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## MinLaw proposes amendments to section 131 of Companies Act to exempt shipowner's liens from registration requirement

The Ministry of Law ("MinLaw") conducted a public consultation exercise from 23 May 2018 to 13 June 2018 inviting public feedback on proposed amendments to the Companies Act ("CA") to exempt liens over sub-freight and sub-hire ("**Shipowner's Liens**") from the requirement of registration under section 131 of the CA. The proposed exemption relates to a Shipowner's Lien created by a company whether as a charge over book debts of the company or a floating charge on the undertaking or property of the company.

Commonly included in standard maritime contracts for the charter of ships, a Shipowner's Lien is a contractual right to sub-hire or sub-freight due to the charterer in the event of the charterer's default under a head charter, provided that such sub-hire or sub-freight have not already been paid.

### Rationale for the proposed amendments

The proposed amendments to section 131 of the CA came about following the Singapore High Court decision in *Duncan, Cameron Lindsay v Diablo Fortune Inc* [2017] SGHC 172, which was recently affirmed by the Court of Appeal in *Diablo Fortune Inc v Duncan, Cameron Lindsay* [2018] SGCA 26. In the Grounds of Decision released on 23 May 2018, the Court of Appeal largely agreed with and upheld the reasoning of the High Court judge and held that Shipowner's Liens should be characterised as floating charges that are registrable under section 131(3)(g) of the CA. Accordingly, such liens are void against the liquidator and creditors of the company if they are not registered under section 131 of the CA.

However, the Court of Appeal acknowledged the commercial inconvenience of requiring registration, especially if the charter is for a short duration or for a single voyage, and if registration may even be required after the charter has come to an end (when there are further sub-freights yet to fall due). Nonetheless, the court's view was that the concomitant commercial consequences of requiring registration cannot change the nature of the security; nor can it justify the court in exempting liens on sub-freights from registration. The Court of Appeal went on to state that "[t]he time is perhaps ripe for Parliament to review the current position and consider introducing an exception for liens on sub-freights" and observed that "in order to maintain Singapore's competitive edge as a leading maritime hub, it may be appropriate to examine suitable legislative reform to carve liens on sub-freights out from the reach of section 131 of the Companies Act".

Recognising the practical and commercial obstacles to registration of such instruments, MinLaw's proposed amendments to section 131 of the CA aim to preserve the ease of doing shipping business in Singapore by exempting Shipowner's Liens from the requirement of registration notwithstanding its status as a charge.

**Reference materials**

The following materials are available on the MinLaw website [www.mlaw.gov.sg](http://www.mlaw.gov.sg):

- Press release
- Annex A: Draft Companies (Amendment) Bill

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