

A BILL

THE ADMIRALTY COURT ACT 1999.

***A “DRAFTING PROJECT” SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF
THE DEGREE OF MASTER OF LAWS (LLM) AT THE IMO
INTERNATIONAL MARITIME LAW INSTITUTE.***

(MALTA)

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Explanatory Memorandum

The need for a single, self-contained, complete and comprehensive law of Admiralty for Bangladesh has been long overdue. As per Article 94(1) of the Constitution of the Peoples' Republic of Bangladesh, the Supreme Court consists of two Divisions, the High Court Division and the Appellate Division. The High Court Division in its Admiralty jurisdiction has been functioning according to more than a century old scattered enactments. These enactments have been found to have failed to cater for the needs of a modern state aspiring to expand its international trade and commerce and attracting investment, both from domestic and foreign investors.

The main problem of the present law appears to be the limited scope of the matters on which Court of Admiralty is empowered to adjudicate the maritime disputes. The maritime matters as mentioned in the century old Admiralty Court Act, 1861 are inadequate and insufficient and are not able to keep pace with the modern age of trade and commerce through shipping.

When the Admiralty Court Act, 1861 was enacted, trade and commerce did not reach the gigantic dimension as it is today. During the 20th century the subject of disputes in admiralty matters have also diversified to a very great extent.

As a result, matters in which the Court of Admiralty should assume jurisdiction and deal with under special procedure in a speedy and summary manner, not being covered by the outdated Admiralty Court Act, 1861 & go for adjudication to the ordinary civil courts functioning under normal lengthy procedural law, thereby frustrating the very purpose of establishing the Court of Admiralty under the aforesaid Act.

In this connection, it should be noted here that Bangladesh came in to being as an independent, unitary and sovereign Republic after a great sacrifice, by defeating Pakistan Government in a long nine-month war. Be that as it may, most of the laws prevailing in Pakistan were adopted and accordingly, old and back dated Admiralty Court Act, 1861, was accepted as our law by virtue of "Laws (Revision and Declaration) Act 1973." Fortunately, Pakistan Government repealing the said Act passed 'The Admiralty Jurisdiction of the High Court Ordinance 1980.' Unfortunately, we are lagging behind in this field. Due to long rule of military Government, we were not able to develop our legal system. However, the present democratic Government of Bangladesh has keen interest to change the outdated and century-old laws. And with that end, "Permanent Law Commission" was established for making recommendations to the Government for reforming and overhauling the existing laws.

Following the provisions of the Constitution, Rules of Business 1996, and Rules of Procedure of the Parliament new laws are enacted. It is obviously lengthy and time consuming. It is too long and complex to discuss here.

The present Government has also very keen interest to enact a new Admiralty

Court Act by consolidating and amending the law relating to Admiralty jurisdiction of the High Court Division for speedy disposal of suits, cases or proceedings

arising from maritime claims & disputes. I am working as a counsel officer of the Honourable Minister for law, Justice and Parliamentary Affairs as well as coordinator of the “Parliamentary Standing Committee” constituted with regard to aforesaid Ministry and as such I am very closely connected with the law making process of my country.

Therefore, I have decided to make proper use of the opportunity provided by IMO IMLI by its Drafting Project. I think, my country will greatly be benefited if I could be able to make a tailor-made “**Draft Bill**” to that effect with the able guidance and supervision of Honourable supervisor of this project

I have very carefully gone through the instructions provided for as the guide lines of Drafting Project. Over and above, keeping in mind the long- standing procedure prevailing in our country, I tried to follow the “Drafting Instructions” provided by IMO IMLI *mutatis mutandis* in making the ‘Draft Bill.’

I am of the opinion that it should be stated here that the famous legal expressions “shall” “may” “means” and “includes” have been used in this ‘Proposed Bill’. But the meaning of the said expressions has not been defined here as the same are available in our Interpretation Act i.e. General Clauses Act, 1897. The said law is applicable for interpreting all existing laws of Bangladesh including the Constitution of the country, the Supreme law of the land. Our judges shall obviously be assisted by that Act in interpreting this Bill as the same is imperative and binding upon them. Apart from the same, with a view to carry out the purposes of this Bill, the Chief Justice of Bangladesh has been delegated power to make

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A BILL

The Admiralty Court Act 1999.

