained the discretion to decide whether it was appropriate to proceed with summary determination even if the requirements prescribed thereunder had not been fulfilled (*TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch)* [2015] 2 SLR 540 ("*TMT Asia*") at [32]). In this regard, the "overriding consideration" in deciding whether such a discretion ought to be exercised was whether summary determination would "save time and cost for the parties" in the circumstances of the case (*TMT Asia* at [32], citing *ANB v ANF* [2011] 2 SLR 1 at [61]; see also *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd* [2018] 1 SLR 108 at [6]). I saw no reason to depart from such an approach in determining when the court should exercise its power

of summary determination under O 9 r 19(1). To the contrary, for reasons set out at [39] above, I found such an approach consistent with the furtherance of the Ideals in O 3 r 1(2) of the ROC. It was therefore unsurprising to me that the leading texts on civil procedure took a similar view on the matter: *Singapore Court Practice* at paras 9.19.3 and 9.19.6; *Singapore Civil Procedure 2024* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2023) ("*White Book*") at para 9/19/1.

43 Returning to the present case, I respectfully agree with Goh J's observations in *Group Lease* that the court, in appropriate cases, may proceed to determine a question of law in an application for an interim injunction (see [38] above). The source of that power is to be found in O 9 r 19(1) of the ROC, and the consequence of its exercise may be that there is simply "no serious question to be tried with respect to such question of law" (*White Book* at para 13/1/13).

44 I pause at this juncture to make three further observations. First, as a matter of procedural fairness, the importance of giving parties the right to be heard should not be understated. Previously, under O 14 r 12(3) of the ROC 2014, the court was not permitted to summarily determine a question of law "unless the parties [had] an opportunity of being heard on the question". Therefore, even though it might appear to the court that the relevant question of law is one amenable to summary determination, it should *consider* whether an adjournment coupled with a direction for the filing of further submissions is necessary in light of the circumstances in which the relevant question arose. This was a point also noted by the learned author of *Singapore Court Practice* (at para 9.19.5):

> If a point of law or construction arises during the interlocutory proceeding, and the court wishes to dispose of it under O 9 r 19

> of the RoC, *the parties may need an adjournment to prepare for this development. Although the rules do not provide for this contingency, the court ought to give such allowance in these circumstances so that it can have the benefit of hearing arguments which have been thoughtfully considered.*
>
> [emphasis added]

45 Second, as was previously the case under O 14 r 12(1)(a) of the ROC 2014, the relevant question of law or construction must be suitable for summary determination, in the sense that there must be "no factual disputes relating to the point of law in question" (*The Chem Orchid* [2016] 2 SLR 50 at [60]; see also *Olivine Capital Pte Ltd v Chia Chin Yan* [2014] 2 SLR 1371 at [50], citing *Barang Barang Pte Ltd v Boey Ng San* [2002] 1 SLR(R) 949 at [5]). Contested factual allegations should be ventilated at the trial of the action where it will be subject to cross-examination, instead of being resolved at the interlocutory stage on the basis of affidavit evidence.

46 Third, and in the context of cases like the present where an interim injunction is sought in *aid* of an arbitration, the court, in exercising its power to summarily determine a question of law or construction, should be careful not to pre-empt the decision of the arbitral tribunal (see, albeit in a different context, *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334 at 367G–368A; *NCC International* at [58]). Where there is a real risk that the relevant question of law or construction will overlap with the issues put before the tribunal, the court should refuse or decline to pronounce on the same. To do otherwise might give rise to the spectre of conflicting determinations, which would undermine the parties' arbitration agreement by pre-empting the very arbitration in which the injunction is sought in support of.

Balance of convenience

47 I turn now to the second requirement that must be established for the grant of an interim injunction. That requires the applicant to show that the balance of convenience lies in favour of the grant of the injunction. This comprises of two broad questions. First, the threshold question of the adequacy of damages to either party arising from the grant or refusal of the injunction. Second, the assessment of the balance of convenience proper if damages would be an inadequate remedy to both parties (or the court is in doubt on that point) (*Group Lease* at [46]; *American Cyanamid* at 408B–409F).

48 The first step in this analysis is to consider whether, if the applicant were to succeed at trial, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do (or not do) what was sought to be enjoined (or mandated) (*American Cyanamid* at 408C). If damages would be an adequate remedy and the defendant in a financial position to pay them, the injunction should not ordinarily be granted, "however strong the [applicant's] claim appears to be at stage" (*American Cyanamid* at 408C–D; *Group Lease* at [46(a)(i)]).

49 If, however, an award of damages would not be an adequate remedy for the applicant in the event of his success at the trial, the court should go onto consider whether, if the defendant were to succeed at trial, he would be adequately compensated by an award of damages for the losses that he would have sustained by having been wrongly enjoined (or mandated) (*American Cyanamid* at 408D–E). If damages would be an adequate remedy for the defendant, and the applicant is in a financial position to pay them, this would not be a ground to refuse the interim injunction sought (*American Cyanamid* at 408E; *Group Lease* at [46(b)]).

50 It is where there is doubt as to the adequacy of damages as a remedy to either party, or where damages would not an adequate remedy for both parties, that the question of balance of convenience arises (*American Cyanamid* at 408F; *Group Lease* at [46(c)]). In practice, it is often difficult to discern whether damages would *in fact* be an adequate remedy for either or both parties, and the court will therefore have to "engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld" (*NCB Jamaica* at [17]). The nature of this inquiry is such that (*American Cyanamid* at 408F):

> It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding whether the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

51 Some of the many factors which the court may take into account are: (a) any difference in the extent as to the inadequacy of damages to the parties; (b) the relative strengths of the parties' cases; (c) the prejudice that either party may suffer if the injunction is granted or refused; (d) the likelihood of that prejudice occurring; and (e) as a last resort, where all other factors appear balanced, the course of action that entails preserving the *status quo* (*Group Lease* at [46(c)]; *NCB Jamaica* at [18]). I emphasise that this, however, is a non-exhaustive list, and that the guiding principle is to take whichever course of action that appears to carry the lower risk of injustice if it should have turned out to have been wrong at trial (see [33] above).

