ADMIRALTY JURISDICTION REGULATION ACT
NO. 105 OF 1983

Assented to: 8 September 1983 Date of commencement: 1 November 1983

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

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

admiralty action means proceedings in terms of this Act for the enforcement of a maritime
claim whether such proceedings are by way of action or by way of any other competent
procedure, and includes any ancillary or procedural measure, whether by way of application
or otherwise, in connection with any such proceedings;
[Definition of "admiralty action" substituted by s. 1 (a) of Act No. 87 of 1992.]

container means a container for the carriage of goods by sea, including any such container
which is empty or otherwise temporarily not being used for such carriage;
[Definition of "container" inserted by s. 1 (b) of Act No. 87 of 1992.]

fund means a fund mentioned in section 3 (11);
[Definition of "fund" inserted by s. 1 (c) of Act No. 87 of 1992.]

maritime claim means any claim for, arising out of or relating to-
(a) the ownership of a ship or a share in a ship;
(b) the possession, delivery, employment or earnings of a ship;
(c) any agreement for the sale of a ship or a share in a ship, or any agreement with
regard to the ownership, possession, delivery, employment or earnings of a ship;
(d) any mortgage, hypothecation, right of retention, pledge or other charge on or of a
ship, and any bottomry or respondentia bond;
(e) damage caused by or to a ship, whether by collision or otherwise;
(f) loss of life or personal injury caused by a ship or any defect in a ship or occurring in
connection with the employment of a ship;
(g) loss of or damage to goods (including the baggage and the personal belongings of the
master, officers or seamen of a ship) carried or which ought to have been carried in a
ship, whether such claim arises out of any agreement or otherwise;

(h) the carriage of goods in a ship, or any agreement for or relating to such carriage;

(i) any container and any agreement relating to any container;

(j) any charter party or the use, hire, employment or operation of a ship, whether such
claim arises out of any agreement or otherwise;

(k) salvage, including salvage relating to any aircraft and the sharing or apportionment
of salvage and any right in respect of property salved or which would, but for the
negligence or default of the salvor or a person who attempted to salve it, have been
salved, and any claim arising out of the Wreck and Salvage Act, 1996;

(l) towage or pilotage;

(m) the supplying of goods or the rendering of services for the employment,
maintenance, protection or preservation of a ship;

(n) the rendering, by means of any aircraft, ship or other means, of services in
connection with the carrying of persons or goods to or from a ship, or the provision
of medical or other services to or in respect of the persons on being taken to or from
a ship;

(o) payments or disbursements by a master, shipper, charterer, agent or any other person
for or on behalf of or on account of a ship or the owner or charterer of a ship;

(p) the remuneration of, or payments or disbursements made by, or the acts or omissions
of, any person appointed to act or who acted or failed to act-

(i) as an agent, whether as a ship's, clearing, forwarding or other kind of agent, in
respect of any ship or any goods carried or to be carried or which were or ought to
have been carried in a ship; or

(ii) as a broker in respect of any charter, sale or any other agreement relating to a ship or
in connection with the carriage of goods in a ship or in connection with any
insurance of a ship or any portion or part thereof or of other property referred to in
section 3 (5); or

(iii) as attorney or adviser in respect of any matter mentioned in subparagraphs (i) and
(ii);

(q) the design, construction, repair or equipment of any ship;

(r) dock, harbour or similar dues;

