



Ship: All Trade Area: South Africa

## **Bulletin 104 - 07/99 - Ship Arrest (Developments) - South Africa**

We have recently been advised of a decision in the Supreme Court of Appeal of South Africa which, we feel, may have far reaching consequences for members trading to that area.

Members will be aware of the South African associated ship provisions that permit an associated ship to be arrested for the debts of the ship in respect of which the claim arose. An association is recognised between two vessels when their owning companies are controlled by the same party.

There is a provision in the relevant legislation that "a person shall be deemed to control a company if he has power, directly or indirectly, to control the company". In the interpretation of that provision the court has now found that in jurisdictions which have similar company law regimes to that of England, nominee shareholders have direct control over a company whilst their principals have indirect control.

**The result of the finding is that ships from completely different fleets may well be considered to be associated simply by virtue of the beneficial owners using the same nominee shareholder (often the lawyer used to purchase the vessel)**

The case in question is the MV Heavy Metal : Belfry Marine Ltd v Palm Base Maritime SDN BHD, the full judgement can be viewed on <http://www.lawpublisher.co.za/belfry.htm>

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