52 I make the additional observation that the relevance of the relative strength of the parties' cases at this stage lies in the assessment of the likelihood that the injunction will turn out to have been wrongly granted or refused (see *NCB Jamaica* at [18]). The permissibility of taking into account such a factor is

subject to the restrictions set out by the CA that (a) "it must be clear that the balance of uncompensatable disadvantages between a plaintiff and a defendant is evenly balanced"; and (b) there must be on the affidavit evidence "no credible dispute that the strength of one party's case is disproportionate to that of the other party" (*Federal Computer Services Sdn Bhd v Ang Jee Hai Eric* [1991] 2 SLR(R) 427 at [25]–[26], citing *American Cyanamid* at 408B–409C).

My decision: the application is dismissed

The requirements under the IAA had not been met

53 The first requirement that Aquilo had to satisfy was that the case was one of urgency and that the interim mandatory injunction was necessary for the purpose of preserving evidence and assets (s 12A(4) of the IAA). Aquilo's only argument on this point was that the Vessel remained exposed to the risk of a *pendente lite* sale at forced-sale value so long as security was not promptly furnished to PTINL.[51] While I accepted that this showed that the injunction was "necessary for the purpose of preserving an asset" owned by Aquilo, I was not persuaded that the case was an urgent one based on the relevant chronology of events.

54 The Warrant of Arrest obtained by PTINL in ADM 64 had been issued on 18 November 2025. Aquilo and its solicitors, Oon & Bazul LLP, had become aware of this at the latest by 20 November 2025 (see [10] above). The present application was filed on 3 December 2025. At the hearing of the application on 30 January 2026, Mr Bazul, counsel for Aquilo, confirmed to me that his clients had not yet commenced arbitration against SRTT for breach of the MOA.[52] As

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51 CWS at para 48; Azeemuddin's Affidavit at para 29.

52 Transcript at p 15, line 8.

I pointed out to Mr Bazul at the hearing, there was simply no evidence in the affidavit supporting Aquilo's application as to why it had not commenced arbitration in the two months since the arrest of the Vessel – nor was there any evidence as to Aquilo's intention to do so.[53] Mr Bazul accepted this,[54] but submitted that the fact that arbitration had not been commenced was not a bar to the grant of interim relief under s 12A of the IAA.[55] Mr Bazul also suggested that I could grant the injunction subject to the condition that Aquilo commence arbitration against SRTT within a week (or even three days) of the order being made.[56]

55 None of these points, however, showed that Aquilo had satisfied s 12A(4) of the IAA. First, while I accepted that interim relief under s 12A may be granted notwithstanding the fact that an arbitration had not yet been commenced (see [26] above), there was nothing in Aquilo's supporting affidavit indicating that Aquilo intended to commence arbitration. The court was therefore left wanting as to whether Aquilo had a genuine intention to commence arbitration, or whether the orders were sought in *aid* of arbitration. Second, I did not accept that Mr Bazul's suggestion for a conditional grant of the injunction could be a factor that I should take into account in concluding that this was an urgent case – to hold otherwise would be tantamount to the tail wagging the dog. The court had to be satisfied that the case was an urgent one under s 12A(4) of the IAA before the injunction could be granted – it could not grant the injunction where an urgent case did not exist and attempt to cure this legal defect by imposing a condition on the relevant injunction. Third, though I

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53 Transcript at p 15, lines 16-25.

54 Transcript at p 15, lines 30-31 and p 16, lines 1-2.

55 Transcript at p 16, lines 4 to 9.

56 Transcript at p 18, lines 21-30.

accepted that there remained a risk of a *pendente lite* sale of the Vessel, the fact remained that Aquilo had not entered an appearance or intervened in ADM 64 as at the date of the hearing. This inaction appeared inconsistent with its claim that the injunction ought to be granted urgently to prevent a sale of the Vessel. In the premises, I was of the view that Aquilo had failed to show that this was an urgent case warranting the intervention of the court as required under s 12A(4) of the IAA.

56 I turn now to s 12A(6) of the IAA, which requires the court to be satisfied that the arbitral tribunal or institution "has no power or is unable for the time being to act effectively". I was satisfied this had been fulfilled, since Aquilo was seeking interim relief from the court at a time when the relevant arbitral tribunal had not been constituted (see [31(b)] above). Nonetheless, given that Aquilo had failed to show that this was an urgent case within the meaning of s 12A(4), this in itself would suffice to dismiss the application. For completeness, however, on the assumption that I had been wrong on my conclusion on s 12A(4), I set out my detailed reasons as to why the substantive requirements for the grant of an interim injunction had not been fulfilled.

There was no serious issue to be tried

57 The first requirement for the grant of an interim injunction is that there must be a serious question to be tried on the merits of the applicant's claim. Unfortunately, Aquilo did not, in its written submissions, frame the question that it would be putting before the arbitral tribunal if and when it commences arbitration. Mr Bazul submitted orally, however, that Aquilo would be making a claim under clause 9 of the MOA for SRTT to indemnify it against all

consequences arising out of the arrest of the Vessel.[57] Specifically, it would be seeking to be indemnified for various heads of losses caused by the arrest, such as its loss of earnings as well as its legal costs.[58] Until and whilst that determination was being made, Aquilo argued, the interim mandatory injunction should be granted so that the Vessel could be released from arrest. As the arrest clearly constituted a "clai[m] made against the Vessel" as that phrase was used in clause 9, the indemnity clause had been "triggered".[59] Aquilo argued that the basis for the injunction sought lay in the contractual obligation that SRTT had undertaken to perform – namely, "the provision of security to secure the Vessel's release".[60] This would preserve the *status quo* pending arbitration, and avoid a *pendente lite* sale of the Vessel.

58 I was willing to accept that, as far as Aquilo's claim that the arrest constituted a "claim made against the vessel" under clause 9 of the MOA was concerned, there was a serious question to be tried. The second sentence of clause 9 of the MOA (set out at [6] above) was identical to the second sentence of clause 9 of the Saleform 2012. That sentence, in turn, was similar to the second sentence of clause 9 of the Saleform 1993, an amended version of which was the subject of detailed consideration by the Court of Appeal of England and Wales in *Rank Enterprises Ltd v Gerard* [2000] 1 All ER (Comm) 449 ("*Rank Enterprises*"). The relevant clause under consideration in *Rank Enterprises* read as follows:

> The sellers warrant that the vessel, at the time of delivery, is free from all encumbrances, mortgages and maritime liens or any other debts whatsoever. Should any claims which have

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57 Transcript at p 5, lines 4-7.