(s) the employment of any master, officer or seaman of a ship in connection with or in
relation to a ship, including the remuneration of any such person, and contributions
in respect of any such person to any pension fund, provident fund, medical aid fund,
benefit fund, similar fund, association or institution in relation to or for the benefit of
any master, officer or seaman;
(t) general average or any act claimed to be a general average act,
(u) marine insurance or any policy of marine insurance, including the protection and indemnity by any body of persons of its members in respect of marine matters;
(v) the forfeiture of any ship or any goods carried therein or the restoration of any ship or any such goods forfeited;
(w) the limitation of liability of the owner of a ship or of any other person entitled to any similar limitation of liability;
(x) the distribution of a fund or any portion of a fund held or to be held by, or in accordance with the directions of, any court in the exercise of its admiralty jurisdiction, or any officer of any court exercising such jurisdiction;
(y) any maritime lien, whether or not falling under any of the preceding paragraphs;
(z) pollution of the sea or the sea-shore by oil or any other substance on or emanating from a ship;
(aa) any judgment or arbitration award relating to a maritime claim, whether given or made in the Republic or elsewhere;
(bb) wrongful or malicious proceedings in respect of or involving any property referred to in section 3 (5), or the wrongful or malicious arrest, attachment or detention of any such property, wherever any such proceedings, arrest, attachment or detention took place, and whether in the Republic or elsewhere, and any loss or damage contemplated in section 5 (4);
(cc) piracy, sabotage or terrorism relating to property mentioned in section 3 (5), or to persons on any ship;
(dd) any matter not falling under any of the previous paragraphs in respect of which a court of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict c. 27), of the United Kingdom, was empowered to exercise admiralty jurisdiction immediately before the commencement of this Act, or any matter in respect of which a court of the Republic is empowered to exercise admiralty jurisdiction;
(ee) any other matter which by virtue of its nature or subject matter is a marine or maritime matter, the meaning of the expression marine or maritime matter not being limited by reason of the matters set forth in the preceding paragraphs; and
(ff) any contribution, indemnity or damages with regard to or arising out of any claim in respect of any matter mentioned above or any matter ancillary thereto, including the attachment of property to found or confirm jurisdiction, the giving or release of any security, and the payment of interest;

[Definition of “maritime claim” substituted by s. 1 (d) of Act No. 87 of 1992.]

**Minister** means the Minister of Justice;

**rules** means the rules made under section 4 or in force thereunder;
ship means any vessel used or capable of being used on the sea or internal waters, and includes any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, floating crane, floating dock, oil or other floating rig, floating mooring installation or similar floating installation, whether self-propelled or not;

this Act includes the rules.

(2)(a) An admiralty action shall for any relevant purpose commence-

(i) by the service of any process by which that action is instituted;
(ii) by the making of an application for the attachment of property to found jurisdiction;
(iii) by the issue of any process for the institution of an action in rem;
(iv) by the giving of security or an undertaking as contemplated in section 3 (10) (a).

(b) An action commenced as contemplated in paragraph (a) shall lapse and be of no force and effect if-

(i) an application contemplated in paragraph (a) (ii) is not granted or is discharged or not confirmed;
(ii) no attachment is effected within twelve months of the grant of an order pursuant to such an application or the final decision of the application;
(iii) a process contemplated in paragraph (a) (iii) is not served within twelve months of the issue thereof,
(iv) the property concerned is deemed in terms of section 3 (10) (a) (ii) to have been released and discharged.

[Sub-s. (2) substituted by s. 1 (e) of Act No. 87 of 1992.]

11. Ranking of claims

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

(b) Property other than property mentioned in paragraph (a) may, in respect of a maritime claim, be sold in execution, and the proceeds thereof distributed, in the ordinary manner.

(2) The claims contemplated in subsection (1) (a) are claims mentioned in subsection (4) and confirmed by a judgment of a court in the Republic or proved in the ordinary manner.

(3) Any reference in this section to a ship shall, where appropriate, include a reference to any other property mentioned in section 3 (5) (a) to (e).

(4) The claims mentioned in subsection (2) are the following, namely-

(a) a claim in respect of costs and expenses incurred to preserve the property in question or to procure its sale and in respect of the distribution of the proceeds of the sale;
(b) a claim to a preference based on possession of the property in question, whether by way of a right of retention or otherwise;
(c) a claim which arose not earlier than one year before the commencement of proceedings to enforce it or before the submission of proof thereof and which is a claim-
(i) contemplated in paragraph (s) of the definition of "maritime claim";
(ii) in respect of port, canal, other waterways or pilotage dues;
(iii) in respect of loss of life or personal injury, whether occurring on land or on water, directly resulting from employment of the ship;
(iv) in respect of loss of or damage to property, whether occurring on land or on water resulting from delict, and not giving rise to a cause of action based on contract, and directly resulting from the operation of the ship;
(v) in respect of the repair of the ship, or the supply of goods or the rendering of services to or in relation to a ship for the employment, maintenance, protection or preservation thereof;
(vi) in respect of the salvage of the ship, removal of any wreck of a ship, and any contribution in respect of a general average act or sacrifice in connection with the ship;
(vii) in respect of premiums owing under any policy of marine insurance with regard to a ship or the liability of any person arising from the operation thereof, or
(viii) by any body of persons for contributions with regard to the protection and indemnity of its members against any liability mentioned in subparagraph (vii);

