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Yoav Harris, Domiana Abboud
and John Harris (Founder, 1940–2023)
Harris & Co. Shipping & Maritime Law



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Global Practice Guides

Shipping

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Harris & Co. Maritime Law Office

2026

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Published by

Chambers and Partners

165 Fleet Street

London

EC4A 2AE

Tel +44 20 7606 8844

Fax +44 20 7831 5662

Web www.chambers.com

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INTRODUCTION

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Harris & Co. Shipping & Maritime Law was established in 1977 by the late advocate John Harris (1940–2023) and handles a lot of legal work in various areas of the law. Its main focus is on maritime and admiralty law, including ship arrests, charterparty disputes, cargo claims, the sale and purchase of ships, the financing of ship purchases, arbitration and commercial litigation. The firm represents ship-owners, charterers, agents, freight forwarders, P&I clubs, oil refineries and other commercial entities in shipping

and maritime law matters. Harris & Co receives instructions from the foremost shipping and maritime law departments of international law firms and keeps abreast of English and other jurisdictions' maritime law judgments and publications. Also, the firm is regularly instructed by legal firms abroad requiring legal assistance in maritime matters relating to Israel. The firm regularly receives "top tier" ratings from Chambers & Partners, among other legal directories.

Contributing Editors



Yoav Harris graduated in 1999 summa cum laude from the law faculty of Haifa University. Yoav specialises in maritime law and commercial litigation. He is known for his deep and wide legal knowledge,

the sharpness of his written and verbal pleadings, the quality of his cross-examinations and his skill in obtaining successful, satisfactory outcomes for his clients. Yoav contributes articles to the Israeli monthly magazine *The Cargo* and is co-author, with John Harris, of the Israeli chapters of the annual *Ship Arrest in Practice* guide of Shiparrested.com. He is also the editor of the *Chambers Shipping Global Practice Guide* and the Israeli chapters of the international shipping guides of other legal directories.



John Harris (1940-2023) was a founding partner of Harris & Co.



Domiana Abboud is an associate attorney at Harris & Co. She graduated from the University of Haifa Faculty of Law in 2019. Prior to joining Harris & Co., Domiana gained valuable experience as a law clerk to a judge at the Haifa District Court and as an associate attorney at one of Israel's leading law firms. Since 2021, she has been part of Harris & Co, where she specialises in maritime law and commercial litigation. Domiana is currently an LLM candidate in International Corporate and Commercial Law at King's College London.

Harris & Co Maritime Law Office

16 Pal-Yam St, 5th Fl
Haifa 330952
Israel

Tel: +972 54 420 2951
Fax: +927 04 874 4040
Email: yoavh@maritime-law.co.il
Web: www.lawships.com



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Contributed by: Yoav Harris, John Harris (1940-2023) and Domiana Abboud, **Harris & Co. Shipping & Maritime Law**

Worldwide Conflicts

A ceasefire between Hamas and Israel came into effect on 9 October 2025, following President Trump's 20-point "[Comprehensive Plan to End the Gaza Conflict](#)", halting the most recent round of the ongoing conflict, which began with Hamas attacks on 7 October 2023. The Sumud Flotilla, comprising [approximately 50 vessels](#), attempted to breach the naval blockade imposed on January 2009 on the Gaza shore, which led to a confiscation claim brought by the state of Israel before the Haifa Maritime Court. The court was asked to use the authority vested in it as a prize court by the Colonial Court's Act 1890 and the Naval Prize Act 1864, through a King's Order in Council in 1937 rendered during the British Mandate over what was called Palestine-Israel at that time.

The Haifa Maritime Court's authority as a prize court was invoked by the State of Israel's application for the confiscation of the small vessel named *Estelle* (2012), and has thereafter been exercised on the vessels *Marianne* (2016), *Zaytuna Olivia* (2019) and *Freedom* (2021). In those cases, the vessels were sold, and the remaining proceeds were awarded to the Israeli Ministry of Treasury. The present application for confiscation of the Sumud Flotilla vessels seems to mark another development in this aspect of maritime law, which always evolves according to either the reality of commerce and trade or naval warfare.

While confiscation proceedings before the Haifa Maritime Court are brought before the courts' adjudication "forthwith, and without bulk broken" in accordance with clause 16 of the Naval Prize Act, the US bombing of vessels described as "[Venezuelan drug boats](#)" seems contrary to the principle of freedom of navigation under the United Nations Convention on the Law of the Sea (UNCLOS), which orders that "the high seas are open to all states" (Article 87) and guarantees the right of innocent passage even through territorial seas (Article 17). UNCLOS indeed recognises the right of hot pursuit of a foreign vessel that has violated the laws and regulations of the pursuing state, provided that such pursuit is commenced when the foreign ship is within the territorial sea or the contiguous zone (Article 111). It also recognises the right of seizure of a pirate ship on the high seas (Article 105) but does not provide any further drastic measures. Moreover,

the US Navy's Commander's Handbook on the Law of Naval Operation 2007 requires, under clause 7.10, that "captured vessels... are sent to port under belligerent jurisdiction as a prize for adjudication by a prize court" and presents a scheme that seems different from the bombing of vessels carried out by US forces.

Protests against the Iranian regime could result in a reduction in Iran's support for its proxies, including the Houthis, who have control of the Bab al-Mandab strait and of navigation in the Red Sea, and who were responsible for more than 100 attacks on navigating vessels between October 2023 and 2025. Although these attacks were intended to disrupt Israel's shipping trade, the main party affected was the Suez Canal itself, which suffered revenue losses amounting to billions of dollars as vessels diverted to an alternative, longer route around Africa.

Latest Developments in Autonomous Ships and the MASS Code

The technological and legal evolution of autonomous ships is continuing at a rapid pace, particularly for military use.

After sinking the Russian ships *Ivanovets* (on 1 February 2024) and *Tsezar Kunikov* (on 14 February 2024), Ukraine naval drones sunk *Sergey Kotov*, a patrol ship of the Russian Navy, on 5 March 2024. On 31 December 2024, for the first time, a Ukrainian naval drone, *Magura 5*, reportedly successfully hit and downed an air target – a Russian Mi-8 helicopter on Crimea's west coast. On January 2025, Ukraine [launched FPV drones](#) via naval drones and hit the Russian air defence system Pantsir-S1 in Kherson region. In May 2025, a world-first event occurred when, reportedly, Ukrainian *Magura* naval drones succeeded in [shooting down two Russian fighter aircraft](#). These naval drone attacks mark a maritime revolution, with Ukraine leading; it brought naval drones to the world stage in early 2023, with the *Sea Baby* and *Magura V5*, and it has recently introduced new variants of naval drones with extended range and arms.

Development of the autonomous shipping industry is evident across both the military and commercial domains. For example, the

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[USX-1 Defiant](#) autonomous warship of the US Defense Advanced Research Projects Agency (DARPA) was completed in August 2025, with a length of 180 feet (55 metres) and a weight of about 240 tons. The vessel is unmanned, with self-fuelling capabilities, and is able to complete missions without humans. In the commercial sphere, an autonomous cargo vessel has been developed by the California-based company Clipper-ship, while Ocean Infinity has built a fleet of 14 robotic vessels known as the “[Armada Fleet](#)”.

The International Maritime Organization (IMO) continues to adapt its regulatory framework to technological developments in autonomous shipping. On 17 June 2025, a symposium titled “[Maritime Autonomous Surface Ships as a reality: the need for the IMO MASS Code](#)” was held. During the 110th session, the committee agreed on a revised [roadmap for the MASS Code](#): adoption of a non-mandatory code by May 2026, development of an experience-building framework by December 2026 and the expected adoption of a mandatory code by July 2030, with entry into force anticipated in 2032.

Sanctions Against Russia and Russia’s Sanction Evasion Attempts

EU sanctions against Russia under Regulation No 833/2014 (particularly the port ban on Russian-flagged vessels (Article 3ea) and restrictions on navigation goods and technologies (Article 3f)) have significantly affected Russia’s fleet of approximately 3,300 vessels (by December 2025).

As reported by [Kpler](#), the “Shadow Fleet” transports around 3,733 million barrels of oil, representing roughly 6–7% of global crude oil trade. To counteract the sanctions imposed by EU countries and the USA, in December 2022 Russia adopted a legal mechanism, through Presidential Decree No 961 and Government Resolution No 118, prohibiting the sale of oil if a price cap is applied (within sanction regulations). Advocate Konstantin Krasnokutskiy advises that the Russian customs authorities demand proof of non-application of the price cap, which means that oil supply contracts cannot abide by the sanctions against Russia if they wish to buy Russian oil, thus forcing buyers to use the Russia fleet to bypass Western sanctions.

Nevertheless, strict Russian legislation does not appear to mitigate the effects of the sanctions; instead, reports indicate that Russian oil tankers have millions of barrels of oil [without a buyer](#). The sanctions, combined with Ukrainian attacks on Russia’s energy infrastructure, have led to a sharp decline in oil production. Coupled with the inherent issues of the ageing, poorly maintained Russian Shadow Fleet vessels, it is unlikely that Russia’s oil issues will be resolved soon.

The EU Deforestation Regulation

The implementation of EU Regulation 2023/1115 (the “EU Deforestation Regulation”; EUDR) – which aims to minimise global deforestation and forest degradation, thereby reducing the associated greenhouse gas emissions and other environmental effects – has been postponed for one more year, pushing the deadline to 30 December 2026. The EUDR cannot be discussed without consideration of the melting glaciers and sea ice, which led to a battle of control between Russia and China against the USA over a northern sea route (the Polar Silk route), which became available year-round due to climate change – and where it seems unlikely that the ice and glacier will return to their previous form.

This “battle” is accompanied by another struggle involving Russia, which continues to apply the methods of catching and dragging (dropping anchor and dragging to cut undersea cables); on 25 December 2024, the Russian-linked Cook Island-flagged *Eagle S* vessel dropped its anchor and dragged it, cutting the undersea electricity cable Estlink 2 connecting Estonia and Finland. Recently (on 31 December 2025), [Finland detained the vessel Fitburg](#), a vessel sailing from Russia, on suspicion that it had been “sabotaging infrastructure” – ie, damaging an undersea telecoms cable running from Helsinki to Estonia. As well as deliberately damaging infrastructure using its shadow vessels, Russia also breaches Article 113 of the UNCLOS, which mandates that states pass laws to investigate and prosecute “breaking or injury” of undersea cables. M/V Fitburg was later released and continued its voyage and arrived at Israel.

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Seafarer Abandonment and the Limits of Legal Protection

In Standard A2.5.2 of the Maritime Labour Convention, 2006, “a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment”. Seafarer abandonment is deemed to have occurred if the ship-owner fails to cover repatriation costs; leaves seafarers without the necessary maintenance and support; or severs ties with seafarers, including by not paying their wages for at least two months. The data shows that seafarer abandonment has been a real issue in the maritime industry. In 2025, [seafarer abandonment cases surged by 30%](#), where at least 2,286 seafarers on 222 vessels were left stranded, compared to 172 vessels and 1,838 seafarers in 2024. Unpaid wages of seafarers is a recognised maritime lien under Article 4 of the UN Convention on Maritime Liens and Mortgages, 1993, but in practice it is unlikely that seafarers will have the financial means to initiate legal proceedings to enforce maritime lien proceedings – especially when employed on Shadow Fleet vessels, where the value of these old, poorly maintained vessels is often lower than the legal cost of initiating the proceedings.

The Limited Range of Limitation on Owner’s Liabilities

Under the mutual understanding that a marine voyage is ultimately an adventure for the vessel’s owners, the cargo and the freight interests, the delegates of the conference that took place at the Hague in August 1924 took it upon themselves to set rules that allocate responsibilities between carriers and cargo interests. Carriers are responsible for loss or damage caused by matters within their direct control (sometimes called “commercial fault”), such as the seaworthiness and manning of the ship at the commencement of the voyage. They are not, however, responsible for loss or damage having other causes, including acts or omissions of the Master and crew during the voyage (“nautical fault”).

The allocation of risks between the carrier and the cargo interests “promotes certainty and provided a clear basis on which the parties can make their insurance arrangements, and their insurers can set premiums” (*Tasman Orient v New Zealand China Clays* [2020]

NZSC [paragraph 18]). Accordingly, under Article IV (2) (a)–(q) of the Hague Rules, updated at the 1968 Hague Conference to become known as the Hague-Visby Rules, neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- an “act, neglect or default of the master... or servant of the carrier in the navigation or management of the ship”;
- a “fire”;
- “perils of the sea”;
- an “act of God”;
- “arrest or restraint of princes”; or
- “any other cause arising without the carrier... or of the agents or servant of the carrier”.

Article IV was described by Sir Norman Hill, representing British ship-owners at the Hague Conference, as the “ship-owner’s clause”, and he insisted that the words relating to the “navigation point”, which “from time immemorial have certainly appeared in the British bill of lading”, should remain (“we would ask Sir, in our clause to have our old words”). Accordingly, the British ship-owners’ wording is the wording of the ship-owner’s clause, providing carriers with exemption from liability for “navigation faults” taking place outside of the owner’s reach and control.

The same logic with regard to risk allocation is imposed by Article III (6) of the Hague Visby-Rules, which stipulate a one-year time bar in *The Taikoo Brilliance* [2025]. The Commercial Court of England and Wales held that the objective of Article III (6) is to allow carriers to “clear their books”; and for this reason, only proceedings capable of determining liability on the merits to establish liability are considered “suits” capable of stopping the time bar. Security claims such as ship arrests are not considered suits capable of stopping the time bar because substantive claims on merits may follow in the future, meaning that the “books should be kept open”, which undermines the commercial purpose of the time bar.

The Roman Law principle of *noxalis actio* means that if a slave causes injury, the Master of the slave can either pay damages or surrender the offender to the injured – and by surrendering this “offending prop-

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erty”, the Master is no longer liable for the damages caused by the slave (George Long, *Noxalis Actio* ; in *Smith’s Dictionary*, 1875, page 807). According to Nicolai Lagoni in *Maritime Transport (Global Limitation of Liability)*, this principle is the legal origin of limitation of liability in shipping, which appeared in Consolato del Mar (1494), the French Ordinance of 1861 and the English Responsibility of Shipowners Act 1733, limiting the ship-owner’s liability up to the value of his or her share in the vessel – or exempting the owner if he or she has handed the ship to the injured.

However, it seems that the sinking of the *Titanic* in 1912, and the high costs of compensation for loss of life and injury, prompted unification of the rules relating to limitation on owners’ liability. A Comité Maritime International (CMI) committee established in 1913 resulted in a convention, adopted 11 years later, named the “International Convention for the Unification of Certain Rules Relating to the Limitation of Liability for Shipowners of Seagoing Vessels” (also known as the “Brussels Convention 1924”). This Convention was amended and updated in 1957 (also in Brussels).