(Act V of 1999)

An Act to consolidate and amend the laws relating to Admiralty Jurisdiction.

Whereas it is expedient to consolidate and amend the laws relating to Admiralty Jurisdiction, it is hereby enacted as follows :-

PART I

1. Interpretation

(a) “aircraft” means any machine which can derive support in the atmosphere from reactions of the air, and includes balloons, whether captive or free, airships, kites, gliders and flying machines;

(b) “cause” includes any cause, suit, action or other proceedings in the High Court Division in the exercise of its Admiralty Jurisdiction;

(c) “court” means the High Court Division of the Supreme Court of Bangladesh established under section 2 of this Act for exercising Admiralty Jurisdiction.

(d) “master” has the same meaning as from time to time defined in The Merchant Shipping Ordinance 1983.

(e) “Pleadings” means application or petition by which action or suit can be submitted before the Court of Admiralty as per section 6 of this Act.

(f) “port” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under a law to make charges in respect of ships entering it or using the facilities therein, and “limits of port” means the limits thereof as fixed by or under the law in question or, as the case may be, by the relevant charter or custom;

(g) “ship” includes any description of vessel used in navigation;

(h) “territorial waters” means the waters beyond the land territory and the inland waters of Bangladesh measured from the base line up to such limit as may be declared from time to time by the government;

(i) “Towage and pilotage” in relation to aircraft means towage and pilotage while the aircraft is water born.

PART II

Organisation & Jurisdiction of the Court

2. Organisation of the court- (1) The High Court Division of the Supreme Court shall be the Court of Admiralty in Bangladesh.

(2) The Court shall be composed of a judge of the High Court Division, appointed by the Chief Justice of Bangladesh.

provided that a bench of two or more judges of the High Court Division may be constituted by the Chief justice of Bangladesh to hear any cause arising under this Act.

3. Jurisdiction of the court. - (1) The judge of the Admiralty Court shall exercise exclusive jurisdiction over maritime disputes as envisaged in subsection(2) of this section and he shall be independent in the exercise of his judicial functions.

(2) The jurisdiction of the Court shall be in all maritime disputes concerning :

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein or for the recovery of documents of title and ownership of a ship, including registration certificate, log- book and such certificates as may be necessary for the operation or the navigation of the ship;

(b) any question arising between the co-owners of a ship as to possession; employment or earnings of that ship;

- (c) any claim in respect of a mortgage or charge on a ship or share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship ;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults of the owners, charterers or person in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on ,in or from the ship in the embarkation, carriage or disembarkation of persons on, in and from the ship;
- (g) any claim for loss or damage to goods carried in a ship ;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage of a ship or cargo or any property on board of ship or the ship itself or its apparel, whether services were rendered on the High Seas or within territorial waters or inland waters or in port (including any claim arising by virtue of application by or under section 12 of the Civil Aviation Ordinance 1960, of the law relating salvage of aircraft and their apparel and cargo);
- (j) any claim in the nature of towage in respect of a ship or an aircraft;

- (k) any claim in nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship;
- (m) any claim in respect of construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of master or member the crew of a ship for any money or property which, under the provisions of the Merchant Shipping Ordinance, 1983, is recoverable as wages;
- (o) any claim by a master, shipper, charterer or agent in respect of disbursement made on account of a ship;
- (p) any claim arising out of an act which is, or is claimed to be a general average act;
- (q) any claim out of bottomry or respondentia;
- (r) any claim for forfeiture or condemnation of a ship or of goods which are being or have been carried, or which have been attempted to be carried in a ship or for the restoration of the ship or any such goods after seizure or for droits of Admiralty;

together with any other jurisdiction for grant of such reliefs as are provided under the Merchant Shipping Ordinance 1983, any other jurisdiction which was vested in the High Court Division as a Court of Admiralty immediately before the commencement of this Act or is conferred by or under any other jurisdiction connected with ships or aircraft in respect of things done at sea which has by tradition or custom of the sea, been exercised by a Court of Admiralty apart from this section; and

(s) Any claim in respect of constitution, administration and distribution of limitation fund.

(3) The jurisdiction of the High Court Division as the Court of Admiralty, under clause(b) of subsection(2) of this section includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that such ship or any share thereof shall be sold and to make such other order as the court thinks just and proper.