58 Transcript at p 21, lines 9-13.

59 CWS at para 34.

60 CWS at para 27.

> been incurred prior to the time of delivery be made against the vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims.

59 The purpose of clause 9 of the Saleform 1993 is to provide buyers with protection against the potential existence, at the time of delivery, of some encumbrance on the vessel, maritime lien attaching to the vessel, or any other liability which could lead to a claim being made against the vessel after its delivery to the buyers (*Rank Enterprises* at [21]; in relation to clause 9 of the Saleform 2012, see *Ship Sale and Purchase* at para 5.36; Malcolm Strong & Paul Herring, *Sale of Ships: The Norwegian Saleform* (Sweet & Maxwell, 3rd Ed, 2016) ("*Sale of Ships*") at para 12–03).

60 It has been long understood that clause 9 of the Saleform 1993 contains two separate and distinct obligations. They are conceptually distinct, in the sense that the first sentence of clause 9 contains a *warranty* from the seller as to the condition of the ship as at the time of delivery, while the second sentence contains an *indemnity* from the seller in relation to any claims against the vessel based on pre-delivery events, but which materialise post-delivery. They are also operationally distinct, in the sense that the buyer need not prove a breach of the warranty to establish a claim against the seller under the indemnity (*Rank Enterprises* at [10], citing *The Barenbels* [1985] 1 Lloyd's Rep 528 at 532).

61 Specifically, the indemnity clause found in the second sentence of clause 9 of the Saleform 1993 – just like its successor in the Saleform 2012 – covers "all consequences" of any "claims made against the vessel". The latter phrase was interpreted by Mance LJ (as he then was) as covering any pre-delivery claims against the vessel "whether the liability asserted by such claims may prove to exist or not" (*Rank Enterprises* at [25]). The buyer would be entitled to be indemnified for all adverse consequences of such claims,

regardless of whether they were spurious or meritorious, so long as they "acted in a reasonable and business-like way in dealing with such claims" (*Rank Enterprises* at [24]). That this was the case was made clear by the draughtsman's deliberate choice to use the word 'claim', as opposed to 'liabilities' (*Rank Enterprises* at [18]–[19]). Interpretating clause 9 restrictively to limit the scope of the indemnity to only meritorious claims would not promote the commercial purpose of clause 9, which is to protect buyers in respect of pre-delivery events (*Rank Enterprises* at [21]).

62 The reasoned decision of Mance LJ in *Rank Enterprises* has remained as good law in England for the past 26 years. To the best of my knowledge, there was no published decision propounding a different interpretation of clause 9 of the Saleform 1993. As such, the interpretation of clause in *Rank Enterprises* would have formed the understanding of buyers and sellers, as well as their legal advisors, in the market of second-hand sale of ships who have relied on the Saleform to govern their relationships with their contractual counterparties. In the absence of arguments to the contrary, therefore, I saw no reason in the present case to depart from Mance LJ's interpretation of clause 9 of the Saleform 1993. From this, it followed that SRTT's submissions, a substantial portion of which went towards disputing the validity of PTINL's arrest of the Vessel,[61] did not go towards showing that Aquilo had failed to establish a serious question to be tried. On the contrary, Aquilo's claim against SRTT on the indemnity in clause 9 of the MOA had prospects of success which existed in "substance and reality" (see [36] above). It was clearly arguable that the arrest was a "claim made against the Vessel" as that phrase was used in clause 9 of the MOA, and Aquilo's loss of earnings and expenses caused by the arrest "consequences" of the same (see *Rank Enterprises* at [22], [26]).

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[61] DWS at paras 6-42 and 44.

Clause 9 did not impose an obligation to SRTT to furnish security

63 That, however, was not the end of the matter. The basis on which Aquilo sought the interim mandatory injunction was that clause 9 of the MOA imposed an obligation on SRTT to furnish security to release the Vessel.[62] Specifically, Aquilo's submission was that there would be no risk of injustice in granting the injunction as SRTT would "merely be required to perform the obligations it contractually undertook" under the MOA.[63]

64 As I pointed out to Mr Bazul at the hearing, such a line of argument assumed that the obligations undertaken by SRTT under clause 9 of the MOA extended to it procuring the release of the Vessel from arrest by furnishing security on Aquilo's behalf – an assumption that did not appear to be supported by the authorities.[64] In response, Mr Bazul submitted that this was essentially a question of construction which "need[ed] to be properly addressed".[65] Mr Bazul also submitted that this was, in his view, "the issue which [was] determinative of [the] case",[66] and suggested that the matter be adjourned with further written submissions to be filed on this point.[67] As such, with the agreement of Ms Balakrishnan, counsel for SRTT, I directed that the matter be adjourned for a week with parties to file further written submissions on the following issue:

> Whether clause 9 of the Norwegian Saleform 2012 should be read to include an obligation to provide security for the release of a vessel, where an arrest had been effected as a result of a "claim" covered by that clause.

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62 CWS at paras 27, 31, 36 and 52.

63 CWS at para 36.

64 Transcript at p 21, lines 21-32 and p 22, lines 1-6.

65 Transcript at p 42, lines 6-18.

66 Transcript at p 42, lines 6-31.

67 Transcript at p 42, lines 19-25.

65 Having considered the parties' further submissions, there was, in my judgment, no serious question to be tried on the merits of Aquilo's claim that clause 9 of the MOA imposed an obligation on SRTT to furnish security to procure the release of the Vessel. This was essentially a question as to the interpretation of the scope of the indemnity in clause 9 of the MOA which was identical to clause 9 of the Saleform 2012 (see [58] above). Given the parties' views – with which I agreed – that this question of construction would be determinative of the present application, I decided to exercise my power of summary determination in relation to the same under O 9 r 19(1) of the ROC. By narrowing the issues raised in the application and providing clarity on a legal issue deeply contested by the parties, I was of the view that proceeding with summary determination would "save time and cost for the parties" in the circumstances (see [42] above).

