

# Companies (Amendment) Bill

---

**Bill No. 27/2018.**

*Read the first time on 9 July 2018.*

A BILL

*intituled*

An Act to amend the Companies Act (Chapter 50 of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## Short title and commencement

1. This Act is the Companies (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

### 5 **Amendment of section 131**

2. Section 131 of the Companies Act is amended —

(a) by inserting, immediately after subsection (3AA), the following subsections:

10 “(3AB) Despite subsection (3), a shipowner’s lien created by a company on or after the date of commencement of section 2 of the Companies (Amendment) Act 2018, whether as a charge on book debts of the company or a floating charge on the undertaking or property of the company, is not a  
15 charge to which this section applies.

(3AC) Despite subsection (3) or (3AA), a shipowner’s lien created by a company before the date of commencement of section 2 of the Companies (Amendment) Act 2018, whether as a charge on book  
20 debts of the company or a floating charge on the undertaking or property of the company, is a charge to which this section applies only if, as at that date —

- 25 (a) an order for the winding up of the company has been made;
- (b) a resolution has been passed for the voluntary winding up of the company; or
- (c) a creditor of the company has acquired a proprietary right to or an interest in the subject matter of the lien.”; and

(b) by inserting, immediately after subsection (10), the following subsection:

“(11) In this section, “shipowner’s lien” means a contractual lien on —

(a) sub-freights;

5

(b) sub-hires; or

(c) bill of lading freight,

created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter).”.

### **Amendment of section 210**

10

3. Section 210(3AA) of the Companies Act is amended by deleting paragraph (a) and substituting the following paragraph:

“(a) in the case of a company in the course of being wound up, on the liquidator and contributories of the company, and on all —

15

(i) the creditors or class of creditors;

(ii) the members or class of members; or

(iii) the holders of units of shares or class of holders of units of shares,

as the case may be; or”.

20

---

## **EXPLANATORY STATEMENT**

This Bill seeks to amend the Companies Act (Cap. 50).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 131 (Registration of charges) by introducing a new subsection (3AB) to —

(a) affirm the characterisation of a contractual lien on sub-freights or sub-hires created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter), as —

- (i) a floating charge which is registrable under subsection (3)(g), as held by the Court of Appeal in *Diablo Fortune Inc v Duncan, Cameron Lindsay* [2018] SGCA 26; or
  - (ii) a charge on book debts of the company under subsection (3)(f), as held by the High Court in *Duncan, Cameron Lindsay and another v Diablo Fortune Inc and another matter* [2017] SGHC 172 (which decision was not disturbed on appeal);
- (b) remove the requirement under subsection (1) that a contractual lien on sub-freights or sub-hires created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter) must be registered; and
- (c) provide that a contractual lien on bill of lading freight created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter) is not a charge that must be registered under subsection (1).

Clause 2 also inserts a new subsection (3AC) into section 131 to provide that a contractual lien on sub-freights, sub-hires or bill of lading freight created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter) created before the date of commencement of section 2 of the Companies (Amendment) Act 2018, is subject to the registration requirement and the consequences of non-registration only if, as at that date, there is —

- (a) a liquidator appointed for the company either by the High Court or by the company by way of a voluntary winding up resolution; or
- (b) a creditor falling within the meaning of “creditor” in subsection (1), as interpreted by the Court of Appeal in *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd* [2014] 1 SLR 733.

Clause 2 further inserts a new subsection (11) into section 131 to define “shipowner’s lien” as a contractual lien on sub-freights, sub-hires or bill of lading freight created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter). Such a lien may be given in favour of, amongst other persons, a registered owner of a ship, a disponent owner of a ship, or a bareboat charterer of a ship.

Clause 3 amends section 210(3AA) (Power to compromise with creditors, members and holders of units of shares) by deleting and substituting paragraph (a) to provide that, in respect of a company in the course of being wound up, a compromise or an arrangement approved by the High Court is binding on the creditors or class of creditors, the members or class of members, or the holder of units of shares or class of holders of units of shares (as the case may be), in addition to the liquidator and contributories of the company. The clause is intended to partly

reverse the amendment made by section 135(a) of the Companies (Amendment) Act 2014 (Act 36 of 2014).

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

---