In 1976, following the work of the Inter-Governmental Maritime Consultative Organization (IMCO) and the CMI, a new Convention on the Limitation of Liability for Maritime Claims (LLMC) was introduced to the shipping industry. This Convention was updated in the Amending Protocol of 1996, and by Resolution LEG 5 (99) (2012) of the IMO’s legal committee. By ordering (for example) that claims for oil pollution damages be excepted from limitation (Article 3 of the Amending Protocol of 1996), the updated 1976 Convention is considered better suited to the shipping industry’s requirements and has been described as a “package deal” where, on the one hand, limitation amounts are raised (in favour of the injured), while on the other hand owners are deprived of their entitlement to limit liability only “if it is proved that the claim resulted from the ship owner’s personal act or omission, committed with the intent to cause such loss, or reckless and with knowledge that such loss would probably result” – in fact rendering the limitation on liability unbreakable (Christiaan Sheyouyuni Fikunawa, *Law on the Limitation of Liability for Maritime Claims* (IMO, 2021)).

The common concept of the Conventions is clear. Owners can apply to limit their liabilities towards a list of claims listed in the Convention(s) (such as loss of life or personal injury, damage to property, wreck removal, damage caused to harbour works, basins and navigable seaways), and their liability will be capped at an amount calculated according to the injuring vessel’s tonnage. Owners lose this privilege if the incident resulted from the “actual fault or privity of the owner” (according to the 1957 Convention), or from a much higher threshold of liability (from the point of view of breaking the limitation) as set out in the 1976 Convention. Both Conventions permit states to exclude specific categories of claims, such as wreck removal and damage to harbour works, basins and navigable waterways, from the scope of limitation.

Accordingly, in the case of *M/V Goliath*, which collided with two tugs at the port of Devonport, Tasmania, causing an incident requiring wreck removal, oil pollution and other economic damages were dealt with by the Australia Federal Court in accordance with the owner’s application to limit liability under the 1976 Convention (aiming to cap its liability towards claims amounting to about USD23 million to USD15.7 million). TasPorts (the injured port) argued that the relevant claims (listed in Article 2 1 (d) of the 1976 Convention) are excluded from limitation of liability following Australia’s ratification of the Convention in 1989, in which the relevant (allowed) reservations covered by Article 2 (d) and (e) of the 1976 convention were not applied. The owners, on the other hand, argued that the wreck removal claims were captured by the wording of Article 2 (1) (a) of the Convention – “claims in respect of loss of or damage to property” (which were not excluded) – and that the fact that they might also fall within the scope of Article 2 (1) (d) is irrelevant. After the first-instance court approved the owners’ argument, the full court overturned the decision.

Turning to the Hong Kong Court of Final Appeal, which dealt with similar facts in the case of *The Star Centurion* [2024], the full court accepted the conclusion that it would be incoherent to allow a contracting state to not apply Article 2 (1) (d) (relating to wreck removal claims) when, at the same time, the claim fell within the scope of Article 2 (1) (a) and would be limited. Exclusion of the claims listed in Article 2 (1) (d) can

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only be achieved if claims for wreck removal will not be included even though the expenses associated with wreck removal may also be captured by the language describing other kinds of claims in Article 2 (1) of the 1976 Convention.

Clause 1 (d) uses the wording “claims in respect of” (a ship that is wrecked), and there is nothing in the legislative history of the 1976 Convention to suggest that Article 2 (1) (d) was intended to cover only wreck claims that do not fall within the meaning of the claims listed in Article 2 (1), (a)–(c) of the 1976 Convention. As a result, the owner’s application was denied (*Tasmanian Ports Corporation v CSL Australia*, 29 April 2025).

In the case of *MSC Flaminia*, the Supreme Court dealt with the charterer’s (MSC) application to limit its liabilities towards the claims of the owners, which were eventually awarded compensation of USD200 million in a 2022 arbitration, for damages and costs that arose during the vessel’s navigation in July 2012 through the Atlantic Ocean. Huge explosions occurred on three of the containers, which were laden with 80% divinylbenzene (DVB), causing the loss of life of three seafarers, destruction of hundreds of containers and extensive damage to the vessel. A claim was filed by MSC in 2020 to limit its liability at EUR26.5 million. This was countered by the owner’s argument that limitation of liability is possible only towards “external” claimants and not towards “indoor” claimants, such as claims by owners against the charterers. The Supreme Court opened its judgment by stating that “the principle of limited liability for maritime claims is an established feature of international maritime law” and that “its roots lie in a recognition of the importance of maritime trade and the need to encourage investment in it”.

It was held that the 1976 Convention uses the word “claims” with no reference to the role of the entity filing the claim, and that the 1924 Convention provides a defence to parties other than the owners – ie, the “principal charterer” (the “charterer, manager or operator of the ship” in the 1957 Convention and also the “salvors and insurers” in the 1976 Convention).

Bearing in mind that charterers invest money in relation to the employment and operation of a vessel, there is no reason why they would not be protected under the Conventions. Therefore, MSC was entitled to limit its liabilities, but only towards the claim for the costs of discharging sound and damaged cargo at the shelter port of Wilhemshaven – as this is related to “removal” and “rendering harmless of the cargo of the ship”, as worded in Article 2 (e) of the 1976 Convention, limitation was allowed (*Msc v Conti*, 9 April 2025).



Law and Practice

Contributed by:

José Miguel Oliveira, António Caxito Marques, Caio de Mello Ferreira and João Saiago Canjeque VdA

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Authors



José Miguel Oliveira joined VdA in 2015. He is a partner of the oil and gas practice, and responsible for the shipping practice. With over 15 years of international experience in African jurisdictions, including Angola and

Mozambique, José has been involved in projects and operations across the oil and gas industry's value chains and has provided advice regarding regulatory issues, contractual matters, corporate and commercial, restructuring, M&A, foreign direct investment, foreign exchange, and shipping and maritime matters. He has acted for the full spectrum of those involved in the shipping industry in all sorts of wet and dry shipping matters, including ship-owners and charterers, cargo interests, P&I clubs, banks, shipyards, port operators, brokers and agents.



António Caxito Marques joined PRIME Advogados, the exclusive member of VdA Legal Partners in Angola, in 2025 as a partner. António has experience in various areas of law, focusing on civil, commercial and

shipping law. He works primarily in litigation and arbitration, representing clients across diverse sectors, including banking, energy, construction, industry, infrastructure, natural resources, trade and distribution. António has also participated in complex negotiations on behalf of the Angolan state, including recovery proceedings of Angolan assets in the international market.



Caio de Mello Ferreira joined VdA in 2023. He is an associate in the oil and gas practice group, where he has been involved in projects and operations across the African oil and gas industry value chain, with a

particular focus on shipping and maritime matters. In this context, he has served as a member of a working group of the International Seabed Authority responsible for drafting exploitation regulations for the area. Additionally, Caio has gained one year of experience in the information and communication technologies practice and completed a secondment in the shipping, transportation and offshore practice area at a leading firm in Copenhagen.



João Saiago Canjeque joined PRIME Advogados, the exclusive member of VdA Legal Partners in Angola, in 2023 as an associate lawyer. His practice primarily focuses on litigation, corporate and real estate matters.

João also has expertise in various legal issues related to the shipping industry, including the bunkering sector and maritime litigation.

VdA (with PRIME Advogados)

Rua Dom Luís, 28
1200 151
Lisboa
Portugal

Edifício Torre X
Rua Manuel Fernandes Caldeira, N.º 5, 9.º D
Coqueiros, Luanda
Angola

Tel: +351 21 311 3400
Fax: +351 21 354 0325
Email: jmo@vda.pt
Web: www.vda.pt



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic laws establishing the powers and authority of the Maritime Court are the Civil Procedure Code and Law No 29/22 of 29 August 2022 (“Law 29/22”), which establishes the principles and general rules on the organisation and functioning of Common Jurisdiction Courts.

Furthermore, Executive Decree No 29/95 of 7 July 1995 creates the Maritime Affairs Chamber (*Sala das Questões Marítimas*), a first-instance special-jurisdiction court with authority over admiralty and maritime claims. The jurisdiction of this chamber is determined by Law 29/22 and Executive Decree No 26/97 of 6 June 1997 (“Executive Decree 26/97”), and includes all matters related to admiralty and shipping law. The rulings provided by the Maritime Affairs Chamber may be appealed to the Court of Appeals.

Experience demonstrates that the most common maritime and shipping claims filed with the Maritime Court relate to collisions and disputes concerning cargo and maritime claims (ship arrests).

1.2 Port State Control

The National Maritime Agency (*Agência Marítima Nacional*, or NMA) is responsible for exercising port state control over all ships, vessels, platforms and seagoing craft calling at, or anchored in, a national port or temporarily deployed at sea in Angolan territorial waters. Under its port state responsibilities, the NMA holds the authority to inspect all vessels operating in Angola and to assess fines for infringements detected.

In this regard, it is worth mentioning that Angola is a member of the International Maritime Organization (IMO), having ratified a number of fundamental resolutions on international ship standards and port state control. Angola is also a member of the Memorandum of Understanding on Port State Control for West and Central African Region.

Moreover, Law No 27/12 of 28 August 2012 (the “Merchant Navy Law”, as amended by Law 34/22 of 13 September 2022) is the main domestic statute on port state control, establishing that the NMA may delegate the inspection of foreign vessels to classification societies or other recognised technical organisations that have entered into a statutory delegation of powers agreement with the Angolan state.

The NMA is also the authority responsible for investigating and responding to any maritime casualty,

such as grounding, pollution or wreck removal. In performing its duties, the NMA is assisted by local port authorities and captaincy with jurisdiction over the area in which the casualty took place. Pursuant to the Merchant Navy Law, environmental authorities such as the Ministry of Environment may also be called to act in the event of (eventual) environmental damage and pollution.

1.3 Domestic Legislation Applicable to Ship Registration

The key domestic pieces of legislation applicable to ship registration are the Merchant Navy Law, Decree-Law No 42644 and Decree No 42645, the last two both of 14 November 1959 (as amended), establishing the rules on commercial registry. In accordance with the Merchant Navy Law, all vessels, ships or other maritime craft are eligible for registration in Angola and fly the Angolan flag, provided that previous inspection and certification by the NMA is conducted and cleared, and compliance with age limitations is verified.

The registration of ships in Angola is a two-tiered system, involving a flag registration with the port and maritime authorities (ie, the NMA and the port authority) and a commercial registration with the Commercial Registry.

1.4 Requirements for Ownership of Vessels

The Merchant Navy Law provides that the registration of ships in Angola may be obtained by any natural or legal persons that have their permanent domicile or head office in the country. Under conditions of reciprocity with other countries, natural or legal persons domiciled or having their head offices abroad may also apply for registration of their ships in Angola, provided that they have a local representative in the country. However, the registration of ships engaged in specific activities (eg, cabotage) may be subject to more stringent requirements. Vessels under construction may also be registered, even though their registration will remain provisional until completion of the relevant works and carrying out of the applicable inspections and clearances.

1.5 Temporary Registration of Vessels

Article 35 of the Merchant Navy Law provides that temporary registration of a vessel is allowed for Angolan ship-owners who have a bareboat charter in a foreign vessel. Based on this statute, dual registration is (theoretically) possible for vessels under a bareboat charter and for the duration of the relevant charter-party.

1.6 Registration of Mortgages

The creation of rights in rem (including possession, ownership and security) or of any security interests (including mortgages) in respect of, or related to, vessels sailing under the Angolan flag is subject to mandatory registration with the Commercial Registry and the Central Security Registry. These processes are governed by Law No 11/21 of 22 April 2021 ("Law 11/21"), which governs the creation of rights in rem, and Presidential Decree No 114/21 of 29 April 2021 ("Presidential Decree 114/21"), which created the Central Security Registry, centralising the information on mortgages over vessels, as well as the registration of all ship-related securities.

On the basis of the foregoing, mortgages over vessels registered (or to be registered) in Angola and sailing (or to be sailing) under the Angolan flag must always be governed by the laws of Angola and registered in Angola as a condition of their effectiveness and enforceability against third parties (*erga omnes*).

Notary Deeds

Prior to – and as a condition for – registration, mortgages encumbering Angolan vessels must be executed by means of a notary deed before a local notary public or a consular office. The documents required for the execution of the notary deed include:

- a commercial registry certificate or equivalent document of the borrower;
- a power of attorney issued to the benefit of the representative(s) of the lender attending and signing the notary deed, on the assumption that the lender is not going to be represented by any of its legal representatives/directors;
- a power of attorney issued to the benefit of the representative(s) of the borrower attending and signing the notary deed, on the assumption that

the borrower is not going to be represented at the notary deed by any of its legal representatives/directors;

- identification documents of the representatives of the parties signing the notary deed;
- certified copies of the loan agreements and/or resolution issued by the relevant corporate body of the lender approving the loans and the underlying terms and conditions of the mortgage, notably the amount of principal plus the amount equivalent to five years of interest;
- a copy of the minutes of the resolution passed by the relevant corporate body of the borrower approving the granting of the mortgages to the benefit of the lender and the underlying terms and conditions, notably the amount of the principal plus the amount corresponding to five years' interest; and
- certificates of ownership of the vessels issued by the NMA and the Commercial Registry Office.

All documents executed or issued outside Angola must be previously legalised before the Ministry of Foreign Affairs (or equivalent), translated into Portuguese and then consularised before the Angolan consulate with jurisdiction over the country where the said documents were issued, as a precondition for being deemed valid, acceptable and enforceable in Angola (Angola is not a party to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents).

Registration With the Commercial Registry Office

Once executed, the notary deed must be registered with the Commercial Registry Office. In this respect, the following must be stressed.

- Registration with the Commercial Registry Office is a condition precedent for the effectiveness of mortgages; in other words, pending said registration, mortgages remain ineffective, even *inter partes*, for all legal purposes.
- Mortgages registered with the Commercial Registry Office remain valid and enforceable for an indefinite period of time, unless:
 - (a) the obligation secured is extinguished by performance;
 - (b) the mortgaged assets (vessel) are transferred

- to a third party (in which case, termination of the mortgage will occur 20 years after registration of the transfer of title and five years after the final maturity of the secured obligation); or
- (c) cancellation is authorised by the mortgagee.
- The ranking of security interests or privileges over ships is linked to the order by which said interests or privileges were registered (*prior in tempore, potior in iure*).

Registrations with the Commercial Registry Office are made by means of:

- the filing of an official form; and
- submission of the relevant supporting documents, including a certified copy of the notary deed.

In addition to this, constitutional documents (deeds, commercial extracts or equivalent documents) of both the mortgagor and mortgagee are usually required by the registrar, although such disclosure is not legally grounded.

Registrations before the Commercial Registry Office may be requested by a legal representative or duly appointed attorney of the mortgagor or the mortgagee, within 90 days of the execution of the notary deed. Failure to file the relevant application within that period may lead to the application of fines, although such fines do not undermine the validity of the registration.