(1) Principles on contractual interpretation

66 It is trite law that the aim of contractual interpretation is to ascertain the meaning the contract would convey to a reasonable business person, and that the courts are concerned with the objectively expressed intention of the parties as opposed to their actual or subjective intentions (*Master Marine AS v Labroy Offshore Ltd* [2012] 3 SLR 125 ("*Master Marine*") at [41(a)]-[41(b)], citing *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [131]). The starting point is that one looks to the text that the parties have used (*CIFG Special Assets Capital I Ltd v Ong Puay Koon* [2018] 1 SLR 170 ("*CIFG (CA)*") at [19(a)]). At the same time, regard may be had to the relevant context so long as the relevant contextual points are clear, obvious, and known to both parties (*CIFG (CA)* at [19(b)], citing *Zurich Insurance* at [125], [128] and [129]).

67 Additionally, the courts may look to "the legal, regulatory and factual matrix constituting the background in which the document was drafted" to inform their interpretation of the contract (*Master Marine* at [41(d)]; *Zurich Insurance* at [131]). It is also permissible to give due consideration to "the commercial purpose of the transaction" and "the reason why a particular obligation was undertaken" by a contracting party (*Zurich Insurance* at [131]; *Master Marine* at [41(e)]).

68 Specific considerations are said to apply in the context of industry-wide standard form contracts drafted by, or on the instructions of, trade associations and industry bodies. It is crucial that these contracts be interpreted in a way that promotes the goals of consistency, predictability and certainty, not least given that many market participants are likely to have adopted the same to govern their dealings (*LSREF III Wight Ltd v Millvalley Ltd* [2016] EWHC 466 (Comm) ("*LSREF III*") at [42]; *Lomas v JFB Firth Rixson Inc* [2011] 2 BCLC 120 at [53]). As standard form contracts are, by their very nature, designed for use in a wide variety of circumstances, their value would be significantly diminished if their provisions could not be relied upon as having the same meaning on all occasions (*AIB Group (UK) plc v Martin* [2002] 1 WLR 94 (*"AIB Group*") at [7]). It follows that such standard form contracts are significantly less amenable to interpretation by reference to the particular context or background facts (*Zurich Insurance* at [110]; *LSREF III* at [42]; *AIB Group* at [7]; see also *The Law of Contract in Singapore* (Andrew Phang Boon Leong (gen ed)) (Academy Publishing, 2nd Ed, 2022) at para 6.064). In a similar vein, it has been noted that (*Chitty on Contracts* (Hugh Beale gen ed) (Sweet & Maxwell, 36th Ed, 2025) at para 16–061, cited with approval in *Providence Building Services Ltd v Hexagon Housing Association Ltd* [2026] UKSC 1 ("*Providence Building*") at [30]):

> In the case of a contract which is intended for standard use throughout a particular industry or market, the court is more likely to focus its attention on *the background generally known to participants in the industry or the market and not on the background known to, or the understandings of, the individual parties to the particular transaction*. In such a case the standard form is *not context-specific so that evidence of the particular factual background or matrix has a much more limited, if any, role to play*.
>
> [emphasis added]

69 Therefore, the principal interpretative methodology in the interpretation of industry-wide standard form contracts is a textual one (*Re LB Holdings Intermediate 2 Ltd* [2022] 2 BCLC 513 at [28]). All this is not to signal a departure from orthodoxy – the purpose of contractual interpretation is to "give effect to the objectively ascertained expressed intentions of the contracting parties" (*Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30]). It is not inconsistent with such a purpose, however, to take as a starting position that the parties had intended for their rights and obligations to be "consistent with those of other parties using the same form" (*Providence Building* at [31]). That starting position, of course, can be displaced by indications to the contrary, such as the existence of bespoke alterations to specific provisions in the contract.

(2) The nature of contractual indemnities

70 I start therefore with the word "indemnify" as used by the parties in clause 9 of the MOA. Generally, the law recognises two types of indemnities (see generally Wayne Courtney, *Contractual Indemnities* (Hart Publishing, 2014) ("*Contractual Indemnities*")). As Street CJ explained in *McIntosh v Dalwood (No 4)* [1930] NSW 415 ("*McIntosh*") at 418 (cited with approval in *Tomongo Shipping Co Ltd v Heng Holdings Sea (Pte) Ltd* [1997] SLR(R) 263 ("*Tomongo Shipping*") at [21]):

> In every case the contractual obligation must first be ascertained in order that it may be seen whether an adequate remedy exists at law in the event of a breach. *If the obligation is merely an obligation to indemnify a person, in the sense of repaying to him a sum of money after he has paid it, no equitable relief is needed. Damages will provide an adequate remedy.* If, however, the obligation on its true construction is *an obligation to relieve a debtor by preventing him from having to pay his debt, equity will in such a case give relief in the nature of quia timet relief, and, instead of compelling the party indemnified first to pay the debt, and perhaps to ruin himself in doing so, will specifically enforce the obligation by ordering the indemnifying party to pay the debt.*
>
> [emphasis added]

71 The first type of indemnities recognised by the law are *compensatory* indemnities, where the indemnifier undertakes "an obligation to indemnify a person, in the sense of repaying to him a sum of money after he has paid it" (*McIntosh* at 418; *Contractual Indemnities* at paras 2–3). The promise is generally one to *reimburse* another for a loss suffered because of a third party's or one's own act or default (see the definition in *Black's Law Dictionary* (Bryan A Garner ed) (Thomson Reuters, 12th Ed, 2024) at p 915). An example of such an indemnity is the guarantor's implied indemnity from his debtor (*Periasamy Ramachandran v Sathish s/o Rames* [2020] SGHCR 8 at [36]; *Contractual Indemnities* at para 2–24).

72 The second type of indemnities are *preventive* indemnities, where the indemnifier undertakes "an obligation to relieve a debtor by preventing him from having to pay his debt" (*McIntosh* at 418; *Contractual Indemnities* at para 2–3). More broadly, the promise is generally one to keep an indemnified party "harmless against loss" arising from particular transactions or events (*CIFG Special Assets I Ltd v Polimet Pte Ltd* [2017] SGHC 22 ("*CIFG (HC)*") at [69]). Such indemnities generally require the indemnifier to *intercede* and act before loss is occasioned to the indemnified party – this is what gives the renowned

phrase "harmless against loss" its meaning (*Contractual Indemnities* at para 2–4). As Buckley LJ said in *In re Richardson* [1911] 2 KB 705 ("*Richardson*") at 716, a preventive indemnity "requires that the party to be indemnified shall never be called upon to pay". In the example given by Street CJ above at [70], the debtor as the indemnified party would sustain a loss upon having paid his creditor. By interceding and making payment of the debt on behalf of the debtor, however, the indemnifier keeps the debtor "harmless against loss" and fulfils its obligations under the indemnity (*Contractual Indemnities* at para 2–3).