(4)The reference in clause (i) of subsection (2) of this section to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from ship or an aircraft or in preserving cargo, apparel, wreck as, under any law for the time being in force, are authorised to be made in connection with a ship or aircraft.

(5) The preceding provisions of this section apply-

(a) in relation to all ships or aircraft, whether Bangladeshi or not and whether registered or not and wherever the residence or domicile of their owners may be;

(b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

(c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign laws.

4. Jurisdiction *in personam* of courts in collision & other similar cases- (1) No Admiralty Court in Bangladesh shall entertain an action *in personam* to enforce a claim to which this section applies unless-

(a) the defendant has his habitual residence or place of business within Bangladesh;
or

(b) the cause of action arose within inland waters or territorial waters of Bangladesh or with the limits of a port of Bangladesh; or

(c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined by the court; or

(d) the parties to the action have voluntarily submitted to the jurisdiction of the

court of Bangladesh.

(2) No Admiralty Court in Bangladesh shall entertain an action *in personam* to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Bangladesh against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(3) The preceding provisions of this section shall apply to counter-claims (not being counter-claims in proceedings arising out of the same incidents) as they apply to action *in personam*, but as if the references to the plaintiff and the defendant were respectively references to the plaintiff on the counter-claim and the defendant to the counter-claim.

(4) The preceding provisions of this section shall not apply to any action or counter claim if the defendant thereto submits or has agreed to submit to the jurisdiction of the Court.

(5) Subject to the provision of subsection (2) of this section, the High Court Division as the Court of Admiralty shall have jurisdiction to entertain an action *in personam* to enforce a claim to which this section applies wherever any conditions specified in clauses (a) to (c) of subsection(1) of this section are satisfied, and, the rules of court relating to the the service of the process outside the jurisdiction shall make such provision as may appear to the rule- making authority to be appropriate,

having regard to the provisions of this subsection.

(6)The claims to which this section applies are claims for loss of life or personal injury arising out of a collision between ships or out of the carrying out or omission to carry out a manoeuvre in the case of one or two or more ships, with regulations made under section 538 of the Merchant Shipping Ordinance 1983.

PART III

Mode of exercising Admiralty Jurisdiction

5.Mode of exercising Admiralty Jurisdiction by the High Court Division- (1)

Subject to the provisions of section 4 of this Act, the Admiralty jurisdiction of the High Court Division as the Court of Admiralty may in all cases be invoked by an action *in personam*.

(2) The Admiralty jurisdiction of the High Court may in the cases as mentioned in clauses (a) to(c) and (r) of subsection (2) of section 3 of this Act be invoked by an action *in rem* against the ship or aircraft or property.

(3) In any case in which there is a maritime lien or other charges on any ship, aircraft or property of the amount claimed, the Admiralty jurisdiction of the High Court Division as the Court of Admiralty may be invoked by an action *in rem*

against that ship , aircraft or property.

(4) In case of any such claim as mentioned in clauses (d) to (q) of subsection (2) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or otherwise in lawful possession or control of the ship, the Admiralty jurisdiction of the High Court Division as the Court of Admiralty may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against -

(a) that ship, if at the time when the action is brought it is beneficially owned in respect of all the shares therein by the owner;

(b) any other ship which, at the time when the action is brought is beneficially owned as aforesaid.

(5) In case of a claim in the nature of towage or pilotage in respect of an aircraft, the Admiralty jurisdiction of the High Court Division as the Court of Admiralty may be invoked by an action *in rem* against the aircraft if at the time when the action is brought it is beneficially owned by the person who would be liable on the claim in an action *in personam*.

(6) Notwithstanding anything contained in the preceding provisions of this section, the Admiralty jurisdiction of the High Court Division shall not be invoked by an action *in rem* in the case of any such claim which relates wholly or partly to wages

(including sum allotted out of wages or adjudged by a competent authority under the relevant law to be due by way of wages).

(7) Where in the exercise of Admiralty jurisdiction, the High Court Division as a Court of Admiralty orders any ship or aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to, or priorities of the claims, in the proceeds of the sale.

