

Singapore High Court Draws Sharp Distinction Between Compensatory and Preventive Indemnities under SALEFORM 2012

Viewpoints

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Introduction

In *Aquilo Shipping Inc v SRTT Marine Trading & Services Pte Ltd* [2026] SGHC 79, the Singapore High Court considered, among other issues, whether Clause 9 of the Norwegian

Saleform 2012 ("**SALEFORM 2012**") required a seller of a vessel to furnish security to procure the vessel's release following its arrest for a pre-delivery claim. The Court ruled that, as the indemnity in Clause 9 is **compensatory**, not **preventive**, the seller was not obligated to put up security to prevent or lift an arrest, even where the arrest arises from a pre-delivery claim.

This case serves as important reminder that not all indemnities allocate risk in the same way – parties should be mindful that, absent express wording to the contrary, indemnities such as that contained in Clause 9 of the SALEFORM 2012 are distinct from the usual maritime letters of indemnity which typically contain express provisions requiring the indemnifier to put up security to procure the vessel's release.

Brief Facts

The dispute arose from the sale of a chemical tanker (the "**Vessel**") under a vessel sale and purchase contract based on the SALEFORM 2012 (the "**Contract**"). Clause 9 of the Contract provided as follows:

"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." [Emphasis added]

The buyer, Aquilo Shipping Inc ("**Aquilo**"), took delivery of the Vessel in January 2025 from the seller, SRTT Marine Trading & Services Pte Ltd ("**SRTT**"). Subsequently, in November 2025, the Vessel was arrested in Singapore pursuant to an admiralty action commenced by cargo interests for misdelivery which occurred prior to the Vessel's delivery to Aquilo. The arresting party demanded security of approximately US\$3.7 million for the Vessel's release.

Aquilo demanded that SRTT take over the conduct of the admiralty proceedings and furnish security to procure the Vessel's release, relying on the indemnity found Clause 9 of the Contract. SRTT did not comply and Aquilo applied to the Singapore High Court for an interim mandatory injunction in aid of arbitration under the International Arbitration Act 1994 ("**IAA**") to compel SRTT to furnish security to secure the Vessel's release.

Issues Before the Court

The Court had to determine whether, procedurally and substantively, the requirements for the grant of an interim mandatory injunction in aid of arbitration under the IAA were satisfied.

Procedurally, the Court had to firstly determine whether, under Sections 12A(4) and 12A(6) of the IAA, (i) the case was one of urgency; (ii) the order was necessary for the purpose of preserving evidence and assets; and (iii) whether the tribunal or institution had no power or was unable for the time being to act effectively.

Substantively, on the question of whether the requirements for a mandatory injunction were satisfied, the Court had to decide whether (i) there was a serious question to be tried; and (ii) the balance of convenience lay in favour of the injunction being granted.

Decision of the High Court

The Court dismissed Aquilo's application on the basis that Aquilo had failed to cross the procedural threshold under the IAA, having failed to demonstrate that the case was one of urgency. The reason was that, although the Vessel was arrested on 18 November 2025, Aquilo had not commenced arbitration against SRTT for breach of the Contract throughout, even up to the hearing on 30 January 2026.

Nature of the Indemnity in Clause 9

While this finding alone disposed of the application, the Court still detailed why the substantive requirements for an interim injunction were not met. Specifically, it held that there was no "serious question to be tried" because there was no obligation under Clause 9 of the Contract for SRTT to provide security for the vessel's release. Instead, the Court interpreted Clause 9 as a reimbursement provision for post-delivery losses rather than a duty to intervene, with the result that Aquilo must provide its own security and seek reimbursement from SRTT afterwards.

In coming to this conclusion, the Court drew a distinction between **compensatory** indemnities, which require the indemnifier to reimburse the indemnified party for loss suffered, and **preventive indemnities**, which require the indemnifier to intercede and take preventive measures on behalf of the indemnified party to keep the indemnified party harmless against loss. The Court reasoned that Clause 9 was a compensatory indemnity clause because:

1. Practically speaking, upon an arrest, the buyer would immediately incur losses and expenses, such as loss of use of the vessel, loss of earnings, port and berthing charges, and master/crew wages and provisions etc. Hence, a seller would not be able to prevent "*all consequences of claims made against the Vessel*" as it would be impossible for him to intercede and prevent such heads of losses from being suffered by the buyer.
2. Interpreting Clause 9 as a compensatory indemnity did not undermine its intended commercial purpose, which is to protect the buyer against the risk of post-delivery

claims based on pre-delivery events. This purpose could be achieved by the buyer seeking reimbursement from the seller when such consequences arise.

3. A compensatory construction to Clause 9 would preserve the buyer's freedom to decide how best to respond to an arrest or threat of arrest. There may be circumstances where the buyer is required to take responsive action to settle a claim with the third party or to furnish the security demanded by the third party, for instance, where the buyer needs to fulfil its obligations to a charterer under a forthcoming time charter. The Court observed that it would offend commercial sense to construe Clause 9 as requiring the seller to intervene preventively and therefore usurp the buyer's freedom of response in such circumstances.

Distinction between Maritime LOIs and SALEFORM 2012 Indemnities

Aquilo sought to draw parallels between the indemnity in Clause 9 and how the indemnities under maritime letters of indemnity for delivery of cargo without presentation of the original bills of lading in P&I club approved wording ("**Maritime LOIs**") operated. In the latter case, interim mandatory injunctions were routinely granted to compel the Maritime LOI indemnifiers to furnish security to secure the release of the arrested vessel. The Court, in rejecting Aquilo's argument, pointed out that whereas the Maritime LOIs contained wording requiring the issuer to provide alternate security to procure a vessel's release from arrest, such wording was absent in Clause 9.

Practical Takeaways

This decision underscores the fact that broad indemnity language does not, without more, give rise to preventive obligations for a seller to furnish security or intervene in post-delivery third-party proceedings. Buyers acquiring vessels under SALEFORM 2012 must therefore proceed on the basis that they would have to furnish security in the event of an arrest arising from pre-delivery claims and seek reimbursement from the seller thereafter for its expenses and losses.

To better protect themselves, buyers are advised to amend Clause 9 of the SALEFORM 2012 to expressly require the seller to provide security when the buyer is met with a security demand from an arresting party for pre-delivery claims. Additionally, given that evidence relating to the underlying pre-delivery claim lies with the seller, the buyer should also amend Clause 9 to require the seller to assist the buyer with the defence of the claim.

But the reality in many vessel sale and purchase transactions is that the seller is usually one-ship company. Even if the Clause 9 is amended to provide that the seller is to hold the buyer harmless for pre-delivery claims, the efficacy of the amended clause would turn on whether the seller has the resources to furnish substitute security. The more prudent

course is for buyers to conduct thorough due diligence on the seller and the vessel, including writ searches, before signing the sale and purchase contract and taking delivery of the vessel.

Conclusion

This decision clarifies the scope of Clause 9 of the SALEFORM 2012, while also serving as a cautionary reminder to buyers and their financiers of the limits of standard-form indemnities. It reinforces the importance of careful drafting and early consideration of arrest and credit risk in vessel sale and purchase transactions as well as the importance of thorough due diligence.

If you have any queries on the above, please feel free to contact our team members set out on this page.

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