(d) a claim in respect of any mortgage, hypothecation or right of retention of, and any other charge on, the ship, effected or valid in accordance with the law of the flag of a ship, and in respect of any lien to which any person mentioned in paragraph (o) of the definition of "maritime claim" is entitled;

(e) a claim in respect of any maritime lien on the ship not mentioned in any of the preceding paragraphs;

(f) any other maritime claim.

(5) The claims mentioned in paragraphs (b) to (f) of subsection (4) shall rank after any claim referred to in paragraph (a) of that subsection, and in accordance with the following rules, namely-

(a) a claim referred to in the said paragraph (b) shall, subject to paragraph (b) of this subsection, rank before any claim arising after it;

(b) a claim of the nature contemplated in paragraph (c) (vi) of that subsection, whether or not arising within the period of one year mentioned in the said paragraph, shall rank before any other claim;

(c) otherwise any claim mentioned in any of the subparagraphs of the said paragraph (c) shall rank pari passu with any other claim mentioned in the same subparagraph, irrespective of when such claims arose;

(d) claims mentioned in paragraph (d) of subsection (4) shall, among themselves, rank according to the law of the flag of the ship;

(e) claims mentioned in paragraph (e) of subsection (4) shall, among themselves, rank in their priority according to law;

(f) claims mentioned in paragraph (f) of subsection (4) shall rank in their order of preference according to the law of insolvency;

(g) save as otherwise provided in this subsection, claims shall rank in the order in which they are set forth in the said subsection (4).
(6) For the purposes of subsection (5), a claim in connection with salvage or the removal of wreck shall be deemed to have arisen when the salvage operation or the removal of the wreck, as the case may be, terminated, and a claim in connection with contribution in respect of general average, when the general average act occurred.

(7) A court may, in the exercise of its admiralty jurisdiction, on the application of any interested person, make an order declaring how any claim against a fund shall rank.

(8) Any person who has, at any time, paid any claim or any part thereof which, if not paid, would have ranked under this section, shall be entitled to all the rights, privileges and preferences to which the person paid would have been entitled if the claim had not been paid.

(9) A judgment or an arbitration award shall rank in accordance with the claim in respect of which it was given or made.

(10) Interest on any claim and the costs of enforcing a claim shall, for the purposes of this section, be deemed to form part of the claim.

(11) In the case of claims against a fund which consists of the proceeds of the sale of, or any security or undertaking given in respect of, a ship (hereinafter referred to as the ship giving rise to the fund) which is an associated ship in relation to the ship in respect of which the claims arose, the following rules shall apply, namely-

(a) all claims which fall under paragraphs (b) to (e) of subsection (4) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3 (7) (a) (i), shall rank immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned and after any claims which fall under paragraph (f) of subsection (4) and which arose from, or are related directly to, the operation of (including the carriage of goods in) the ship giving rise to the fund concerned;

(b) all claims which fall under the said paragraphs (b) to (e) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3 (7) (a) (ii) or (iii) shall rank immediately after any claims mentioned in paragraph (a) of this subsection or, if there are no such claims, immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned;

(c) the provisions of subsections (5) and (9) shall apply with regard to any claim mentioned in paragraph (a) or (b).

(12) Notwithstanding the provisions of this section, any undertaking or security given with respect to a particular claim shall be applied in satisfaction of that claim only.

(13) Any balance remaining after the claims mentioned in paragraphs (a) to (e) of subsection (4) and the claims mentioned in subsection (11) have been paid, shall be paid over to any trustee, liquidator or judicial manager who, but for the provisions of section 10, would have been entitled thereto or otherwise to any other person entitled thereto.

[S. 11 substituted by s. 9 of Act No. 87 of 1992.]
General Law Amendment Act, No. 139 of 1992
Wreck and Salvage Act, No. 94 of 1996