73 It follows that where an indemnified party has sustained actual loss within the scope of the indemnity clause, the indemnifier is in breach of his primary obligation to keep the indemnified party harmless from loss. A breach of that primary obligation will give rise to a secondary obligation to pay damages which may be enforced by the indemnified party by suit, assuming of course that the relevant loss falls within the scope of the indemnity (*Firma C-Trade SA v Newcastle Protection and Indemnity Association (The Fanti) (No 2)* [1991] 2 AC 1 ("*The Fanti*") at 35G–36C). However, a crucial precondition before the indemnifier's obligation is breached is that the indemnified party must have suffered *actual* loss. As such, "at common law, the cause of action does not (unless the contract provides otherwise) arise until the indemnified person can show actual loss" that falls within the scope of the indemnity (*The Fanti* at 35G–36A and 40C–E; *Collinge v Heywood* (1839) 9 Ad & E 634 at 641). A similar analysis applies to compensatory indemnities – the indemnifier's primary obligation to indemnify the indemnified party is enlivened only upon the latter suffering actual loss which is within the scope of the indemnity (*Contractual Indemnities* at para 5–31).

74 At equity, however, preventive indemnities may be enforced by way of specific performance "as soon as the *liability* covered by the indemnity has

arisen" [emphasis added] (*Management Corporation Strata Title Plan No 1933 v Liang Huat Aluminium Ltd* [2001] 2 SLR(R) 91 ("*MCST 1933*") at [13], citing *Johnston v The Salvage Association and McKiver* (1887) 19 QBD 458 at 460–461; *British Union and National Insurance Company v Rawson* [1916] 2 Ch 476 at 481–482; *McIntosh* at 418; *Contractual Indemnities* at para 5–39). Lord Brandon summarised the position as such (*The Fanti* at 28A–C, see also Lord Goff at 35G–36C):

> There is no doubt that before the passing of the Supreme Court of Judicature Acts 1873 and 1875, there was *a difference between the remedies available to enforce an ordinary contract of indemnity* (by which I mean a contract of indemnity not containing any express "pay to be paid" provision) *at law on the one hand and in equity on the other*. At law the party to be indemnified *had to discharge the liability himself first and then sue the indemnifier for damages for breach of contract*. In equity an ordinary contract of indemnity *could be directed to be specifically performed by ordering that the indemnifier should pay the amount concerned directly to the third party to whom the liability was owed or in some cases to the party to be indemnified*.
>
> [emphasis added]

75 Whether an indemnity is preventive or compensatory in nature is a question of interpretation (*McIntosh* at 418). The significance of what appears, at least on first glance, to be a theoretical distinction has various practical consequences. I will set out just two:

(a) First, the remedial consequences. As noted above at [74], a preventive indemnity may, in certain circumstances, be enforced by way of specific performance (*MCST 1933* at [13]). In contrast, the remedy by which a compensatory indemnity is enforced is by way of an award of damages, given that the relevant obligation the indemnifier has undertaken is one to *reimburse* (see [71] above).

(b) Second, the mode of performance. A compensatory indemnity, by its very definition, is performed by way of the indemnifier paying to the indemnified party a sum representing the latter's loss. In contrast, in the absence of provisions to the contrary, the method of performing a preventive indemnity is generally at the indemnifier's discretion. For example, an indemnity against claims by or liabilities to third parties – which is ordinarily preventive in nature – may be performed by the indemnifier by: (a) making payment directly to the indemnified party; (b) making payment to the relevant third party to whom the indemnified party is liable to; or (c) assuming responsibility for the defence of the action against the indemnified party (*Contractual Indemnities* at para 2–12 and paras 7–4 to 7–8; see also *Richardson* at 716–717; *Muhammad Issa El Sheikh Ahmad v Ali* [1947] AC 414 at 426).

(3) The proper interpretation of the indemnity in clause 9

76 Having set out the legal nature of indemnities, I turn now to the interpretation of clause 9 proper. In my view, clause 9 was a compensatory indemnity, under which the sellers undertook to reimburse the buyers for any losses caused by post-delivery claims made against the Vessel. I note the point made in the literature that, generally, indemnities against claims made by third parties are preventive in nature (*Contractual Indemnities* at paras 6–5 to 6–9; see also the authorities discussed by Lord Jauncey in *The Fanti* at 40C–41F). However, the fact that it would be simply impossible for the seller to intercede and prevent certain heads of losses from being suffered by the buyer was a powerful indication suggesting that the draughtsman of clause 9 had not intended for the indemnity to be preventive in nature.

77 This was evident in the universality of the word "all" which qualified the phrase "consequences of claims made against the Vessel" in clause 9 of the MOA. As noted above at [62], the arrest of the Vessel falls within the phrase "claims made against the Vessel" in clause 9 of the MOA, though it is not so limited: *Rank Enterprises* at [28], citing *Rank Enterprises Ltd v Gerard* [1999] 2 All ER (Comm) 749 at 757. Upon the arrest of a vessel, the buyer, *qua* shipowner, would immediately be forced to incur various expenditures and/or suffer various heads of losses by virtue of the arrest of his vessel. These would be manifested, for example, in the form of: (a) the loss of use of the vessel; (b) the loss of earnings from the vessel; (c) port and berthing charges, as well as wages of and provisions for the master and crew, for the duration of the arrest (for example, see *Compania Financiera Soleada SA v Hamoor Tanker Corpn* [1981] 1 All ER 856 at 859). As a wasting asset, the value of the vessel will depreciate, with this being exacerbated as it remains anchored and subject to the ravages of inclement weather. Perishable cargo on the vessel which the shipowner may be obliged to deliver to a different destination pursuant to a charterparty might also be lost. Continuing losses would be suffered by the buyer while his vessel remains under arrest.