It is worth mentioning that the law sets forth the possibility of securing a provisional registration of a mortgage over a ship before execution of the notary deed. To that end, the mortgagor must file an application with the Commercial Registry Office authorising registration of a mortgage over a given ship in favour of the mortgagee. This (provisional) registration is valid for a term of three months, which is renewable. The priority of the prospective mortgage over other security interests, once the definitive mortgage is created, is ensured by provisional registration, which protects a mortgagee against concurrent mortgagees and allows the execution of a mortgage without the pressure of priority being given in the register to another mortgage, even where created later on.

Upon registration with the Commercial Registry Office, the mortgages must be endorsed in the passports of the vessel(s) (deeds, ownership certificate issued by the NMA). Such endorsement is made for publicity purposes – ie, it is not a condition of the effectiveness/validity of the underlying mortgage or of its enforcement.

1.7 Ship Ownership and Mortgages Registry

The registry of ownership of a vessel is, in theory, public. Any individual may approach the NMA or the Commercial Registry Office in order to obtain information on the ownership of a vessel. Moreover, pursuant to Law 11/21 and Presidential Decree 114/21, the mortgage registry is available to the public and may be consulted by any person upon submission of a consultation request to the Central Security Registry. The consultation request must be submitted in accordance with the form made available on the online platform.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Angola has a nascent ship finance market, with debt transactions typically led by foreign lenders that apply international ship loan market standards. The Angolan nexus arises primarily at the level of the security package over Angolan-flagged vessels. As a result, the most common transaction structures involve cross-border loan facilities governed by foreign law, combined with local Angolan security instruments to perfect rights over the ship and related receivables.

For ship mortgages on Angolan-flagged and registered vessels, Angolan law is mandatory, and local perfection of the mortgage is essential (please refer to **1.6 Registration of Mortgages** for details on the execution and registration process). Information regarding ship security interests is intended to be centralised in the Central Register of Movable Guarantees (*Central de Registo de Garantias Mobiliárias*) established under Law 11/21 and Presidential Decree 114/21. This register aims to publicise all movable security interests, including those over ships, and serves as the basis for establishing registration priority. However, it is important to note that the Central Register of Movable

Guarantees has not yet been fully implemented. As part of Angola's modernisation of the movable security regime, extrajudicial enforcement (appropriation or direct sale) is permitted if expressly agreed by the parties, providing an alternative to judicial enforcement.

In addition to ship mortgages, lenders may seek a comprehensive, international-style security package, including assignments of insurances and material charters/earnings, in line with market practice. Perfection and publicity for these ancillary securities are achieved pursuant to the movable guarantees framework, with registration required for ships and certain receivables.

2.2 Ship Leasing

Angola's ship finance industry remains nascent, with limited transaction volumes and no discernible shift towards leasing. Deals typically take the form of traditional cross-border bank loans under international standards, anchored by Angolan-law ship mortgages. Leasing arrangements, including sale-and-leaseback structures, are not yet common, and many vessel acquisitions are state-led, primarily for public-service ferries and cargo operations.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The following international conventions and domestic laws are enforceable in Angola.

Pollution

- The 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, as amended in 1973 and 1991.
- The 1973 International Convention for the Prevention of Pollution from Ships and Annexes I/II, III, IV and V.
- The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation.
- The 1992 Protocol to amend the 1969 International Convention on Civil Liability for Oil Pollution Damage.

- The 1992 Protocol to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.
- The 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.
- The 1996 Protocol to amend the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which regulates environmental protection.

In terms of domestic laws, the Merchant Navy Law, Law No 5/98 of 19 June 1998 (the “Environmental Law”) and its ancillary regulations, and related statutes must also be taken into account.

Wreck Removals

Wreck removals are governed and dealt with in light of domestic law, namely the Merchant Navy Law, the Environmental Law and ancillary statutes and regulations, as Angola is not a signatory of the Nairobi International Convention on the Removal of Wrecks of 2007.

3.2 International Conventions: Collision and Salvage

The following international conventions and domestic laws are enforceable in Angola.

Collision

- The 1910 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels.
- The 1952 International Convention for the Unification of Certain Rules concerning Civil Jurisdiction in Matters of Collision.
- The 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation.
- The 1972 International Regulations for Preventing Collisions at Sea, as amended in 1981.

Collision events are also governed by domestic law, notably Article 73 et seq of the Merchant Navy Law and Article 664 et seq of the Commercial Code.

Salvage

Salvage is governed by the International Convention on Maritime Search and Rescue and, on a domestic level, by the provisions of the Merchant Navy Law (Article 81 et seq), the Sea Search and Rescue System Regulation (Presidential Decree No 89/16 of 21 April 2016) and the Commercial Code (Article 676 et seq).

3.3 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims has not been ratified by Angola.

However, Angola is a signatory of the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-Going Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (the “1957 Convention”).

Under domestic law, the provisions of the Merchant Navy Law and the Commercial Code are worth noting in this regard. For instance, where collision was caused due to fault or wilful misconduct of the crew, damages will be calculated and shared between the owners pro rata to the severity of each crew’s fault. Furthermore, if it is not possible to determine which vessel caused the accident, all intervening vessels shall be jointly liable for damages and losses arising therefrom.

3.4 Vienna Convention on the Law of Treaties

Although Angola did not formally accede to or ratify the Vienna Convention on the Law of Treaties (“Vienna Convention”) following its independence from Portugal in 1975, its legal system retained Portuguese legislation that did not conflict with national sovereignty. This principle is enshrined in Article 58 of the Constitutional Law of 11 November 1975 (the First Angolan Constitution), which stated: “All laws and other legal provisions in force at the date of independence shall remain in effect, provided they do not conflict with the Constitution of the People’s Republic of Angola and the Angolan revolutionary process.” Subsequent amendments to the Constitution have further reinforced this principle. Since Portugal ratified the Vienna Convention in 1969, there is a basis – supported by

numerous legal authors – for arguing that the Convention forms part of the Angolan legal order.

To the best of our knowledge, however, the higher courts have not yet addressed treaty interpretation by reference to Articles 31 and 32 of the Vienna Convention. Nevertheless, prevailing legal scholarship provides a foundation for outlining the interpretative process that should be adopted.

First, the object of interpretation (ie, identifying the applicable legal norms) should be both objective (aiming to discern the mens legis) and contemporaneous (considering the norms within their current context).

The elements of interpretation encompass both literal (the text of the treaty itself) and extra-textual (instruments assisting in achieving the interpretative objective) considerations. The extra-textual elements include the systematic, teleological and historical approaches.

Regarding the systematic element), the treaty’s “context” must be taken into account, including, inter alia, the text, preamble, annexes, and any other agreements concluded in connection with the treaty (Article 31 (2)). The teleological element is likewise recognised, requiring interpretation in light of the treaty’s object and purpose (Article 31 (1)). The historical element, which encompasses the *travaux préparatoires* and the circumstances surrounding the treaty’s conclusion, is considered a supplementary means. The Convention itself assigns a subsidiary role to this element, limiting its use to the instances prescribed in Article 32 (a) and (b).

Beyond these interpretative elements, general principles – such as good faith, the recognition of the implied effects of treaties, and teleological interpretation – must also be observed.

In light of the above, the approach outlined in paragraphs 57 (2), (3) and (4) of the *MSC Mediterranean Shipping Company SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS “MSC Flaminia”* UK Supreme Court decision closely aligns with the method of interpretation likely to be adopted by judicial bodies within the Angolan legal order. By contrast, points (1)

and (5), although relevant, might not be appropriately regarded as general constituent elements of the interpretative framework under Angolan law.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Pursuant to the 1957 Convention, the ship-owner or another entitled person can limit its liability by establishing a limitation fund. The limitation fund can be established in any way admitted in the law and is dependent on the filing of an application before the competent court. The application must identify:

- the occurrence and damages;
- the amount of the limitation fund;
- how the fund will be established;
- the amount of the reserve; and
- the known creditors and the amounts of their claims.

The application must be filed along with the vessel’s documents (eg, a tonnage certificate) supporting the calculation of the amount of the fund. The calculation of the limitation fund shall be in accordance with Article 3 of the 1957 Convention.

To the best of the authors’ knowledge, limitation funds have not been established in Angola. The authors believe that the courts would most likely insist on a cash deposit or local bank letter of guarantee.

3.6 Seafarers’ Safety and Owners’ Liability

Angola is not a party to the Maritime Labour Convention. Seafarers’ rights and safety are generally governed by the Commercial Code, the General Labour Law (Law No 7/15 of 15 June 2015) and the Merchant Navy Law.

4. Cargo Claims

4.1 Bills of Lading

The provisions of the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the “Hague Rules”) are applicable in Angola. Angola is not a signatory of the Hague-Visby Rules, the Hamburg Rules or the Rotterdam Rules.

The provisions of the Hague Rules are supplemented by Article 538 et seq of the Commercial Code.

4.2 Title to Sue on a Bill of Lading

As a general rule, the right to sue on a bill of lading assists the shipper, the carrier and the consignee.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

In the absence of detailed provisions set out by the parties in the contract, Article 2 of the Hague Rules establishes that the carrier is liable, under every contract of carriage of goods by sea, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods.

Nevertheless, Articles 7 and 8 of the Hague Rules, as well as Articles 1 (1), 2 and 3 of the 1957 Convention, establish that the ship-owner may limit its liability in respect of claims arising under specific circumstances (eg, personal or property claims), unless the occurrence resulted from the actual fault or privity of the owner. Limitation of liability requires that a limitation fund has been constituted, as set out by Articles 2 and 3 of the 1957 Convention.

4.4 Misdeclaration of Cargo

Pursuant to Article 3 (5) of the Hague Rules, the shipper shall be deemed to have guaranteed the accuracy of the marks, number, quantity and weight to the carrier, and shall indemnify the carrier against all loss, damages and expenses arising or resulting from such inaccuracies.

To the best of the authors' knowledge, no relevant judgments are available in this respect.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

According to the relevant Civil Code provisions, the general time bar for filing contractual claims is 20 years, while the time bar for liability in tort claims is three years. Statutes of limitations cannot be extended, but they can be suspended (Articles 318 to 322) or interrupted (Articles 323 to 327) under specific circumstances (eg, execution of an arbitration agreement, and recognition of the debt).

Still, in this particular case it must be noted that Article 3 (6) of the Hague Rules establishes that the carrier and the ship-owner shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered, this being the time bar to be considered in this particular case.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The 1952 International Convention Relating to the Arrest of Sea-Going Ships (the "Brussels Convention") is applicable in Angola. Outside its scope, the claimant must make use of the provisions of the Civil Procedure Code.

5.2 Maritime Liens

Maritime liens are recognised in Article 578 of the Commercial Code, which specifies the following categories of claims:

- (1) court costs incurred in the common interest of the creditors;
- (2) remuneration for salvage;
- (3) pilotage and towage expenses;
- (4) tonnage, lights, anchorage, public health and other harbour dues;
- (5) expenses incurred in connection with a vessel's maintenance and storage of her appurtenances;
- (6) Master and crew wages;
- (7) costs incurred in connection with the operation and repair of the vessel, her appurtenances and equipment;
- (8) reimbursement of the price of the cargo that the Master was forced to sell;
- (9) insurance premiums;

(10) any unpaid portion of the price due in connection with the purchase of a vessel;

(11) costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the last three years;

(12) unpaid amounts arising from shipbuilding contracts;

(13) outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances not mentioned in (11); and

(14) sums due to shippers in respect of loss or damage to cargo.

Liens mentioned in points (1) to (9) above are understood to refer to those incurred during, and as a cause of, the last voyage.

The term “last voyage” has been interpreted by legal authors and courts in two ways:

- Under a restrictive interpretation, only claims that arise during and become due in connection with the last voyage benefit from the maritime lien. Earlier claims are treated as ordinary debts, with the burden of proof resting on the creditor.
- Under a broader interpretation, the privilege applies to all claims listed under Article 578, regardless of the voyage during which they arose. In this view, the reference to the last voyage serves only to rank the privileged claims, with priority given to the most recent. Indemnities for injuries of crew are foreseen in Article 529 of the Commercial Code and, provided the conditions set out therein are met, are recognised as maritime liens in points (2) and (6) above.

Maritime claims are those set forth in Article 1 (1) of the Brussels Convention, including liabilities resulting from contracts for chartering a vessel, and in respect of which a vessel may be arrested under the terms of the Convention.

5.3 Liability in Personam for Owners or Demise Charterers

It is not required for the owner to be liable in personam for arrest of a vessel to be accepted. Pursuant to Article 3 (4) of the Brussels Convention, if the charterer (and not the registered owner) is liable in respect of a maritime claim relating to a vessel, in the context of a charter by demise of a vessel, the claimant may arrest such vessel or any other vessel in the ownership of the charterer by demise, even though no other vessel in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The above-mentioned regime shall apply to any case in which a person other than the registered owner is liable in respect of a maritime claim relating to that vessel.

5.4 Unpaid Bunkers

A bunker supplier may arrest a vessel for unpaid bunkers under Article 1 (1)(k) of the Brussels Convention. Moreover, by reference to Article 3 (4) of the Brussels Convention, it is also defensible that the bunker supplier may seek the arrest of the supplied vessel even where the bunkers were ordered by the charterer and not by the vessel's owners.

5.5 Arresting a Vessel Powers of Attorney

The original power of attorney should be provided to the court and attached to the arrest application, unless it is not available. In the latter case, it is possible to request leave from the tribunal to submit the original power of attorney at a later stage (a scanned (colour) copy of the original power of attorney being submitted with the application whenever available).

Where issued abroad, powers of attorney are only accepted and enforceable if previously notarised, legalised, translated into Portuguese and, finally, consularised before Angola's embassy or consulate with jurisdiction over the country of their issuance.

Documentation

Regarding the documentation, and even though courts are entitled to the originals, it is common practice to accept scanned copies of these. In addition, documents should be written in Portuguese; otherwise, the parties must submit the documents in their original language, along with their certified Portuguese

translation. However, documents cannot be filed electronically.

Security

Despite the judge being free to decide otherwise, usually no security is required. Whenever the court asks the claimant to provide a security deposit, it will generally correspond to the amount of the claim. The security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

5.6 Arresting Bunkers and Freight

Bunkers and freight may be arrested, as determined by the relevant Civil Procedure Code provisions. On similar terms as other provisional procedures, the claimant is required to demonstrate the likelihood of its right or credit, and the risk that it will lose security for its credit if the arrest is not ordered.

5.7 Sister-Ship Arrest

Articles 2 and 3 of the Brussels Convention establish that the vessel that originated the maritime claim, as well as any other associated vessel or sister-ship owned by the same person(s), may be arrested by the claimant. However, in disputes regarding the title to, or ownership of, the ship, and disputes between co-owners as to the ownership, possession, employment, earnings, mortgage or hypothecation of a specific ship, associated vessels cannot be arrested.

Outside of the Brussels Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrest, security may only be obtained when the debtor is personally liable for the claim through the attachment of any other property owned by the debtor.

