

ONE SHIP COMPANY

It has long been the practice in the shipping business to arrange for several ships which are financed by a common source and managed or operated as a fleet, to be registered in the names of separate companies whose only asset is the particular ship registered in its name. Often such companies will be registered in a country where the identification of shareholders in companies is not a matter of public record. This arrangement has become known colloquially as the "one-ship- company" and has been a source of irritation to cargo interests and others who consider that they are thereby deprived of the benefit of the sister ship provisions. However, it is clear that the courts have recognised that the "one-ship company" is a legitimate business arrangement, and in the absence of evidence of fraud it is not permissible to lift the corporate veil in order to look behind the "one-ship company" structure for the purposes of identifying the beneficial owner of the company and say that the beneficial owner of the company is the beneficial owner of the ship. In law the beneficial owner of the ship is the company, which is a separate and distinct legal entity or person from the beneficial owner of the company."

The practice of creating a "one-ship company" in the shipping industry has long been recognized as a legitimate and strategic business arrangement. This method involves registering each vessel under the name of a separate company, with the ship being the sole asset of that company. These companies are often incorporated in jurisdictions that provide anonymity to the shareholders and beneficial owners, making it difficult for claimants to pursue claims against the beneficial owners or the fleet as a whole.

Legitimacy of the One-Ship Company Structure

The "one-ship company" structure is a well-established practice in the maritime industry, allowing shipowners to limit liability to the value of the vessel owned by the company. The legal principle that governs this arrangement is based on the doctrine of corporate separateness, where the company is treated as a separate legal entity from its shareholders. The seminal case of *Salomon v. A Salomon & Co Ltd.* [1897] AC 22 (House of Lords) firmly established that a company, once incorporated, is a separate legal entity from its members, with its own rights and liabilities. This principle has been applied consistently in maritime law as well, ensuring that the one-ship company structure is respected unless there is evidence of fraud or other exceptional circumstances.

In the context of admiralty law, the corporate veil of a one-ship company is generally not lifted unless there is sufficient evidence to justify such an action. Courts have consistently upheld the sanctity of the corporate structure, even in cases where it may disadvantage creditors or claimants, such as cargo interests, who are unable to pursue claims beyond the assets of the company that owns the vessel.

Judicial Approach to One-Ship Companies in India

Indian courts have followed the principles established in common law jurisdictions when dealing with one-ship companies. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") provides the statutory framework for maritime claims, including the arrest of vessels. However, the Act does not expressly address the issue of one-ship companies, leaving the matter to be governed by general principles of company law and admiralty jurisprudence.

Section 5 of the Admiralty Act, 2017, allows for the arrest of a vessel in rem in respect of a maritime claim. The provision is typically invoked when a ship is owned by a one-ship company, limiting the claimant's recourse to the value of the vessel itself. Despite the frustrations this structure can cause to cargo

interests and other claimants, courts in India have largely adhered to the doctrine of corporate separateness, refusing to pierce the corporate veil without evidence of fraud or malfeasance.

In *M.V. Elisabeth and Ors. v. Harwan Investment and Trading Pvt. Ltd.*, Goa (AIR 1993 SC 1014), the Supreme Court of India emphasized the importance of protecting maritime claimants while recognizing the limitations imposed by corporate structures like the one-ship company. The court highlighted the necessity of adhering to international maritime conventions and practices, which often respect the corporate veil unless there are exceptional circumstances justifying its disregard.

Case Law and Judicial Interpretations

Vestris Maritime Ltd. v. The Owners and Parties Interested in the Vessel MT Vestris (AIR 2004 Cal 94): The Calcutta High Court dealt with the issue of a one-ship company structure and the arrest of a vessel owned by such a company. The court upheld the principle that the corporate veil should not be lifted merely because the company's only asset was the vessel. The court emphasized that unless there was evidence of fraud or malfeasance, the company would be treated as a separate legal entity, and claimants could only proceed against the assets of that particular company.

MT Pratibha Neera v. Union of India (2014 SCC OnLine Bom 641): In this case, the Bombay High Court addressed the difficulties faced by claimants when dealing with one-ship companies. The court reiterated that the separate legal personality of the one-ship company must be respected, and the arrest of a vessel does not extend to the beneficial owners unless there is sufficient evidence to lift the corporate veil. The court recognized that while the one-ship company structure could frustrate claimants, it was a legitimate business arrangement.

MV Sea Success I v. Liverpool & London Steamship Protection and Indemnity Association Ltd. (2002) 4 SCC 636: The Supreme Court of India addressed the issue of sister ship arrests in the context of one-ship companies. The court held that the arrest of a sister ship was only permissible if the beneficial ownership of the sister ship and the offending vessel was the same at the time of the arrest. In the case of a one-ship company, since each vessel is owned by a separate legal entity, the court held that the sister ship provisions could not be invoked unless there was a clear identification of common beneficial ownership.

Sister Ship Provisions and the One-Ship Company

One of the significant implications of the one-ship company structure is its effect on the application of the sister ship arrest provisions under Section 5(2) of the Admiralty Act, 2017. The sister ship arrest provisions allow a claimant to arrest a vessel other than the offending ship, provided that both ships are beneficially owned by the same entity. However, in a one-ship company arrangement, each vessel is owned by a different company, effectively preventing the claimant from invoking the sister ship arrest provisions.

This has been a source of frustration for cargo interests and other maritime claimants, who find themselves limited to the single asset of the one-ship company, often with no recourse against the fleet or the beneficial owner. Nevertheless, the courts have consistently upheld the legitimacy of this structure, recognizing that in the absence of fraud or exceptional circumstances, the corporate veil cannot be pierced to impose liability on the beneficial owner of the company.

The one-ship company structure is a well-established and legitimate business practice in the shipping industry. While it may pose challenges to claimants, particularly in the context of maritime claims, Indian courts have consistently upheld the doctrine of corporate separateness, recognizing that a company is a distinct legal entity from its shareholders or beneficial owners. The

Admiralty Act, 2017, and judicial precedents reinforce this principle, ensuring that the one-ship company structure remains a viable option for shipowners while protecting the interests of maritime claimants within the framework of the law.