78 The fact that shipowners often suffer significant financial losses owing to the arrest of their vessels is precisely the reason why the courts, on various occasions, have emphasised that an arrest is a draconian, invasive remedy that can cause the shipowner "tremendous inconvenience, financial distress and severe commercial embarrassment" (*The Vasiliy Golovnin* [2008] 4 SLR(R) 994 at [51] and [120]; *The Xin Chang Shu* [2016] 1 SLR 1096 at [3]). Yet, it would be impossible for the seller to intercede and prevent these losses from being suffered by the buyer, especially when arrests are usually sought by claimants on an *ex parte* basis (see generally, *The Jeil Crystal* [2021] SGHC

292 at [2]; *The Rainbow Spring* [2003] 3 SLR(R) 362 at [37]). Common sense and practical considerations therefore indicated that the indemnity in clause 9 of the MOA was not of a nature whereby the seller promised to *prevent* the buyer from suffering any loss caused by the arrest of the Vessel. A contrary interpretation would otherwise impose an obligation on the seller which it could find practically impossible to fulfil.

79 The commercial purpose of clause 9 of the MOA is to protect the buyer against the risk of post-delivery claims based on pre-delivery events, in light of the fact the seller is usually better positioned than the buyer to know of the history of the Vessel. That intended purpose is to be achieved by the buyer's right to be indemnified by the seller against *all* the consequences of such claims. This could well be achieved by the buyer meeting such consequences as and when they arise, and seeking reimbursement from the seller thereafter. There is nothing inherent in such a commercial purpose which necessitates the seller interceding and acting *before* actual loss is suffered by the buyer. Indeed, Aquilo was unable to cite even a single authority indicating otherwise. In fact, such an analysis is consistent with the reasoning of Mance LJ in *Rank Enterprises*, who appears to have contemplated that it will often be the *buyer* who will be forced to put up security in the face of a claim made against his vessel (at [21]):

> … the clause's general aim is to protect the buyers in respect of pre-delivery events… From the buyers' viewpoint, the practical mischief is the materialising post-delivery of a claim against the vessel arising from pre-delivery events. *The claim alone will force* ***the buyers*** *to take evasive or responsive action, including very often putting up security to prevent arrest or obtain release.* Whether a claim or claims may or may not be good will probably only materialise over time and after investigation, and even then the answer may not be clear. Indeed, a claim or claims may be good in part, and invalid or exaggerated as to the rest.
>
> [emphasis added in italics and bold italics]

80 The analysis above, and Mance LJ's observations, also appeared to be consistent with the market understanding. As noted in the leading text on the Saleform 2012 (*Sale of Ships* at para 12–19):

> [The decision in *Rank Enterprises* (see [81] below) is such that] the buyers of second-hand ships will not be obliged to establish that any claim, made against the vessel after delivery arising from events taking place before delivery, constitutes an actual liability of the Sellers in order to rely on the indemnity under cl.9. Whilst this is welcome news for buyers (and is, it is submitted, a business like result), *the deficiencies in cl.9 remain*, namely the limited ambit of the first sentence, ***the fact that the Sellers do not need to provide security*** and that often the Buyers will have recourse under the second sentence against a company with no, or no identifiable, assets.
>
> [emphasis added in italics and bold italics]

Similarly, as noted in another leading text on the sale of ships, the learned authors have observed (*Ship Sale and Purchase* at para 5.38):

> On a first reading of the clause 9 indemnity, *the buyer may believe that the seller must deal directly with any claims made against the ship for which they are responsible under clause 9*. For example, where a claimant arrests the ship after delivery in respect of a claim which arose before delivery, the buyer may believe that they can require the seller:
>
> - to obtain the ship's release by securing or paying off the claim; and/or
> - to take over the defence of the claim.
>
> However, *in practice*, the words used in [the second sentence of clause 9] ***oblige the buyer first to contest the claimant's action against the ship and obtain the ship's release from arrest, and then to seek an indemnity from the seller***.
>
> [emphasis added in italics and bold italics]

81 The phrase "claims made against the Vessel" was interpreted by Mance LJ in *Rank Enterprises* as extending to a demand which carries with it "a real and present threat of seizure of the vessel" (*Rank Enterprises* at [29]). Hence, there is no need for a vessel to actually have been arrested before there can be

said to have been a "claim made against a vessel" – a threat from a third party to have the vessel arrested when it reaches port if security is not provided suffices (*Rank Enterprises* at [28]). In this regard, a corollary of giving clause 9 of the MOA a compensatory construction was further augmented by the very practical consideration that it would grant the buyer *qua* shipowner the freedom to tailor its response in the face of a threat by a third party to arrest its vessel. Significant commercial pressures arising from the arrest, manifested for example in the need to fulfil its obligations to a charterer under a forthcoming time charter, may require the buyer to take responsive action in settling the claim with the third party, or to furnish the security demanded by the third party (see Ang J's (as she then was) comments in *The Acrux* [2004] 4 SLR(R) 531 at [11]). It grated against commercial sense, in my view, to construe clause 9 as requiring the seller to *intercede* and take preventive measures on behalf of the buyer, usurping the latter's freedom of choice in responding to the claims made against the vessel in the process.

82 The proposition – and, in fact, the market understanding (see [80] above) – that the burden of furnishing security in the event of an arrest of the vessel fell on the buyer was also consistent with the principles governing the enforcement of contractual indemnities and the concept of damnification. As noted above at [73], a cause of action on an indemnity does not, in the absence of express provision, arise until the indemnified party has sustained actual loss. An indemnified party, however, does not suffer loss merely because a claim or demand has been made against it by a third party; it suffers a loss when "it pays an amount from its own resources in full or partial satisfaction of the claim" (*Contractual Indemnities* at para 6–23; see also Lord Goff in *The Fanti* at 35G–35H). This reasoning must apply *a fortiori* to the remedy of arrest, which essentially enables an applicant to "obtain *pre-judgment* security" from the

respondent for his claim [emphasis in original] (*The Jeil Crystal* [2022] 2 SLR 1385 at [29]). A buyer faced with a demand for security from an arresting party would have suffered no loss by virtue of that demand for which it is entitled to a cause of action against the seller. In contrast, a buyer who furnishes the security first and successfully contests the arrest would have incurred costs or expenses in doing so – conceivably, in the form of legal fees and the costs of furnishing security itself (for example, where security is furnished by way of a bank guarantee). It would clearly have sustained an actual loss, for which it is entitled to reimbursed by the seller under clause 9 of the MOA (see also *Rank Enterprises* at [22]).