5.9 Releasing an Arrested Vessel

Pursuant to Article 5 of the Brussels Convention, the vessel must be released upon sufficient bail or other security being furnished, save those arrests in respect of any of the maritime claims regarding disputes as to the title or ownership of the ship, or in disputes

between co-owners of the ship as to the possession, employment or earnings of any vessel. In such cases, the court may permit the person in possession of the vessel to continue trading it, upon such person furnishing sufficient bail or other security.

Outside the Brussels Convention, the vessel will also be released if security is provided in the form and amount deemed sufficient by the court.

As previously mentioned, the security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

Both under and outside the Brussels Convention, the vessel shall also be released:

- upon payment of the debt;
- in the event the main claim is not commenced within 30 days – or a different time period established by the court when the claim is subject to the jurisdiction of a foreign court – from the arrest being ordered, or where the claim has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- where the main claim is definitively dismissed;
- where the main claim is upheld but the debt remains outstanding and the creditor does not initiate enforcement proceedings within six months from the claim being definitively upheld, or where the claim has had no developments for a period of more than 30 days for reasons imputable to the creditor; or
- where the credit ceases to exist.

Although not common, courts have already accepted clubs' letters of indemnity as security.

5.10 Procedure for the Judicial Sale of Arrested Ships Procedure

Usually, the judicial sale of arrested ships requires that a new enforcement proceeding is initiated by the creditor before the competent court. Once the application is lodged, the court will notify the debtor to settle the claim or offer its opposition, as well as notify any other interested parties, such as secured creditors.

If the sale is ordered, the judge will decide on how it will take place, and then appoint an auctioneer. The vessel is sold “as is and where is” and free from any charges or encumbrances. This notwithstanding, the debtor may still recover the vessel until completion of the judicial sale, provided it deposits the amount being claimed plus court fees and expenses.

Ship Maintenance

Once the vessel is arrested and until it is sold in the enforcement proceedings, an agent appointed by the court will be liable for supervising its maintenance, whenever the Master and their crew are absent or urgent decisions are to be taken.

Claim Priority

The order of priority of claims is established under Article 578 of the Commercial Code, as mentioned in 5.2 Maritime Liens.

5.11 Insolvency Laws Applied by Maritime Courts

On 10 May 2021, Angola enacted Law No 13/21 (“Law 13/21”) on the Legal Framework for Corporate Restructuring and Insolvency. The purpose of Law 13/21 is to regulate:

- the legal regime of extrajudicial and judicial recovery of natural and legal persons in economic distress or “imminent insolvency”, provided that the recovery is viable; and
- the legal regime of insolvency proceedings of natural and legal persons.

Pursuant to Law 13/21, once recovery and insolvency proceedings are put in motion, all suits pending against the debtor are suspended, which means that the Maritime Court shall be barred from ordering the arrest or judicial sale of a vessel owned by companies undergoing such proceedings.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

In the event of wrongful arrest of a vessel or where the arrest is lifted for reasons imputable to the applicant, the applicant is liable for the damages caused to the arrestee, provided that the applicant has not acted

with normal prudence or due care, as set out by Article 621 of the Civil Code.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

In addition to the individual terms of the relevant contract, the carriage of passengers is governed in general by Angola’s Civil and Commercial Codes and the Consumer Law. Angola has not ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

In accordance with the domestic laws, a passenger has the right to be compensated for any losses or damages caused by an action attributed to the carrier, regardless of its wilful misconduct, and for any expenses incurred by the passenger deriving from the delay, interruption or change of route undertaken by the carrier.

The time bar applicable will vary depending on whether the claim arises from a breach of contract, where the general time bar of 20 years applies, or from tort, where a three-year time bar will apply.

Indemnities for personal injury of a passenger are recognised as maritime claims pursuant to Article 1 (b) of the Brussels Convention.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Choice of Law Clauses

Notwithstanding the provisions set out by the Brussels Convention or the Hague Rules, the parties may choose the law that governs the obligations arising from a contract (including bills of lading), as established by Article 41 (1) of the Civil Code. However, that choice must correspond to a serious interest of the parties or be connected to a relevant element of the contract (eg, the place where the parties are domi-

ciled or the contract shall be performed), as set out by Article 41 (2).

Jurisdiction Clauses

As a rule, jurisdiction clauses stated in contracts (including bills of lading) are valid and enforceable, as long as they arise from a written agreement, in which the competent jurisdiction is expressly mentioned, as established by Article 99 of the Civil Procedure Code.

Article 5 of Executive Decree 26/97 further establishes that Angolan courts' jurisdiction cannot be excluded in matters of international maritime law that would be within the jurisdiction of Angolan courts in accordance with Angolan domestic law, unless the parties are foreigners and if it is a question regarding an obligation that must be performed in foreign territory and does not relate to assets located, registered or enrolled in Angola.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Pursuant to Articles 1 (1) and 3 (1) of Law No 16/03 of 25 July 2003 ("Law 16/03"), an arbitration clause is valid as long as it arises from a written agreement from the parties and concerns a claim of rights that can be disposed of or waived and that is not attributed to the exclusive jurisdiction of Angolan courts.

For choice of law clauses, see **7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Angola.

With regard to domestic law, Articles 1094 to 1096 of the Civil Procedure Code are applicable to the review and confirmation of foreign judgments. As a rule, any judgment awarded by a foreign court shall be subject to review and confirmation by the Supreme Court in order to be valid and enforceable in Angola.

The following set of requirements must be met for the review and confirmation of a foreign judgment, as set out by Article 1096:

- there are no doubts as to the authenticity of the judgment and the intelligibility of its decision;
- it must have become a final decision (not subject to appeal) according to the law of the country where the judgment was issued;
- it comes from a foreign court whose jurisdiction has not been fraudulently acquired, and it does not concern a matter of exclusive jurisdiction of the Angolan courts;
- there is no case pending or decided before an Angolan court, unless the foreign court has prevented jurisdiction;
- the defendant has been duly summoned to the proceedings, in accordance with the law of the country of the court of origin, and the principles of adversarial proceedings and equality of the parties have been observed; and
- it does not contain a decision whose recognition would lead to a result manifestly incompatible with international public policy or the principles of international private law of Angola.

The enforcement of arbitral awards where the New York Convention is not applicable is regulated in Law 16/03 and in the Civil Procedure Code, and can only be rejected on limited grounds (in addition to those that are also applicable to the enforcement of judicial decisions) as follows:

- the dispute is not arbitrable;
- the award is rendered by an arbitral tribunal with no jurisdiction;
- the arbitration agreement has expired;
- the award lacks the statement of grounds;
- there has been a violation within the proceedings of fundamental principles, and the violation had a decisive influence on the outcome of the dispute;
- the arbitral tribunal has dealt with issues that it should not have dealt with, or has failed to decide issues that it should have decided; or
- where the tribunal decided as amiable compositeur, and the award breaches the principles of public policy of Angolan law.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In accordance with Articles 2, 4 and 8 of the Brussels Convention, Angolan courts may order the arrest of a vessel in respect of any maritime claims.

However, pursuant to Article 7 (3) and (4), if the parties have agreed on submitting the dispute to a different jurisdiction or to arbitration, the Angolan court may fix the time within which the claimant should commence the main proceedings. If such proceedings are not brought within the time so fixed, the defendant may apply for the release of the vessel or of the bail or other security.

Outside the scope of the Brussels Convention, Angolan courts will also accept the arrest in respect of claims subject to foreign arbitration or jurisdiction clauses where the vessel is within their territorial jurisdiction.

7.5 Domestic Arbitration Institutes

Currently, there is no domestic arbitration institution that specialises in maritime claims active in Angola. Hence, in such matters general arbitral bodies will be competent, governed by Law 16/03.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In the event of a breach of foreign jurisdiction or arbitration clauses, the defendant must invoke such before the court that lacks jurisdiction and request for the claim to be dismissed.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Companies incorporated in Angola will be subject to the general taxation regime set forth for other companies incorporated or with a permanent establishment in the country – ie, they will be subject to 25% industrial tax on their profits. This notwithstanding, tax benefits and reliefs may be applicable for investment projects submitted under the Private Investment Law (Law No 10/18 of 26 June 2018) regime. Non-

resident shipping and airline companies are exempt from industrial tax provided that Angolan companies benefit from the same exemption regime in the jurisdiction of such companies.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

If the parties have not included force majeure or hardship clauses in their contract(s), it is particularly important to take into consideration the general Angolan legislation, namely the provisions of the Civil Code regarding abnormal changes in circumstances (Articles 437 and 438) or impossibility of performance of contracts (Articles 790 to 793).

Abnormal Changes in Circumstances

Article 437 applies whenever the circumstances on which the parties based their decision to enter into an agreement have suffered an abnormal change. As a result, the party that has been adversely affected by that change may terminate the agreement or ask for its modification based on equity, provided the party demonstrates that it could not have predicted the event and its consequences and that there is a causal link between the event and the failure to perform.

However, the above-mentioned regime includes very strict requirements in order to be invoked, since it is not enough to demonstrate the difficulty in performing the contract, but rather that the abnormal change is not covered by the risks inherent to the contract, and that requiring the performance of the agreement is contrary to the principles of good faith.

Impossibility of Performance

If the contract becomes impossible to perform, Articles 790 to 793 are applicable, establishing different consequences based on whether the impossibility is total or partial and definitive or temporary.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

There is no track record regarding the implementation of the “IMO 2020” rule concerning the limitation

on sulphur content of fuel oil used on board ships in Angola.

This matter was addressed by Presidential Decree No 141/12 of 21 June 2012, which approved the Regulation for the Prevention and Control of the Pollution of National Waters, where it is prescribed that:

- the sulphur content of fuel oil used on board ships must not exceed 4.5% mass by mass (m/m) within ports;
- the sulphur content of fuel oil used on board ships must not exceed 1.5% m/m in inland waters; or
- the ship must have installed an exhaust gas cleaning system duly approved in accordance with the criteria and specifications contained in the international certificates for the prevention of air pollution.

The Ministry of Environment is the authority responsible for supervising and controlling the enforcement of the above-mentioned sulphur content limits.

Given that the implementation of the IMO 2020's sulphur content limits is still pending, no enforcement actions or proceedings/sanctions have taken place or are taking place in this regard.

9.3 Trade Sanctions

The recognition of international trade sanctions in Angola is governed by:

- Law No 5/20 of 27 January 2020, as amended (the Law on the Prevention and Combating of Money Laundering, Terrorist Financing and Proliferation of Weapons of Mass Destruction); and
- Law No 1/12 of 12 January 2012 (the Law on the Designation and Execution of International Legal Acts) and ancillary regulations thereof.

In addition to providing the national legal framework with an adequate system of enforcement of international sanctions imposed by the United Nations Security Council, these statutes also prescribe the terms for the criminal liability resulting from non-compliance with the restrictions imposed by the relevant sanctions.

Accordingly, the National Bank of Angola has approved Notice No 14/20 of 22 June 2020 containing the rules and procedures to be adopted by commercial banks in order to conduct proper KYC and risk assessment analysis in relation to all operations requested by their clients, and to ensure compliance with any applicable international sanctions.

The only record of a sanction imposed on an Angolan entity dates back to 1993 and was imposed by the UN Security Council on the National Union for the Total Independence of Angola (UNITA). The sanctions included the freezing of the group's funds, a ban on the diamonds originating from UNITA-held territory, and an embargo on the sale of arms and petroleum to the group. The sanctions were in force until peace was assured in 2002, in light of UNITA's commitment to continuing the peace process. No legal process was initiated in this regard.

9.4 International Conflict

With regard to the Russia–Ukraine conflict, Angola was initially neutral, abstaining in the first UN General Assembly resolution put to a vote in March 2022 condemning Russia's invasion. However, the Angolan government voted in favour of a UN General Assembly resolution put to a vote in October 2022 condemning the annexation of four regions of Ukraine by Russia. Despite this, no sanctions on Russian individuals and/or entities are currently in place.

Although not immune to potential shocks, notably through rising prices of food and agricultural products, Angola has thus far been resilient to the impact of the war in Ukraine, with no significant implications particularly for maritime law or trade. As far as the authors are aware, Angolan courts are yet to deal with non-performance of obligations related to the war in Ukraine.

US sanctions against Russia, especially after the invasion of Ukraine in 2022, have generated important repercussions on international relations, including between Russia and Angola. The relationship between the two countries is based on historical ties and co-operation in various areas, such as energy, defence and trade. However, US sanctions have had a number of consequences for this relationship.

Despite Russia being affected by these sanctions, Angola continues to maintain trade relations with Russia.

Although it should be borne in mind that Russia is prevented from selling military materiel due to sanctions, co-operation in the military field continues.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

There are rumours that the Angolan government is planning to make investments in the fisheries sector more attractive, and that new legislation in this respect may be approved.

Trends and Developments

Contributed by:

José Miguel Oliveira, António Caxito Marques, Caio de Mello Ferreira and João Saiago Canjeque VdA

VdA is a leading international law firm with more than 50 years of history, recognised for its impressive track record and innovative approach in corporate legal services. The excellence of its highly specialised legal services, covering several industries and practice areas, enables VdA to overcome the increasingly complex challenges faced by its clients. Recognition of the excellence of its work is shared by the entire team, as well as by clients and stakeholders, and is acknowledged by leading professional associa-

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Authors



José Miguel Oliveira joined VdA in 2015. He is a partner of the oil and gas practice, and responsible for the shipping practice. With over 15 years of international experience in African jurisdictions, including Angola and

Mozambique, José has been involved in projects and operations across the oil and gas industry's value chains and has provided advice regarding regulatory issues, contractual matters, corporate and commercial, restructuring, M&A, foreign direct investment, foreign exchange, and shipping and maritime matters. He has acted for the full spectrum of those involved in the shipping industry in all sorts of wet and dry shipping matters, including ship-owners and charterers, cargo interests, P&I clubs, banks, shipyards, port operators, brokers and agents.



António Caxito Marques joined PRIME Advogados, the exclusive member of VdA Legal Partners in Angola, in 2025 as a partner. António has experience in various areas of law, focusing on civil, commercial and shipping law. He works primarily in litigation and arbitration, representing clients across diverse sectors, including banking, energy, construction, industry, infrastructure, natural resources, trade and distribution. António has also participated in complex negotiations on behalf of the Angolan state, including recovery proceedings of Angolan assets in the international market.



Caio de Mello Ferreira joined VdA in 2023. He is an associate in the oil and gas practice group, where he has been involved in projects and operations across the African oil and gas industry value chain, with a

particular focus on shipping and maritime matters. In this context, he has served as a member of a working group of the International Seabed Authority responsible for drafting exploitation regulations for the area. Additionally, Caio has gained one year of experience in the information and communication technologies practice and completed a secondment in the shipping, transportation and offshore practice area at a leading firm in Copenhagen.



João Saiago Canjeque joined PRIME Advogados, the exclusive member of VdA Legal Partners in Angola, in 2023 as an associate lawyer. His practice primarily focuses on litigation, corporate and real estate matters.

João also has expertise in various legal issues related to the shipping industry, including the bunkering sector and maritime litigation.