6. Action or suit to be instituted by pleadings.- An action or suit before the High Court Division as the Court of Admiralty in its Admiralty jurisdiction shall be instituted by a pleadings save that if the suit *in rem* the defendant may (subject to such variation as circumstances may require) be described as the owners and parties interested in the vessel or other property proceeded against instead of by name.

7. Rejection of the pleadings.-The pleadings shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is properly valued, but the pleadings is written upon paper insufficient to cover the court fees , and the plaintiff on being required by the court to supply the requisite court fees within a time fixed by the court, fails to do so; and

(c) where the suit appears from the statement of the pleadings to be barred by any

maritime law or any other law for the time being in force.

8. Return of the pleadings.- (1) The pleadings may at any stage of the suit be returned to be presented in the proper court in which the suit should have been instituted.

(2) On returning a pleadings the judge shall endorse thereon date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

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9. Time for filing written statement.-(1) The defendant shall, at or before the first hearing as to framing of issues or within 30 days from the date of receiving the notice of the suit, action or proceedings, present a written statement of his defence.

(2) Notwithstanding subsection (1) above, the court may extend either limitation period as set out in that subsection to such extent and on such conditions as it thinks just and proper.

10. Verification of the pleadings and written statement.- Pleadings and written statement shall be verified at the end by the party or by one of the parties pleadings or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

11.Amendment of pleadings & written statement.- The Court may at any stage of the suit ,action or proceedings allow either party to alter or amend his or her pleadings & written statement in such manner & on such terms as may be just, & all such amendments shall be made as may be necessary for the purpose of determining the real controversy between the parties.

12.Interlocutory and other related orders.-(1) The Admiralty Court shall have power to issue interim order, in an appropriate case, for the ends of justice.

(2) Notwithstanding any thing contained in this Act or any other law for the time being in force the Admiralty Court may by order (whether interlocutory or final) grant injunction or appoint receiver or attach the property or arrest the offending ship or her sister ship in all cases in which appears to the court to be just and convenient to do so.

PART IV

Overriding Clause

13.Overriding clause.- Notwithstanding anything contained any other law for the

time being in force, the provisions of this Act shall prevail and no court in Bangladesh, save Admiralty Court, shall take cognizance of the maritime disputes as mentioned in subsection (2) of section 3 of this Act.

PART V

Application of other laws:

14. Applicability of the Code Civil of Procedure. -(1) The Code of Civil Procedure, 1908, shall not apply in disposing Admiralty cases, save section 10 which deals with “**Doctrine of *res judicata*”**.

(2) The rules, regulations framed by the Chief Justices of Bangladesh, under section 29 of this Act shall have effect as if enacted in this Act and equally be applicable in exercising the jurisdiction of the Admiralty Court.

PART VI

Issues & Inquiry

15. Framing of issues.- At the first hearing of the suit the court shall, after reading the plaint and written statement and after such examination of the parties as may appear necessary, and considering submissions of the learned counsels of the parties to the dispute, ascertain what material propositions of fact or law if the parties are at variance, and shall thereupon proceed to frame & record the issues on which the right decision of the case appears to depend.

16. Order as to inquiry. -The court may, at any time, entrust any individual body, bureau, commission, or other organisation that it may select, with the task of carrying out an inquiry or giving an expert opinion.

PART VII

Judgement of the Court & Foreign Judgement

17. Summary judgement in case of *ex parte* suit, action or proceedings. - Where the plaintiff appears and the defendant does not appear before the court and fail to defend his case, then the court may proceed *ex parte* and after taking evidence and hearing the plaintiff, if it is proved, the court may pass summary judgement.

Provided that the court shall state the reasons on which it is based.

18. Judgement on contest. - After taking the evidence, both oral and documentary adduced by the parties, and hearing the arguments put forward by the learned lawyers of the parties, the court shall pronounce the judgement with 21 (Twenty one) days from the date of conclusion of the trial.

19. Presumption as to foreign judgement -The Admiralty Court shall presume, upon the production of any document purporting to be certified copy of a foreign judgement, that such judgement was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction or obtained fraudulently by the plaintiff.

PART VIII

Execution of the Judgement

20. Execution of the judgement, decree and order of Admiralty court. - The Admiralty Court shall execute its judgements, decree and order as per rules, regulations framed by the Chief Justice of Bangladesh, under section 29 of this Act

21. Recognition & enforcement of foreign judgement&decree. - The Admiralty Court shall execute judgements and decree of foreign courts recognised by any law of Bangladesh for the time being in force to secure the ends of justice as its own judgement.