83 It may be true that placing the onus on the buyer to furnish security and to challenge the arrest may place the buyer in somewhat of a disadvantaged position, particularly where the evidence required to contest the arrest is in the possession or the control of the seller. However, a seller who refuses to cooperate and thereby prejudices the buyer's defence might subsequently be liable for the resultant consequences of the arresting party's claim under the indemnity. In any case, a well-advised buyer could seek a suitably worded amendment stating that the seller is required to assist the buyer with the defence of the claim or requesting the seller to fortify its indemnity by provision of adequate security (*Ship Sale and Purchase* at para 5.38). These are, ultimately, matters to be worked out between the parties. The court will not, and cannot, come to the aid of a disadvantaged buyer by rewriting its bargain with its seller.

84 In my judgment, therefore, under clause 9 of the MOA, the seller was only required to *reimburse* the buyer for losses arising out of claims made against the Vessel. It necessarily followed that the nature of the promise that the seller had made under clause 9 was to *pay* a monetary sum representing the quantum of losses that the buyer had suffered by virtue of the arrest of the

Vessel, and not to furnish security on behalf of the buyer in order to secure the release of its Vessel from arrest.

85 I am fortified in my conclusions above by the general legal principle that, in cases of ambiguity, contracts of indemnity are to be construed strictly in favour of the indemnifier (*ie*, the seller) (*CIFG (HC)* at [74]; *HSBC Institutional Trust Services (Singapore) Ltd v DNKH Logistics Pte Ltd* [2022] SGHC 248 at [30] ("*HSBC*"); *Turms Advisors APAC Pte Ltd v Steppe Gold Ltd* [2024] SGHC 174 at [180]). In my view, this is not a rule peculiar to indemnity clauses *per se*; it is simply an instantiation of the *contra proferentem* rule, which states that "where a particular species of transaction, contract, or provision is one-sided or onerous it will be construed strictly against the party seeking to rely on it" (*CIFG (HC)* at [75] citing *Zurich Insurance* at [131]).

86 It has been said that this is because, unlike a guarantee, an indemnity clause imposes a primary and independent obligation on an indemnifier, the nuisance of which ordinary businessmen are not prepared to subject themselves to (*HSBC* at [30]; *CIFG (HC)* at [74]). Another rationale for adopting a strict interpretation of indemnities against the *proferens*, *viz*, the indemnified party as the beneficiary of the clause, is one of policy. Indemnity clauses purport to shift the responsibility or consequences of an adverse event from the indemnified party to the indemnifier, thereby effecting a powerful change in the contractual allocation of risks. It is this burden-shifting – the result of which may be "extremely onerous" – which necessitates a degree of caution in the law's approach to indemnities (Gerard McMeel, *The Construction of Contracts: Interpretation, Implication and Rectification* (Oxford University Press, 2nd Ed, 2011) at para 20.54; *HSBC* at [30]; see also *Contractual Indemnities* at para 3–37, citing *Andar Transport Pty Ltd v Brambles Ltd* (2004) 206 ALR 387 at [68]).

87 In the present case, in so far as there was any ambiguity as to how the indemnity in clause 9 of the MOA was to be performed, I was of the view that such ambiguity should be resolved in favour of the seller. Put another way, the seller was not contractually required to furnish security to procure the release of the Vessel in the absence of express stipulation to the same effect.

88 Aquilo also relied on a line of local and English authorities where the courts had granted interim mandatory injunctions (or specific performance) to compel indemnifiers to furnish security to secure the release of the vessel (*The Bremen Max* [2009] 1 Lloyd's Rep 8125 ("*Bremen Max*"); *The Laemthong Glory (No 2)* [2005] 1 Lloyd's Rep 63224 ("*Laemthong Glory*"); *Tomongo Shipping*; see also *Projector SA v Marubeni International Petroleum (S) Pte Ltd* [2005] 2 SLR(R) 144 ("*Marubeni*"); *Trafigura Maritime Logistics Pte Ltd v Clearlake Shipping Pte Ltd* [2020] EWHC 726 (Comm) ("*Trafigura Maritime*"); *Navig8 Chemicals Pool Inc v Aeturnum Energy International Pte Ltd* [2021] EWHC 3132 (Comm) (*Navig8 Chemicals*"); *The Universal Bremen* [2020] 1 Lloyd's Rep 206 ("*Universal Bremen*")). While Aquilo candidly accepted that these authorities concerned maritime letters of indemnities ("LOI") and "not… an indemnity clause contained in a ship sale agreement", it argued that they applied with "equal force" given the broad wording of clause 9 of the MOA.[68]

89 I rejected this argument. It was true that the courts in those cases had held that the relevant indemnifier was under an obligation to furnish security to procure the release of the relevant vessel. Yet, the single common thread which ran through all those seemingly disparate cases was the presence of an express provision requiring the issuer of the LOI to provide such security as may be

[68] CWS at paras 28 and 31.

required to secure the release of the vessel (*Marubeni* at [5]; *Bremen Max* at [5]; *Trafigura Maritime* at [14]; *Laemthong Glory* at [23]; *Navig8 Chemical* at [7]; *Tomongo Shipping* at [5]; *Universal Bremen* at [10];). Put differently, those clauses took the form of a *preventive* obligation whereby the seller undertook to furnish security in order to relive the buyer from the burden of having to do the same (see *Tomongo Shipping* at [22]). For reference, I set out the relevant clause in the LOI found in *Marubeni* at [5]:

> *If the vessel or any other vessel or property belonging to you should be arrested* or detained or if the arrest or detention thereof should be threatened, [the sub-charterer agrees] to *provide on demand such bail or security as may be required to prevent such arrest or detention or to secure the release of such vessel* or property and to indemnify you in respect of any loss, damage or expense caused by such arrest or detention whether or not the same may be justified.
>
> [emphasis in original omitted; emphasis added in italics]

90 Clauses such as those found in *Marubeni* at [5] are found in the standard form LOIs of most P&I Clubs (Felipe Arizon & David Semark, *Maritime Letters of Indemnity* (Informa Law, 2014) at para 3.51). The commercial rationale behind such clauses is obvious. The entire purpose of the maritime LOI in the context of carriage of goods by sea is to ensure that a shipowner is fully protected from the risks of delivering cargo without production of the original bill of lading, an act which might open the shipowner to claims for misdelivery by the lawful holder of the original bills of lading (*The Cherry* [2003] 1 SLR(R) 471 at [27]; *Marubeni* at [45]; Tan Lee Meng, *Law on Carriage of Goods by Sea* (Academy Publishing, 3rd Ed, 2018) at para 6.076; *Laemthong Glory* at [54]). Consistent with such a purpose, the relevant indemnifiers in those cases had expressly undertaken to provide security to secure the release of the relevant vessel under arrest so that the shipowner would not have to suffer the arrest of the vessel (*Tomongo Shipping* at [22]; *Marubeni* at [40]–[41]; *Bremen Max* at [21]–[23]). There was, however, no such

obligation undertaken by SRTT in the present case. For this simple reason, Aquilo's analogy to the cases in the LOI context were inapt.