VdA (with PRIME Advogados)

Rua Dom Luís, 28
1200 151
Lisboa
Portugal

Edifício Torre X
Rua Manuel Fernandes Caldeira, N.º 5, 9.º D
Coqueiros, Luanda
Angola

Tel: +351 21 311 3400
Fax: +351 21 354 0325
Email: jmo@vda.pt
Web: www.vda.pt



Angola's maritime sector is of strategic importance due to Angola's extensive Atlantic coastline, which stretches for more than 1,600 km. Since the country's independence in 1975, Angola's economy has evolved, with the maritime sector playing a vital role in trade, transportation and the exploitation of natural resources, especially oil and gas. The country's geographical location facilitates links between Africa and the rest of the world, making Angola a reference point in international trade.

Angola is one of the largest oil producers in Africa, and its maritime industry has been fundamental for the transportation of crude oil and derived products. In addition, the Port of Luanda and other strategic ports, such as Lobito and Cabinda, play a central role in the country's international trade, facilitating imports and exports of various products. The following are among the main trends and developments in the country.

The Port of Luanda

Angola's ports are strategically located along the southern Atlantic coast of Africa, with direct access to shipping routes connecting to the Americas, Europe and Asia.

The Port of Luanda, Angola's capital city, is the largest and busiest port in Angola, handling more than 80% of the country's imports and exports. The port is currently being expanded, with a new container terminal under construction, which is expected to

increase the port's handling capacity and boost its competitiveness in the region. The Port of Luanda is Angola's largest logistics platform and the main gateway for goods to and from the country. It has a general cargo terminal, a multipurpose terminal, a container terminal, a support base for oil-related activities, a multi-use terminal, a fuel terminal, and a passenger terminal that connects Luanda, Soyo and Cabinda. The port's management model is Landlord Port, where private entities regulate and oversee the operation of the terminals, which is in turn monitored by Empresa Portuária de Luanda (a public company). Back in 2021, DP World signed a 20-year concession agreement with the government of Angola to operate the multipurpose terminal at the Port of Luanda. Under the concession terms, DP World committed to invest USD190 million over the concession period and use said monies to rehabilitate the existing infrastructure, acquire new equipment and increase the terminal's throughput to 700,000 TEUs/year.

The Port of Lobito and the Corridor of Lobito

The Port of Lobito is the second-largest port in Angola and serves as a significant entry and exit point for imported goods and commodities exports. It is currently undergoing a substantial modernisation process, including expansion and development of its container terminal to handle larger vessels and increase its capacity. Recently, Africa Global Logistics and the Port of Lobito signed a concession contract whereby the latter has agreed to invest EUR100 million to turn

the port into a modern, efficient and competitive port platform capable of contributing to the growth and diversification of the Angolan economy.

The Port of Lobito is intrinsically linked to one of the largest infrastructure projects in Angola (and, the authors would say, currently in Africa), the Corridor of Lobito (*Corredor do Lobito*). The project aims to modernise Angola's rail network and improve the connectivity between the Port of Lobito and landlocked countries, such as the Democratic Republic of Congo and Zambia.

The Corridor of Lobito project includes the rehabilitation and modernisation of the Benguela railway, which runs from the coastal city of Benguela to the border with the Democratic Republic of Congo, passing through Lobito. The railway link will provide a more efficient and cost-effective alternative to road transport, reducing the costs and time of shipping freight and facilitating the export of a wide array of commodities from the region, such as agricultural and mining products. The Corridor of Lobito has seen significant investments from the Angolan government, the African Development Bank and other international financial institutions. The project has already made significant progress, with the rehabilitation of over 1,300 km of railway track and the modernisation of multiple stations along the route. The project is expected to create significant economic benefits, promoting regional trade and stimulating economic growth in Angola and neighbouring countries. It will also help to strengthen Angola's position as a key player in the regional transportation network and improve the competitiveness of the country's ports by expanding their hinterlands.

The most recent projects related to the Corridor of Lobito are better described in the last section of this Trends and Developments article.

Other Ports

The Port of Namibe is another major port in Angola, serving the southern regions of the country and neighbouring countries. It specialises in handling mining, industrial and agricultural products.

Angola also has several smaller ports, including the ports of Cabinda and Soyo, which are crucial for the

country's oil industry, given Angola is one of Africa's largest oil exporters. In December 2024, the National Maritime Agency (AMN – *Agência Marítima Nacional*) opened public tenders to entities engaging with the supply of equipment in order to equip and provide with more resources the installations of the captaincy of the port of Soyo. In January 2025, the public contract was awarded to three different companies taking into consideration the financial and technical conditions set out in the public procurement tender.

Despite facing significant challenges, such as operational inefficiencies and a lack of skilled labour and equipment, the Angolan government aims to attract foreign investment in the shipping sector to meet the growing demand for cargo handling and transportation, and increase the competitiveness of its ports in the region.

IMSAS and Abuja MoU Commitments

In November 2025, Angola underwent the International Maritime Organization Member State Audit Scheme (IMSAS), which was conducted under the auspices of the International Maritime Organization (IMO). The primary objective of IMSAS is to promote the consistent and effective implementation of applicable IMO instruments and to assist Member States in enhancing their capabilities, thereby improving overall performance and compliance with the instruments to which they are party.

Ahead of the IMSAS, which took place in the first week of November, Angola undertook a series of preliminary assessments with the classification societies and other industry operators to identify and address potential regulatory and technical gaps. These assessments noted that Angola has not ratified eight of the 16 relevant IMO instruments.

Still in this context, as a preparation for the IMSAS, the Angolan State held, in July 2025, a presentation relating to the achievements, challenges and opportunities to the States that are parties to the memorandum of understanding on Port State Control for West and Central African Region ("Abuja MoU"). During the Abuja MoU meeting, Angola reported that, although it has attended the Port State Control Committee meetings regularly since 2021, it only began conducting

inspections under the Abuja MoU framework in 2025, and it only met its financial contribution in 2012. It is noteworthy that, in the second quarter of 2025, Angola conducted inspections on three vessels, as per the data presented in the Abuja MoU meeting.

Addressing the IMSAS findings will strengthen Angola's maritime governance and support fulfilment of its obligations under the Abuja MoU. Angola's principal objectives are to address incidents involving foreign vessels in its maritime domain, to achieve the 15% inspection commitment for ships calling at its ports, to enhance human capacity development (with particular emphasis on the training and retraining of Port State Control Officers (PSCOs)), to develop harmonised Port State procedures across Abuja MoU member states, and to ratify and/or incorporate all relevant IMO instruments into domestic law.

In support of improved Port State Control practices, the AMN convened a technical workshop addressing PSCO obligations before, during and after inspections of foreign vessels.

Overall, 2025 was a year of restructuring for Angola in respect of its obligations under the IMO instruments. It is expected that the number of inspections of foreign vessels will increase in the coming year, alongside a more robust maritime legal framework to address outstanding IMO instruments, whether by ratification or incorporation into domestic law.

Legislative Developments

In 2025, Angola's Maritime Law experienced several significant developments especially as regards the new AMN fees applicable to the operators in the maritime space of Angola.

The new Joint Executive Decree No 05/25 ("AMN Fees Framework") establishes a new legal regime governing fees and charges levied by the AMN on services provided to "ship operators". The AMN Fees Framework overhauls the previous system governing payments for AMN services. Its scope is wide-ranging, covering all entities that benefit from AMN services, including (i) public, private and mixed entities, as well as (ii) national and foreign vessels, platforms and other floating craft involved in maritime commerce, fishing,

extractive industries, scientific research or recreational activities within waters under Angolan jurisdiction.

Among the key modifications, one may note the following.

- Under the previous regime, fees did not differentiate between oil and gas sector activities and other maritime activities. The new framework introduces a clear distinction between these sectors.
- While previous fees were generally assessed by reference to the Tax Correction Unit (UCF – *Unidade de Correção Fiscal*) [1 UCF = AOA88.00], the current framework expresses fees in "round figures" (all in kwanzas).
- The new regime introduces additional layers of fees, either by creating entirely new fees/tariffs or by segmenting those that were previously grouped. This stratification considers various factors, including the gross tonnage, the nature of the services provided, the personnel involved, the type of operator, and the time taken to deliver a service/time that a vessel remains in Angola.

As a general trend, we could note a significant increase in the amount of the fees applicable to AMN services, mainly due to:

- the shift from UCF-based pricing to kwanza-based pricing;
- the increase in the number of fees/tariffs; and
- the stratification of pre-existing fees.

However, there remains a certain ambiguity regarding the liable party (passive subject) in certain legal-tax relationships established under the new regime.

Given the novelty of this statute, there are still several provisions whose applicability remains unclear to the industry in general. In this regard, on 29 August 2025, the AMN carried out a workshop on the implementation of the AMN Fees Framework. The presentation comprised a number of technical operators from the AMN and some industry representatives, including stakeholders from the oil and gas industry, shipping agents, stevedores, cabotage operators and others.

Maritime Courts

Angola does not have specialised maritime courts. Instead, it has a dedicated chamber for maritime matters within the common courts. However, various voices in the country, including prosecutors and lawyers, have called for not only greater awareness of the existence of the existing maritime chamber within the district courts, which is still unknown to many people, but also for the creation of specialised maritime courts as permitted by Article 176 of the Angolan Constitution.

As Angola seeks to diversify its economy, the shipping sector has emerged as a critical growth area, with the potential to boost the country's economic development significantly. This move towards specialised courts would build trust and confidence in the maritime sector and help to create a more favourable investment climate by providing investors with a specialised platform for resolving maritime disputes. This would also be in line with the overall national strategy for maritime governance, as better analysed in the "IMSAS and Abuja MoU Commitments" section above.

International Co-Operation

In December 2025, the US International Development Finance Corporation (DFC) signed a loan agreement with Lobito Atlantic Railway, the concessionaire of the Lobito Corridor's railway and port. The facility supports the rehabilitation and operation of the brownfield mineral port in Lobito and approximately 1,300 km of brownfield rail line in Angola from Lobito Port to Luau on the Angolan border. DFC's investment – alongside that of the Development Bank of Southern Africa (DBSA) – is expected to increase Lobito's transportation capacity tenfold to 4.6 million metric tons and reduce the cost of transporting critical minerals by up to 30%, thereby facilitating open access to mineral-rich regions in the Democratic Republic of the Congo and Zambia.

This agreement follows the Memorandum of Understanding establishing the US–Angola Trade and Investment Partnership signed in November 2024 and complements other partnerships concluded at the end of 2024, including the PGI Lobito Trans Africa Corridor Summit (aimed at developing the Lobito Corridor and investing in infrastructure to connect the Atlantic and Indian Oceans), the Memorandum of Understanding for Infrastructure Capacity Building between Angola's Ministry of Transportation and the United States Agency for International Development, and the Memorandum of Understanding between Angola's Ministry of Industry and Commerce and the United States Department of Commerce.



Law and Practice

Contributed by:

María Belén Espiñeira

Espiñeira Maritime Lawyers

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Espiñeira Maritime Lawyers was established in the city of Buenos Aires in 2011 with the purpose of providing national and international clients with comprehensive legal advice on issues associated with different areas of the maritime and aeronautical transport industries, international trade and insurance. The firm is qualified to provide legal advice to enterprises related to energy, and oil and gas, including those involved in operations, services and supplies linked to the offshore industry. Espiñeira Maritime Lawyers also

acts as legal correspondent of protection and indemnity (P&I) clubs and represents insurance companies. By means of direct and personalised assistance, the firm's team of lawyers, who are trained in Argentina and abroad, is focused on offering pre-emptive legal support and efficient solutions for clients' disputes in administrative, mediation, judicial and arbitration proceedings. Every member of the firm is trained in rendering high-quality services tailored to the clients' needs and interests.

Author



María Belén Espiñeira graduated from the Pontifical Catholic University of Argentina and obtained a Master's degree in International Maritime Law, with distinction, from Swansea University. She has over 20 years of experience in the maritime sector. Ms Espiñeira founded Espiñeira Maritime Lawyers in 2011. She provides legal advice to domestic and foreign companies related to the maritime transport, shipping and maritime insurance sectors. Her areas of practice include charterparty disputes, cargo claims, major maritime incidents, regulatory matters, customs issues, insurance and international trade-related matters. Ms Espiñeira is also a lecturer and has participated as a speaker in high-profile international events such as the Parallel Event of the World Maritime Day organised by the IMO.

Espiñeira Maritime Lawyers

Alicia Moreau de Justo 1150
3rd Floor, Of. 306-A, Dock 8
Puerto Madero
(CPAAX1107) C.A.B.A.
Argentina

Tel: +34 602 60 43 30
+54 911 4971 9885
Email: info@espineiralawyers.com
Web: www.espineiralawyers.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Section 116 of the Argentine National Constitution provides that admiralty cases fall within the jurisdiction of the Supreme Court and other, lower federal courts.

Accordingly, Section 515 of the Argentine Navigation Law (No 20,094) sets forth that all cases resulting from, or related to, navigation shall be heard by the Civil and Commercial Federal Courts of Buenos Aires.

The Argentine Maritime Authority (*Prefectura Naval Argentina*) exercises administrative jurisdiction over navigation matters pursuant to Law 18,398, being responsible for investigating the facts and determining administrative and professional liabilities involved in shipwrecks, collisions, groundings and other maritime incidents. Its findings are considered important pieces of evidence in judicial proceedings related thereto.

Additionally, there is an Administrative Tribunal of Navigation (*Tribunal Administrativo de la Navegación*), which is another administrative body under the Argentine Navy (*Armada Argentina*), responsible for determining the professional liability of national or foreign crew members in cases involving incidents in navigation.

1.2 Port State Control

Argentina is a signatory to the Latin American Agreement on Port State Control of Vessels, which was signed in Viña del Mar on 5 November 1992 and has been in force since 1993.

For the purposes of exercising port state control, the Argentine Maritime Authority checks whether foreign vessels visiting Argentine ports comply with the provisions set forth by the international conventions of the International Maritime Organization (IMO), which are mandatory under the Agreement.

These conventions are:

- the International Convention on Load Lines, 1966;
- the Protocol of 1988 relating to the International Convention on Load Lines, 1966;
- the International Convention for the Safety of Life at Sea, 1974;
- the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974;
- the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL);
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and
- the International Convention on Tonnage Measurement of Ships, 1969.

Currently, the Agreement is applicable at the ports of San Lorenzo, Rosario, Arroyo Seco, Villa Constitución, San Nicolás, Ramallo, San Pedro, Zárate, Campana, Buenos Aires, Dock Sud, La Plata, Mar del Plata, Quequén, Bahía Blanca, San Antonio Oeste, Puerto Madryn, Caleta Olivia, Comodoro Rivadavia, Puerto Deseado and Ushuaia.

The Argentine Maritime Authority's inspectors are empowered to conduct onboard inspections, check the validity of the pertinent certificates and documents, and verify the general condition of the vessel, her equipment and her crew.