PART IX

Language of the court.

22. Language of the court. - The official languages of the Admiralty Court shall be English and Bengali. If the parties agree that the case shall be conducted in English, the judgement shall be delivered in English. If the parties agree that case shall be conducted in Bengali, the judgement shall be delivered in Bengali.

23. Authenticity of the languages. -There shall be an authentic text of this Act in Bengali and an authentic text of an authorised translation in English, both of which shall be certified as such by the speaker of Constituent Assembly.

Provided that in the event of conflict between the Bengali and English text, the Bengali text shall prevail.

PART X

Appearance of the Parties

24. Appearance in person, by recognised agent or pleader.-(1) Any appearance, application or act in or to the court can be made or done by the party in person, or by his recognised agent or by a pleader appearing, applying or acting as the case may be on his behalf.

(2) The recognised agent of the parties by whom such appearances, applications

and acts may be done are -

(a) persons holding powers of attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties.(b) persons carrying on trade or business, for and in the name of the parties not resident within the local limits of the jurisdiction of the court within which limits, the appearance, application or act is made or done in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

PART XI

Appeal Procedure

25. Provision for filing appeal. - An appeal shall lie to the Appellate Division of Supreme Court of Bangladesh, from a judgment or an order passed by the Judge of the Admiralty Court.

26. Limitation for filing appeal- (1) An appeal under section 25 of this Act shall not be entertained if it is not preferred within 30 (thirty) days from the date of the judgement or ordered appealed against.

(2) Notwithstanding subsection (1) above, the Appellate Division of the Supreme Court may extend either limitation period as set out in that subsection to such extent and on such conditions as it thinks just and proper.

PART XII
Court fees & costs.

27. Court fees.-(1) Subject to the provisions of subsection (2) of this section the provisions of the Court Fees Act, 1870 shall apply *mutatis mutandis* to all actions claims and suits, whether *in rem* or *in personam*, brought before the Admiralty Court.

Provided that notwithstanding any provision to the contrary in the Court Fees Act, 1870 the maximum fees chargeable on a plaint except for a claim under clause (n) of subsection (2) of section 3 of this Act shall not exceed taka 1,00,000 (one lac). Provided further that in case of a claim under clause(n) of subsection (2) of section 3 of this Act the fees chargeable shall be a fixed and nominal amount of taka 100 (One hundred taka only).

(2) All fees chargeable on plaint under this Act shall be collected either by stamps or in cash payable to the Registrar of the court or to a person authorised by him.

28. Costs. - Parties shall bear their respective costs unless the court otherwise decides.

PART XIII
Rule making Authority.

29. Power to make rules, regulations etc. - The Chief Justice of Bangladesh from time to time may ,by notification in the official gazette, make rules for carrying out the purposes of this Act and until such rules are made, the Admiralty rules, 1911

shall, with such adaptation as circumstances may require and in so far as is not inconsistent with any provision of this Act, continue to be in force.

PART XIV

Miscellaneous

30. Saving of inherent power of the Court.- Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

31. Amendment of judgements, decrees or orders.- Clerical or Arithmetical mistakes in judgements, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court *suo moto* or on the application of any of the parties.

PART XV

Repeal , Saving and Transitional provision.

32. Repeals. - (1) The Admiralty Court Act 1840, the Admiralty Court Act 1861 and the Courts of Admiralty Act 1891, in so far as they apply to, and operate in Bangladesh, are hereby repealed.

33. Savings. - Nothing in this Act shall authorise proceedings *in rem* of any claim

against Government of Bangladesh , or arrest, detention or sale of any ship or aircraft of Bangladesh Army or Bangladesh Navy or Bangladesh Air force or any cargo or property belonging to the Government of Bangladesh.

34. Transitional provisions. - Nothing in any provision in this Act or in any repeal consequential there upon shall affect proceedings pending in any court in respect of any cause of action arising before the Act coming in to operation.

PART XVI

Title, Commencement and Extent

35. Short title, commencement & extent - (1) This Act may be cited as the Admiralty Court Act 1999.

(2) This Act shall come in to force on 1st January 2000.

(3) This Act extends to whole Bangladesh.