91 In my judgment, clause 9 of the MOA did not impose an obligation on SRTT to furnish security on Aquilo's behalf to secure the release of the arrested Vessel. It followed that there was no serious question to be tried in respect of the same, and the application was dismissed.

The balance of convenience did not lie in favour of granting the injunction

92 Given that the threshold requirement of a serious question to be tried had not been fulfilled, it followed that the question as to whether the balance of convenience lay in favour of granting the interim mandatory injunction did not arise (see [36] above). Nonetheless, if I had been wrong, I would have held that the balance of convenience did not lie in favour of granting the injunction.

93 Turning first to the threshold question of the adequacy of damages, I was not persuaded that damages would have been an inadequate remedy for Aquilo should the interim mandatory injunction turn out to have been (wrongly) refused. First, Aquilo once again sought to rely on the cases referred to above at [88] in the context of maritime LOIs, where it has been held to be established law that damages would not be an adequate remedy if a mandatory injunction or specific performance compelling the issuer to perform its obligation to furnish security were to be refused (*Trafigura Maritime* at [31]; *Universal Bremen* at [30]). For the same reasons I have set out at [89]–[90] above, I found that this line of cases was inapplicable in the present context as well.

94 Next, turning to Aquilo's arguments on the facts of the case, it argued that it would suffer substantial prejudice if the injunction were to be refused, since the Vessel – which is its only asset – would be exposed to the risk of being

sold by judicial process (see [16] above). Aquilo argued that it was a "one-ship owning company" and that the refusal of the injunction would result in it not only losing its only asset but also being wound up eventually.[69]

95 I accepted that there was a real risk that the Vessel would be sold by PTINL so long as it remained under arrest. Indeed, that risk had been exacerbated by the time of the hearing. On 16 January 2026, some ten days before the hearing, PTINL had filed HC/SUM 240/2026 where it had applied, *inter alia*, for the Vessel to be appraised and sold *pendente lite* by the Sheriff.

96 The fundamental problem with this argument, however, was that it would apply to just about every shipowner who has had his ship arrested by way of an admiralty claim *in rem*. The same may be said about Aquilo's argument that it would be substantially prejudiced by a *pendente lite* sale by of the Vessel as it is a "one-ship owning company". The prevalent practice in the shipping industry of shipowners organising their fleet of ships under the ownership of "one-ship companies" – a means by which shipowners limit their liabilities to creditors – is one that has been judicially noticed on several occasions (*The Skaw Prince* [1994] 3 SLR(R) 146 at [19]; *The Yangtze Harmony* [2026] SGHC 3 at [37]). In my view, if the argument that the relevant vessel is owned by a one-ship company would suffice for the purposes of an injunction, that would tilt the balance in favour of a substantial number of potential applicants. The onus of showing that it would be irremediably prejudiced by the (wrongful) refusal of the injunction lay on Aquilo, but it did not adduce any evidence as to the identity of its beneficial owner or that entity's/individual's ability to meet the security demand of PTINL. In the absence of any further arguments on this point, therefore, I found that Aquilo had failed to show that it would be unjust

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69 Transcript at p 6 line 31 to p 8 line 11.

for this court to confine it to an award of damages should it subsequently transpire that the injunction had been (wrongly) refused.

97 In contrast, were the interim mandatory injunction to be (wrongly) granted, I was of the view that damages would be an adequate remedy for SRTT. If SRTT were to succeed in its case before the tribunal (*ie*, that clause 9 did not impose on it an obligation to furnish security), it could be compensated by way of an award of damages for the US$3,672,687.10 and S$300,000.00 which it had been (wrongly) compelled to pay as security for PTINL's claim. While those were by no means small sums, and SRTT would have suffered prejudice in having lost the use of those moneys from the time of payment, it could be compensated for the same by way of an award of interest.

98 Turning then to the balance of convenience proper, I was of the view that the balance of convenience lay in favour of refusing to grant the interim mandatory injunction. If the injunction were to be granted, the court would effectively be ordering specific performance of SRTT's purported obligation to furnish security under clause 9 of the MOA (*NCC International* at [74]; *Maldives Airports* at [40]) – an obligation which, as I found above, was non-existent. Having obtained such an injunction, there was no guarantee that Aquilo would not rest on its laurels and decide not to pursue the arbitration further. As noted above at [55], Aquilo had not commenced arbitration, nor was there any evidence as to its intentions in relation to the same. This, however, would irremediably prejudice SRTT, who would have already furnished the requisite security by virtue of the injunction without having had the opportunity to ventilate its arguments in full before the tribunal as to why the injunction ought not to have been granted or otherwise set aside. Additionally, for the reasons at [96] above, I rejected Aquilo's argument that it would suffer substantial prejudice if the injunction were to be refused since its Vessel – which is its only

assets – would be exposed to the risk of being sold by judicial process. In the circumstances, I was of the view that the path of least injustice was to deny the injunction sought by Aquilo, and I ordered accordingly.

Conclusion

99 For the foregoing reasons, I dismissed HC/OA 1376/2025. Parties are to file submissions on costs (limited to 5 pages) within 14 working days of the release of these grounds of decision.

Sushil Nair
Judge of the High Court

Bazul Ashhab, Prakaash s/o Paniar Silvam and Caleb Tan (Oon & Bazul LLP) for the applicant;
Balakrishnan Chitra (Legal Matrix LLC) for the respondent.