If there is evidence of non-compliance with the requirements set forth by the aforementioned international conventions, a more detailed inspection can be carried out, and if they pose a serious risk to navigation or the maritime environment, foreign vessels may be detained until the deficiencies are fixed.

1.3 Domestic Legislation Applicable to Ship Registration

In Argentina, ship registration is regulated by:

- the Argentine Navigation Law;
- Law 19,170;
- the Argentine Maritime, River and Lake Navigation Regime (Decree 37/2025); and
- Maritime Ordinance 9/02.

For vessels with a gross tonnage of less than three, Maritime Ordinance 2/19 shall apply.

The authority handling domestic registration of vessels is the National Registry of Ships, under the ambit of the Argentine Maritime Authority, which is ultimately under the Ministry of National Security.

1.4 Requirements for Ownership of Vessels

According to Section 52 of the Argentine Navigation Law, the requirements that must be met to have a vessel registered in the National Registry of Ships are the following:

- the vessel must comply with the construction and seaworthiness requirements set forth by the Argentine Maritime Authority (Section 52.a);
- the ship-owner must be domiciled in Argentina;
- where the ship-owner is an entity, it must be established in accordance with the Argentine regulations (Section 52.c); and
- where the ship-owner is a foreign company, it must have a branch or another kind of permanent representation established in Argentina according to the applicable domestic law (Section 52.c).

1.5 Temporary Registration of Vessels

Under Argentine law, the temporary registration of vessels in the National Registry of Ships is not provided for. Nevertheless, Decree Law 19,492/44 (regarding national cabotage), as ratified by Law 12,980, and the Law on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration (No 27,419) provide that – under specific circumstances and after complying with formal requirements – foreign vessels may receive the same treatment as Argentine-flag vessels and enjoy all the rights and obligations of registered Argentine vessels, without being registered in the National Registry of Ships.

1.6 Registration of Mortgages

Maritime mortgages are registered in the National Registry of Ships.

To register a mortgage attached to a vessel with a gross tonnage of ten or more, the following documentary requirements must be complied with.

- The mortgage agreement must be executed in a public deed or an authenticated private agreement, including:
 - (a) the name, surname, filiation, nationality, profession and domicile of the creditor and the debtor;
 - (b) particulars of the ship according to the certificate of registration;
 - (c) relevant details of the contract; and
 - (d) the amount of the loan, the interest rate agreed and the terms of payment.
- Evidence of having paid salaries and all social security contributions of the crew serving the vessel on her last voyage must be submitted.

1.7 Ship Ownership and Mortgages Registry

The information recorded by the National Registry of Ships is available to those who have a justified interest in enquiring about the ownership, mortgages, liens and encumbrances attached to vessels registered therein. Pursuant to Section 40 of Law 19,170, any interested party may request access to data regarding the certificates of ownership, liens and encumbrances of vessels by filling in form F-004-RNB.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship financing in Argentina is predominantly structured as debt financing. Equity financing is used less frequently and, when applied, it is typically provided at the level of the ship-owning company through capital contributions or shareholder loans, rather than as financing granted directly to the vessel.

The most common form of security for vessel financing is the ship mortgage, which is expressly regulated by the Argentine Navigation Law. Ship mortgages may be created over Argentine-flagged vessels of ten gross tons or more, including vessels under construction. In order to be valid and enforceable against third parties, a ship mortgage must be granted by public deed (or by a duly authenticated private instrument, where permitted) and registered with the National Registry of Ships.

In order to promote domestic shipbuilding and expand the national merchant fleet, Argentina has enacted the Naval Industry Promotion Law (No 27,418) and the Law on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration. Of particular relevance to ship finance, the Law on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration strengthens the maritime privilege framework applicable to ship mortgages by confirming that a ship mortgage ranks immediately after the first-priority group of maritime privileges and ahead of the second-priority group. In addition, the law expressly grants privileged status to ship construction credits of a mortgage or pledge nature, integrating them into the maritime privilege system and thereby enhancing legal certainty and predictability for lenders and shipbuilders involved in newbuilding financing.

2.2 Ship Leasing

Ship leasing transactions in Argentina have not experienced a significant increase in recent years. Traditional bank lending continues to be the predominant source of vessel financing, while private equity funds, alternative credit providers and Chinese leasing houses are more common in other jurisdictions than in the Argentine market. Under a leasing structure, ownership of the vessel remains with the lessor, while the lessee is granted the right to use and operate the vessel and assumes the related commercial and operational risks. By contrast, under a loan structure, ownership lies with the borrower and the lender's rights are exercised through contractual claims and security interests, most notably ship mortgages. Enforcement regimes also differ. Ship mortgages are enforced through judicial proceedings before Argentine courts. Enforcement is subject to mandatory local law, including the system of statutory maritime privileges, and typically involves arrest and judicial sale of the vessel. As a result, mortgage enforcement is inherently court-driven. By contrast, leasing enforcement is based on ownership rather than on security interests. Under Argentine law, the lessor remains the legal owner of the vessel during the lease term. As a result, in the event of default, the lessor is entitled to seek repossession of the vessel on the basis of the duly registered leasing agreement. Although repossession in practice requires court involvement and co-ordination with the relevant maritime authorities, the procedure

is generally more direct than the enforcement of a ship mortgage, as it does not require a judicial sale of the vessel nor does it involve competition with maritime liens. In practical terms, mortgage enforcement is focused on the realisation of the security through the sale of the vessel, whereas leasing enforcement is focused on the recovery of the possession of the vessel. Sale and leaseback transactions are not common in Argentina and are generally limited to isolated cases.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Argentina is not a party to any international convention covering wreck removal. Hence, domestic legislation applies (ie, the Argentine Navigation Law and Law 16,526 concerning the legal regime applicable to wreck removal operations, Sections 12 to 18).

Regarding pollution, Argentina ratified the 1992 Protocol amending the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, thus becoming a party to those conventions. Argentina is not a party to the 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund.

In addition, Argentina has not ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, nor the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances, 1996, and its amending protocols.

Regarding marine pollution prevention, Argentina has ratified the following international conventions:

- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

- the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and Protocol of 1997;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;
- the co-operation agreement with Uruguay to Prevent and Combat Incidents of Pollution of the Aquatic Environment Caused by Hydrocarbons and Other Harmful Substances, 1987; and
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

3.2 International Conventions: Collision and Salvage

Argentina is a signatory to the Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, and to the International Convention for the Unification of Certain Rules with Respect to Collisions between Vessels, both of 1910.

Likewise, Argentina has ratified the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, 1952; the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, 1952; and the Montevideo International Commercial Navigation Treaty, 1940 (which provides rules on jurisdiction in matters of salvage and collision).

In those cases where these conventions do not apply, the Argentine domestic legislation does. Accordingly, the Argentine Navigation Law contains specific provisions about procedural aspects, causation and apportionment of liability, applicable law and jurisdiction on collision and salvage matters.

3.3 Convention on Limitation of Liability for Maritime Claims

Argentina is not party to the Convention on Limitation of Liability for Maritime Claims, 1976, but the Argentine Navigation Law provides for a specific regime that allows the ship-owner and the disponent owner to limit their liability by setting up a limitation fund, for losses and damages caused by the acts of, or omission to perform an act by, their employees, servants and agents who performed their duties at sea.

The cap on the liability for maritime claims is the value of the ship at the end of the voyage, plus the credits accrued on the last voyage. If the value of the vessel at the end of the voyage is insufficient to pay all compensation for claims due to death or personal injury, there is a supplementary limitation based on the tonnage of the vessel.

Registered owners can also limit their liability for maritime claims by relinquishing their vessel in favour of their creditor, depositing the title of ownership in a judicial court pursuant to a special judicial proceeding within three months after the incident occurred.

3.4 Vienna Convention on the Law of Treaties

Argentina approved and ratified the Vienna Convention on the Law of Treaties by Law No 19,865, enacted on 3 October 1972, and it therefore forms part of the Argentine legal system. Argentina is not a party to any international conventions on limitation of liability, including the Convention on Limitation of Liability for Maritime Claims, 1976.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Limitation funds must be set up in cash by depositing an amount that equals the value of the ship at the end of the voyage, plus the credits accrued on the last voyage. The right to set up a limitation fund may be alleged by the owner or the disponent owner before the expiry of the time limit to allege defences in the sentence enforcement process. Among other formalities, explanatory details of the composition of the limitation fund and a list of the creditors or claimants subject to such limitation fund must be provided by the owner or the disponent owner. Afterwards, a special proceeding of limitation of liability will be initiated. If the ship-owners elect to limit their liability by relinquishing the vessel, they must provide the property deed of the vessel. The owners' right to relinquish their vessel should be alleged within three months after the incident occurred.

3.6 Seafarers' Safety and Owners' Liability

Argentina is a party to the Maritime Labour Convention, 2006, approved by Law 26,920, and its amendments of 2014, 2016 and 2018.

In addition, the following national legislation applies to the rights and safety of seafarers:

- the Labour Contract Law (No 20,744);
- the relevant sections of the old Commercial Code, as amended by Laws 17,371 and 17,823 related to the legal regime applicable to work on board ships;
- the Labour Risks Law (No 24,557);
- the Argentine Navigation Law;
- collective bargaining agreements; and
- *Regimen de Formación y Capacitación del Personal de la Marina Mercante* (REFOCAPEMM).

4. Cargo Claims

4.1 Bills of Lading

The transport of cargo under a bill of lading is governed by:

- the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the “Hague Rules”), signed in Brussels in 1924, which was ratified by Argentina in 1960; and
- the Argentine Navigation Law, which contains specific provisions applicable to the contract of carriage of goods by sea, when the International Convention does not apply.

Therefore, when a bill of lading or similar document of title has been issued in a contracting state to the Hague Rules, the Hague Rules apply; otherwise, the Argentine Navigation Law does.

4.2 Title to Sue on a Bill of Lading

The consignee of the cargo and/or the legitimate holder of a bill of lading is entitled to sue under the bill of lading. Argentine law recognises the assignment of title to sue, although it may be subject to certain conditions and formalities depending on the particulars of the case.

4.3 Ship-Owners’ Liability and Limitation of Liability for Cargo Damages

The Argentine Navigation Law establishes a package limitation based on the nature of the cargo (per package, piece, unit or kilo weight). It follows the spirit of the International Convention for the Unification of

Certain Rules of Law relating to Bills of Lading, 1924 (the “Hague-Visby Rules”), but sets its own unit of account – namely, the Argentine gold peso – for the calculation of the limit. It is restricted to carriers, but their servants and agents can also allege the benefit of this limitation when a claim is brought directly against them. Therefore, the ship-owner – acting as actual carrier – can also claim the benefit of this limitation.

Section 278 of the Argentine Navigation Law provides that the limit to the carrier’s liability for cargo claims shall be calculated per damaged or lost piece of cargo (when the cargo is carried unpacked, eg, heavy objects) or package of cargo (when the cargo is carried packed, eg, in boxes or pallets) or per unit of freight (when the cargo is carried in bulk). When cargo is carried in containers, the law states that where a container is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in it shall be deemed the number of packages (for the purpose of limitation) as far as these packages or units are concerned. The limitation of liability operates as a defence to which the carrier is entitled and which the carrier must allege when first appearing in court. Although the legislation fails to provide a cap to carriers’ liability for damages and/or losses caused by a delay in delivering the cargo at the port of destination, Argentine courts have resolved to follow the same limitation of liability regime as for loss of, or damage to, cargo.

4.4 Misdeclaration of Cargo

Section 296 of the Argentine Navigation Law provides that shippers shall be deemed to have guaranteed to carriers the accuracy of the particulars of the cargo as inserted by them in the shipping instructions or the declaration of cargo for shipment. Therefore, carriers could bring a claim against shippers, if their failure to describe the cargo accurately causes damage to them or makes them incur liability before third parties.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Argentine legislation, the time limit for cargo claims under the contract of carriage is one year from the unloading of the cargo; or, in the event that the goods were not discharged from the ship, from the date on which they should have been discharged; or,

in the event that the goods have not been loaded onto the ship, from the date on which the ship departed, or should have departed, from the port of loading. Parties are allowed to agree on an extension to the time bar, provided that such agreement is reached after the damage, or the cause of the damage, occurred.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Argentina is neither a party to the Brussels Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952, nor to the International Convention on Arrest of Ships, 1999.

Ship arrests are governed by the Argentine Navigation Law, which provides that Argentine vessels can be arrested in the following cases:

- to grant a maritime lien; and
- to grant a debt incurred by the Master, owner or disponent owner of the vessel in connection with her use, navigation and exploitation (in the port of the jurisdiction where the ship-owner is domiciled or has its principal establishment).

Furthermore, it sets forth that foreign vessels can be arrested and prohibited from sailing in the following cases:

- to grant a maritime lien;
- to grant a credit accrued in the Argentine territory for the use of a vessel, or a sister vessel of the same, belonging to the same ownership when bringing actions of arrest or when the credit accrued; and
- to grant a credit, connected or not with the use of the vessel, which is capable of being claimed by the creditor before Argentine courts, which should be competent to hear the case.

5.2 Maritime Liens

Under Argentine law, the following claims are considered maritime liens and may entitle claimants to arrest a vessel and collect their credit with preference over other creditors:

- judicial and legal costs incurred for the common interest of creditors for the maintenance of the ship, for her judicial sale, and for the distribution of the sums obtained from the sale of the vessel among the creditors;
- claims for wages and other sums due to the Master, officers and other members of crew resulting from employment contracts, labour laws and agreements signed with unions;
- claims arising from shipbuilding contracts;
- taxes, duties, contributions and others resulting from the navigation or the commercial exploitation of the vessel;
- claims resulting from death or personal injury that occurred on board or ashore, in connection with the operation of the vessel;
- claims for tortious acts against the owner, the disponent owner or the vessel resulting from the operation of the vessel;
- claims for salvage reward, wreck removal expenses and general average contributions;
- claims for damage or loss caused to the cargo or goods on board;
- claims resulting from charterparty disputes or from the execution of contracts of carriage;
- claims resulting from supplies or other necessities for the vessel's operation, maintenance or service;
- credits for the construction, repair or equipment of the vessel and for dock expenses;
- claims arising from disbursements made by the Master, shippers, charterers or agents on behalf of the vessel or her owner; and
- claims for the last purchase price of the vessel and the interest accrued during the last two years.

5.3 Liability in Personam for Owners or Demise Charterers

Depending on the case, in Argentina, a vessel could be arrested regardless of her owner's personal liability on the merits constituting a recognised maritime lien, for debts incurred by the demise charterer.

5.4 Unpaid Bunkers

The supply of bunkers or other necessities gives rise to a maritime lien, and thus gives a right to arrest the ship irrespective of whether it was ordered by the charterer or the owner.

5.5 Arresting a Vessel

In order to obtain an order of arrest from an Argentine court, the arrestor will need to meet the following procedural requirements:

- pay a court fee – 3% of the claimed amount must be paid to court;
- pay expenses concerning the National Registry of Ships – 0.1% of the claimed amount; and
- provide adequate counter-security for any eventual damages that the arrest might cause if it is made without the arrestor being entitled to do so.

Counter-security may be given in cash, by a local bank or by a well-known local insurance company. It may be difficult to obtain locally when the arrestor is a foreign entity; however, there might be alternative ways to overcome any obstacle in this regard.

The arrestor will also need to grant its lawyers a power of attorney (POA) empowering them to bring actions of arrest; nevertheless, actions could be brought without a POA if this document is presented in its original form within the following 40 days after the initial presentation requesting a vessel's arrest.

5.6 Arresting Bunkers and Freight

The Argentine Navigation Law does not specifically deal with the possibility of arresting bunkers and freight, as it does with the possibility of arresting a vessel; however, it provides that specific maritime claims confer a maritime lien over freight.

Regarding the procedural requirements to bring actions of arrest on bunkers and freight, the requirements set forth by the National Civil and Commercial Procedural Code regarding precautionary measures over any assets, goods or credits shall apply.

5.7 Sister-Ship Arrest

Pursuant to the Argentine Navigation Law, it is possible to arrest a foreign sister-ship if the vessel that generated the credit to be secured with the arrest and the one to be arrested belong to the same ownership, when requesting the arrest or when the credit accrued.

5.8 Other Ways of Obtaining Attachment Orders

The National Civil and Commercial Procedural Code sets forth different precautionary measures to obtain security, such as seizure of assets, credits and rights, prohibition of disposal of movable or immovable property, judicial intervention, and the possibility to request a more convenient measure aimed at obtaining a more appropriate security in view of the particular case.

5.9 Releasing an Arrested Vessel

A vessel that is arrested may be released from arrest if adequate security is given to substitute the security granted by the arrest. Adequate security may be given in the form of another asset to be arrested, a local bank guarantee, a cash deposit, an insurance policy issued by a local company or an insurance policy obtained locally by the Argentine shipping agents of the foreign vessel, or by giving Argentine National Treasury Bonds.

A club's letter of intent or a foreign bank's letter of guarantee may be effective to get the vessel released from the arrest; however, if the arrestor objects to its effectiveness or appropriateness, the judge may not admit the substitution.

5.10 Procedure for the Judicial Sale of Arrested Ships

After an enforceable title is in place, the court shall – before ordering the judicial sale of a national ship – request from the National Registry of Ships a report of the vessel's mortgages, liens and encumbrances. If the vessel flies a foreign flag, such request shall be made to the corresponding consular authority. If liens and encumbrances do not exceed the vessel price, the court shall order the judicial sale of the ship, and the funds obtained from the auction shall be distributed among the creditors. If liens and encumbrances exceed the vessel price, creditors may request the initiation of the special proceeding of privileged creditors on the vessel. In principle, the private sale of an asset subject to judicial execution is not permitted under Argentine law, as the judicial auction/sale process is the mechanism established to ensure transparency, equality among creditors, and the maximisation of value for the benefit of the interested parties.

However, certain exceptions or alternatives may be available, depending on the specific circumstances of the case and the express authorisation of the court.

Any interested party may object to the judicial sale of the vessel. If no objections are entered or if they are dismissed by the court, the judicial sale of the vessel shall be ordered, and the sums obtained therefrom shall be distributed among the creditors, observing the order of preference provided by the Argentine Navigation Law. The Argentine Navigation Law divides maritime claims into two groups. The first group is formed of credits resulting from non-contractual claims and has preference over the claims of the second group, which is formed of credits resulting from contractual claims. The credit of the mortgagor has preference after the credits of the first group and before the credits of the second group.

5.11 Insolvency Laws Applied by Maritime Courts

The Argentine Insolvency and Bankruptcy Law (No 24,522), as amended by Laws 25,563, 25,589 and 26,086, provides for a debt restructuring proceeding that is similar to the one set forth under Title 11 of the US Bankruptcy Code. Once a debtor files a judicial restructuring proceeding (*Concurso preventivo de acreedores*), all existing actions to enforce claims against it – except those claims arising from a pledge or mortgage – shall be stayed and transferred to be continued by the bankruptcy court and no similar actions may be brought. However, any existing contentious proceeding against debtors, where their liability has not been yet determined, shall continue its regular course before the same court where the claim was originally brought, up to the final judgment.

Privileged creditors secured by pledges or mortgages shall be allowed to continue enforcement actions, but the court may order a stay of such proceedings for a period no longer than 90 days. Moreover, the court shall not authorise precautionary measures or judicial sale unless the claimant proved the credit was verified in the judicial restructuring proceeding. Among privileged creditors, those whose claims are secured by maritime liens set forth by the Argentine Navigation Law may request the formation of the special process of maritime privileged creditors. Moreover, a

vessel mortgagee may request the judicial sale of the vessel, over which maritime privileged creditors will concur following the ranking of priority set forth by the Argentine Navigation Law. If, after the judicial sale of the vessel, any part of the purchase price remains, it will be transferred to the relevant bankruptcy court.

Despite the aforesaid, the debtor and other interested creditors may request the bankruptcy court to lift all precautionary measures pending over those assets considered essential for the continuance of their commercial activities, such as a vessel might be for her owners. Under these circumstances, the judicial sale of a vessel property of owners that are under a judicial restructuring proceeding shall be subject to the judicial bankruptcy proceedings.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The Argentine Navigation Law does not contain any express provision about wrongful arrests; however, the most recognised doctrine has considered that, in the case of an intentional wrongful arrest, the arrestor shall be liable unlimitedly for all the damages and losses resulting from the illegitimate immobilisation of the vessel. In this respect, the burden of proof to demonstrate the arrestor's liability would be difficult to meet, as the intention of the arrestor, the wrongful arrest and the causation link between the arrest and the damages will need to be demonstrated.

The Argentine Navigation Law only provides that the liability of the arrestor who – without acting maliciously – obtains the arrest of a vessel and does not ultimately initiate actions of claim is limited to the damages caused by the immobilisation of the vessel, until the moment at which the ship-owner substitutes said arrest with another security, and to the expenses related thereto (Section 540, Argentine Navigation Law).

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Argentina approved its accession to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and its Protocol (1974) by means

of Law 22,178. Furthermore, the Argentine Navigation Law rules apply to those cases that do not fall within the scope of application of the aforementioned Convention and contains specific provisions on the contract of carriage of passengers, including passengers' claims for personal injury, death, and damage to their cabin luggage, and luggage and vehicles in the ship's hold.

The time bar limit for passengers' claims is two years under the Convention and a year under the Argentine Navigation Law. Both legal systems establish a presumed fault or a fault base liability regime applying to the carrier, which varies depending on whether the cause of the personal injury, death or damage to luggage or vehicles is related to a maritime incident or not. Furthermore, both legal systems set forth that the carrier is entitled to claim the benefits of the limitation of liability. Claims for indemnities for personal injury of a passenger would be recognised as a maritime lien and claim.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Jurisdiction clauses are recognised and enforced by Argentine courts; however, attention should be paid to Section 614 of the Argentine Navigation Law, which expressly states that clauses of jurisdiction excluding Argentine courts from resolving disputes – incorporated into a voyage charterparty, a contract of carriage of goods or persons, or any contract where the carrier undertakes to transport goods to a destination where they have to be delivered in Argentina – shall be null and void.

Likewise, Section 621 provides that the parties are allowed to agree that a charterparty dispute or cargo claim shall be subject to arbitration proceedings or resolved by a court from a different jurisdiction, provided that such agreement is reached after the damage or the cause of it has occurred.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In the event that the bill of lading has an applicable law clause indicating that the contract of carriage is subject to a specific law or to an international convention such as the Hague or Hague–Visby Rules (clause paramount), such provision will be valid before the Argentine courts, and such legislation will apply, irrespective of its ambit of application. However, if any of the provisions of the chosen applicable legislation or international convention restrict or limit the liability of the carrier or ship-owner to a greater degree than the Argentine Navigation Law does, those provisions will be considered null and void. An example of provisions that would be considered null and void by Argentine courts are those referring to the limitation of liability of the carrier under the Hague and Hague–Visby Rules.

Arbitration clauses referring disputes to foreign arbitration, incorporated into a bill of lading for the transport of goods that shall be discharged at Argentine ports, shall be null and void, pursuant to Section 614 of the Argentine Navigation Law, which gives exclusive jurisdiction to Argentine courts to resolve claims arising under a contract of carriage whereby goods are to be delivered at any Argentine port.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Argentina has been a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958 since 1988. Moreover, Law 27,449, concerning international commercial arbitration, contains specific provisions that apply to international commercial arbitration with a seat outside Argentina. This body of provisions follows the spirit of the aforementioned Convention.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Judicial precedents issued by the National Civil and Commercial Court of Appeals have regularly stated that Argentine courts have concurrent jurisdiction to arrest a vessel, in all cases where a vessel could be arrested under the Argentine Navigation Law, despite the jurisdiction of another court that might be competent to resolve the merits of the dispute that gave rise to the arrest, either because an extension of jurisdic-

tion clause has been agreed between the parties or because another court might be competent due to another provision of international private law.

Furthermore, as Argentina is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Argentine courts could order an arrest on a vessel to secure a claim, which would be subject to arbitration proceedings in a country that has ratified such convention, if they are empowered to do so under Argentine law.

7.5 Domestic Arbitration Institutes

The Argentine Maritime Law Association (*Asociación Argentina de Derecho Marítimo*) has issued Arbitration Rules and created an Arbitration Committee within the organisation. Although it is known that some contracts will have incorporated an arbitration clause referring all disputes that may arise thereunder to be resolved following the Association's Arbitration Rules and by the Arbitration Committee, there is no record of disputes being resolved by the institution.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

At the first appearance at court, the defendant should raise an objection of lack of competence based on the breach of a foreign jurisdiction or arbitration clause.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

In Argentina, there is no tonnage tax and the incomes earned by ship-owners established in Argentina are fully subject to income tax. The income tax is calculated on the profit or loss shown in the company's financial statements, which is adjusted by adding up non-deductible expenses, and deducting non-taxable incomes and/or allowable deductions not accounted for in the accounting records. The tax rate on the net income of companies incorporated in Argentina is 30%. Depending on the particulars of the case, if a ship-owner's vessel is engaged in several contracts, in excess of her ordinary use during a fiscal year, the benefits of the accelerated depreciation of such asset

may be claimed before the tax authority, in the form of a reduction in income tax.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

The Argentine Navigation Law, when regulating the different shipping contracts, provides that a force majeure event shall operate as an exemption from liability cause, in different specific scenarios. The maritime doctrine and relevant judicial precedents have stated that the defence of force majeure should be interpreted narrowly, that the concept of force majeure is dynamic and cannot be analysed in abstract situations, and that the admissibility of this defence depends strictly on the circumstances of the case. Further, it has stated that for an event to be considered force majeure, it should not be a mere difficulty, but unforeseeable, unavoidable, real, current, beyond the control of the parties and supervening, and should pose an insuperable obstacle that prevents the full performance of a contractual obligation. The theory of frustration as such is provided by Section 1091 of the National Civil and Commercial Procedural Code; however, it should be pointed out that this contractual remedy may not apply to all maritime matters.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

On 8 June 2021, Argentina deposited the instrument of accession to the Protocol of 1997, adopting Annex VI of MARPOL with the IMO. Therefore, the limit on the sulphur content in the fuel oil used on board ships navigating Argentine territorial waters is a maximum of 0.50% mass by mass. The Argentine Maritime Authority is empowered to inspect vessels arriving at Argentine ports, regardless of their flags, to ensure compliance with the environmental protection provisions stipulated by MARPOL Annex VI, and demand the fulfilment of the operational requirements set forth by the convention for national-flag vessels.

9.3 Trade Sanctions

The Argentine Republic is a founding member of the United Nations. Since its foundation, the country has

played an active role in the defence and promotion of international peace and security, human rights and sustainable development. Regarding international trade sanctions, Argentina generally follows the sanctions imposed by the UN Security Council, published by the Ministry of Foreign Affairs, International Trade and Worship. The decisions adopted by the Security Council are incorporated in domestic law according to the procedure set forth in Law 24,080 and its regulatory decrees.

With respect to the impact that the trade sanctions imposed by the international community due to the conflict between Russia and Ukraine may have in Argentina, it should be noted that it does not differ from the one observed in the shipping industry at large.

Issues encountered include cancellations of voyages, shipments and bookings, as well as the need to issue letters of indemnity. When a specific cargo has been intended to be consigned to a Russian-related party or a Russian-related territory, delays and additional costs have been observed.

9.4 International Conflict

Argentina has not been shut off from the global economic consequences of the war in Ukraine, such as the increase in the prices of energy, agricultural products, minerals and fertilisers, and fuels, as well as higher rates for international transportation. Likewise, since Argentina is a notable exporter of agricultural products, the interruption of trade with Ukraine and Russia has given the country the opportunity to increase and expand its foreign commerce in these sectors of the economy. With regard to the non-performance of contractual obligations due to the war, depending on the circumstances of the case, the defence of force majeure could be invoked by the defaulting party in order to escape from liability. To date, there are no records of any final judicial decision in this regard.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

All the main maritime matters regulated by Argentine law have been covered throughout this article; nevertheless, the author would like to address the Law on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration, in force since 29 December 2017, which was enacted with the purpose of promoting the transport industry and the participation of Argentine ship-owners in the local market.

Said act brought about the creation of the Special Registry of National Ship-Owners, which depends on the Undersecretariat of Ports, Waterways and Merchant Navy of the Ministry of Transport, in contrast with the Registry of Onshore Personnel, which depends on the Argentine Maritime Authority.

Those registered in this new registry can benefit from the advantages established by the Law on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration, among them, the reduction of obstacles to:

- importing foreign vessels to incorporate them in an Argentine fleet (without paying import taxes); and
- chartering foreign-flagged vessels and naval artefacts under bareboat charter contracts within a temporary import legal regime and having them considered Argentine-flagged to all effects, including operating on national cabotage during the chartering period (ie, the vessel shall keep her foreign flag but she will receive “Argentine-flag treatment”).

In addition, Argentina continues to review and update the regulatory framework applicable to the maritime sector, with the aim of modernising its legal regime and facilitating the shipping business.

These measures form part of broader efforts to simplify procedures, reduce administrative burdens and improve efficiency in maritime and shipping-related activities, while promoting greater legal certainty and alignment with international trade practices. This process remains ongoing.

Trends and Developments

Contributed by:

Jorge Radovich, Liza Pozzi and Matias Bongiorno
Radovich & Asociados

Radovich & Asociados is specialised in maritime law, ocean and brown waters navigation. Its areas of practice include liabilities of owners and disponent owners of vessels, both contractual and in tort. In the first aspect, the practice includes contracts of building and sale of ships, COAs or volume contracts, charterparties and bills of lading, contracts of pilotage, of towage, hull and machinery, cargo and P&I. It is also highly qualified in the handling of collision and

allision cases, salvage and general average. The firm also has expertise in the management of pollution hazards. The law firm is very skilled in the regulation and particularities of brown waters navigation in the Paraguay–Paraná Waterway, which is very important for the region, Coast Guard enquiries and customs law. The firm has extended its practice into areas such as multimodal transport, land and air carriage, and port terminal liabilities.

Authors



Jorge Radovich is a senior partner at Radovich & Asociados. Gold Medal at the University. Admitted to the Buenos Aires Bar. Member of the CMI (former Ex-Co and Nominating Committee) and Chair of the IWG on

Offshore Activities. Member and Vice President of the Argentine Association of Maritime Law. Director of the Editing Committee of the Revista de Estudios Marítimos (Magazine of Maritime Studies). Officer of the Argentine IIDM. He wrote the book “Handbook of Insurance in Foreign Trade”. Former Professor at the UBA and UMSA. Major marine casualties, collisions and strandings, insurance, salvage, general average, charterparties and volume contracts, ship sale and purchase, shipbuilding. Recognised maritime arbitrator.



Liza Pozzi is a partner at Radovich & Asociados. Admitted to the Buenos Aires Bar and Rosario Federal Court of Appeal. Member of the Argentine Association of Maritime Law and the Editing Committee of the Revista de

Estudios Marítimos (Magazine of Maritime Studies (MMS)). Member and Former Secretary of the

Argentine Branch of the Iberoamerican Institute of Maritime Law (IIDM). Executive Secretary General of the IIDM. Wista Member. Full Professor of the subject “Maritime Insurance” at the Universidad Nacional de Rosario. She has written articles in the MMS, E-Book and Books of the IIDM. Coast Guard summaries, navigation accidents, recoveries, arrest of vessels and defence of them are her most frequent areas of work.



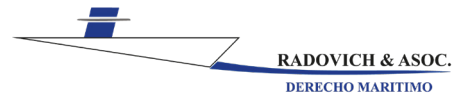
Matias Bongiorno is a partner at Radovich & Asociados. Admitted to the Buenos Aires Bar and Rosario Federal Court of Appeal. Member of the Argentine Branch of the Iberoamerican Institute of Maritime

Law (IIDM). Secretary and Member of The Maritime Center of Rosario Ports. Co-director and owner of Bonmar Ship Agents. Full Professor of the subject “Maritime, Port and Navigation Regulations” at the Universidad Nacional de Rosario. He has written articles in the MMS, E-Book and Books of the IIDM. Coast Guard summaries, customs claims, navigation accidents, recoveries, arrest of vessels and defence of them are his most frequent areas of work.

Radovich & Asociados

Av. Callao 1564, Floor 4 "A",
Autonomous City of Buenos Aires,
ZIP 1024,
Argentina

Email: info@maritimelaw.com.ar
Web: www.maritimelaw.com.ar



Introduction

In this article, we aim to provide a bird's-eye view of the Argentine Navigation Law (ANL), which, while clearly falling within the framework of continental law, has some very distinctive characteristics. For example, maritime law rules also apply to navigation in brown waters, unlike in other nations. International conventions ratified by the Republic take precedence over local maritime law, and jurisprudence plays a very important role. Due to space limitations, we cannot elaborate on every point of interest, but the intention is to mention the most important aspects with practical impact for foreign companies and colleagues, and we remain available to provide further information upon request from them.

Characteristics of the Ship-Owner's Liability

The source of liability in ANL damages is always subjective, based on the intent or negligence of the owner or disponent owner of the vessel, or of persons for whom they are legally responsible. Joint and several liability can only be imposed by law or an international convention ratified by Argentina, such as the Civil Liability Convention/Fund of 1992 (but not its further versions), which regulates liability for oil spills from tankers.

Liability is normally limited, in principle, except in cases of intent or gross negligence.

Maritime Liens on Vessels

The following claims have priority (Article 485 of the ANL):

- (a) legal expenses incurred in the common interest of the creditors for the preservation of the vessel, or for its sale and the distribution of the proceeds;
 - (b) claims of the captain and other crew members arising from employment contracts, labour laws and collective bargaining agreements;
 - (c) claims related to the construction of the vessel, whether secured by a mortgage or pledge;
 - (d) duties, taxes, contributions, and fees for services rendered, arising from navigation or the commercial operation of the vessel;
 - (e) claims for death or bodily injury occurring on land, on board or at sea, directly related to the operation of the vessel;
 - (f) claims for torts against the owner, operator or vessel, not based on a contractual relationship, for damage to property on land, on board or at sea, directly related to the operation of the vessel; and
 - (g) claims for assistance and salvage, removal of shipwrecks, and general average contributions.
- The following are second-priority claims:
- (h) claims for damage to cargo and baggage;
 - (i) claims arising from contracts for the lease or chartering of a vessel or from a contract of carriage;
 - (j) claims for the supply of products or materials to a vessel for its operation or maintenance;
 - (k) claims for the construction, repair or outfitting of the vessel or for dry-docking expenses;
 - (l) claims for disbursements made by the Master, and those made by shippers, charterers or agents on behalf of the vessel or its owner; and
 - (m) the claim for the price of the vessel's most recent acquisition and the interest due from the last two years.

The claims included in the first group have priority over mortgage claims, which take precedence over those in the second group. Secured creditors may not be subrogated to the rights of the vessel's owner to compensation due under a hull and machinery insurance contract.

It is characteristic of a lien that it adheres to a vessel like a limpet, remaining valid and enforceable even if the vessel is transferred to a third party completely unrelated to the event that gave rise to it.

Except in the case of (m) above, it is crucial to bear in mind that the lien expires one year after its creation, which affects the possibility of obtaining an attachment on the vessel, as will be discussed in the following section. Extinction before one year occurs in the case of a judicial sale of the vessel or after three months of a private sale.

Arrest of Vessels and Lifting of Precautionary Measures

The arrest of a vessel not flying the Argentine flag implies the prohibition of navigation of the vessel.

In principle, for an arrest to be valid, the vessel must be in an Argentine port, not under way. However, case law has admitted that a vessel in roadstead awaiting entry to the port may be arrested (Federal Court of Necochea, Case No 8235/2024, *TT Marine Maritime Agency SA v Vessel RED ORCHID IMO 9757890* re: Interdiction of Departure and Navigation, 26 August 2024).

The person requesting the arrest must pay the court fee of 3% on the amount to be secured, plus the amount budgeted by the court to cover interest and costs.

An attachment order issued pursuant to a final judgment or arbitral award is generally the least problematic. If the decision is foreign, it should be noted that Argentina has ratified the New York Convention but not subsequent amendments.

The second level of difficulty arises with attachments based on maritime liens, which require proof of their existence and validity.

In addition to maritime liens, foreign vessels may be arrested for debts incurred within the national territory for the benefit of the vessel herself, or of another vessel that belongs or belonged, at the time the debt originated, to the same owner; and for debts arising from the vessel's operations, or for other debts unrelated to these operations, when they are enforceable in the courts of the country.

If the vessel that originated the debt in Argentina is subject to a demise charter operated by a disponent owner, or there is a time charterer, and they are the only parties responsible for the debt, the seizure of another vessel owned by the disponent owner or time charterer is appropriate, but not the seizure of another vessel belonging to the owner of the disponent owner or time charterer.

If the arrest is preventive and without a lien, the requirements of common civil and commercial law, which are more stringent, must be met.

In all cases, documents in a foreign language must be translated in Argentina, and judges require a counter-security of between 20% and 40% of the sum to be secured for registration. A surety bond is most commonly presented, although cash, bonds and other assets can also be deposited.

Article 612 of the ANL establishes that national courts have jurisdiction to hear any case to which an owner or disponent owner of a foreign-flagged vessel is a party, in cases where, according to this law, the vessel may be arrested.

However, its interpretation generated controversy and conflicting decisions until the issue reached the Supreme Court.

The Supreme Court declared in 1975, in the case of *Eberth Clemens B.M.B.H. v Vessel "PAVLO"*, that the jurisdiction established by Article 612 is not exclusive, but concurrent with any other jurisdiction that might apply.

Thus, the arrest of a vessel in Argentina did not create exclusive jurisdiction for the court that ordered it; rather, the final decision on the merits of the case

could ultimately fall to another court, which is what ultimately occurred in accordance with the rules of private international law.

The following vessels may not be subject to arrest or navigation ban.

- National or foreign warships, and vessels under construction intended for incorporation into the military forces of a State.
- All other ships assigned to the service of the public authorities of the national government, a province or a municipality, and other ships owned or operated by the national government, a province or a municipality if the owner or operator waives the limitation of liability provided for in Title III, Chapter I, Section 4. Ships assigned to the service of the public authorities of a foreign State may also not be arrested.
- Loaded vessels ready for departure, unless the respective debt was incurred to repair, prepare and provision the vessel for that voyage or was incurred after the vessel was loaded.

The decision ordering the arrest can be appealed if it contradicts what has already been explained, but the most common practice is to negotiate a letter of undertaking from a P&I club, and the matter is discussed amicably or in pre-trial mediation.

Both the execution of the arrest and its lifting are carried out by means of an official letter to the Argentine Coast Guard, the processing of which has a negligible cost.

If the parties do not reach an agreement, if the arrest is based on a foreign judgment or arbitral final and binding decision, the vessel will be judicially auctioned and the proceeds will be distributed accordingly. If there are other privileged creditors, the order of priority of the claims is decided judicially in a special procedure.

If the arrest is a preventive one, an ordinary trial must be held, which can last for years.

Limitation of Liability Relating to Cargo Damage or Loss

Argentina ratified the 1924 Brussels Convention on Bills of Lading, known as the Hague Rules, so if this Convention is applicable, it will take precedence over the regulations of the ANL. However, it should be noted that neither the Visby nor the Hamburg nor the Rotterdam Rules have been ratified, meaning that the limitation of liability for loss or damage to packages or pieces will amount to 100 gold pounds sterling according to the Hague Rules.

On the other hand, if the Hague Rules are not applicable, the carrier's limitation of liability for damage to or loss of cargo under Argentine regulations amounts to 400 Argentine gold pesos per package or piece.

The ANL does not include delays among the cases in which the limitation by package can be opposed, but the jurisprudence is unanimous that this is possible given the analogous extension of the rule based on the autonomy of navigation law.

The regulations governing cargo transport by water in the ANL are a matter of public order; therefore, the parties cannot modify them except to the benefit of the cargo owner. However, it is permissible for the parties to agree upon rules before loading and after unloading the goods.

The fact that in both the Hague Rules and the ANL the amount of the limitation per package is related to the value of gold, which has increased significantly, means that the limitation in Argentina is much higher than in the most recent Conventions, as mentioned in the first paragraph of this section.

As an example, the limit for one package in the ANL is about USD78,000, which is very high by current standards.

If the carrier has acted with intent or temerity, the right to limit liability will be lost.

If the bill of lading was issued ad valorem, the limitation of liability discussed above could be overcome.

The revolution that the use of containers produced in cargo transport has forced jurisprudence to determine in which cases pieces packed in a container should be considered as a single package or not.

The plenary ruling issued by the Federal Civil and Commercial Court of Appeals of Buenos Aires in *La Confianza Cía. Arg. de Segs. S.A. v Buque Salvador y/o Ivaran Lines s/cobro*, on 22 September 1989, established that “in the case of a claim for damages for breach of a maritime transport contract based on the shortage of goods packaged in bundles or other types of packages in containers – the quantity of which was indicated in the respective bill of lading, either in the ‘number of bundles’ column or in the description of the goods – and packed in a cargo unit, the liability limit established by the 1924 Brussels Convention must be calculated for each of those bundles or containers”.

This plenary ruling is binding on all Chambers of the Federal Civil and Commercial Court of Appeals of the Autonomous City of Buenos Aires.

Limitation of Liability of the Owner and Disponent Owner

According to the ANL, the owner and disponent owner may limit their liability, including in cases not related to cargo claims, unless there is fault on their part in relation to the events giving rise to the claim.

The limitation shall extend to the value of the vessel at the end of the voyage during which such events occurred, plus the gross freight, the passage received or receivable for that voyage, and the credits in its favour that arose during the voyage. Obviously, this limitation will be used in case of catastrophic claims.

In addition to this limitation, the ANL provides for other limitations for specific contracts or situations, namely, with regard to shipwrecked or inactive vessels, naval craft and aircraft, and dangerous objects in the water, which may be extracted, removed or scrapped in certain circumstances.

As we explained in “Characteristics of the Ship-Owner’s Liability” above, the source of liability in ANL damages is always subjective, and limited. The ANL estab-

lishes exceptions to the limitation of liability, such as when the vessel is unseaworthy. There are also cases of objective liability, such as when pollution occurs.

The owner and disponent owner may exercise the right to limit their liability to their creditors, in accordance with the provisions of the ANL until the deadline for filing objections in the enforcement proceedings, handed down in any of the proceedings in which they are sued for payment of any of the claims mentioned in the ANL.

In the event that the vessel is abandoned: if in kind, this must be done within three months of the end of the expedition; if in value, within five days of being notified to comply with a final judgment.

According to the ANL, If the limitation is insufficient to cover personal injury, it shall be increased by USD2,550 approximately per tonne of total tonnage until such damages are covered. Vessels under 100 tonnes: USD254,300 approximately.

Argentina has not ratified the 1924 and 1957 Limitation of Liability Conventions or the 1996 Protocol.

Assistance and Rescue of Vessels

As we explained in the Introduction, in Argentina, maritime law rules also apply to navigation in brown waters.

According to the ANL, for assistance and rescue (A&R) of vessels to take place, three conditions must be met: danger, lack of reasonable opposition from the Master of the assisted vessel, and the achievement of a useful result.

Unlike English law, the peril does not need to be imminent, but it must be real (not putative).

Regarding the Master’s lack of opposition, this does not have to be against the express will of the assisted vessel. The refusal must be reasonable.

Finally, the A&R must have a useful outcome.

When all three conditions are met, A&R allows the assisting vessel to claim a salary that will be deter-

mined as a percentage of the value saved, considering the level of danger, effort, the manoeuvres performed, the time spent, etc. In turn, that percentage varies depending on whether it is maritime or river A&R. The A&R salary cannot be waived by the crew.

Argentina ratified the 1910 London Convention but has not ratified the 1989 London Convention.

Customs Claims in Argentina

With regard to customs issues that may affect the normal operation of a merchant vessel in Argentine waters, two situations must be highlighted, as they may involve ship-owners, charterers and maritime operators in legal proceedings and ultimately result in the imposition of fines.

Both situations relate to the veracity and accuracy of customs declarations, which constitute the legal foundation of the Argentine customs system, in accordance with the principles set forth in the Kyoto Convention, ratified by Argentina. However, in practice, the criteria applied by customs officials when inspecting vessels are often extremely rigorous, even in cases involving minor discrepancies, omissions or errors.

Accordingly, Argentine Customs considers that any declaration that does not comply with the requirements of truthfulness and accuracy may be deemed inaccurate, giving rise to tax consequences and, in certain cases, penalties. In other words, there must be no discrepancy whatsoever between what is declared to the customs authorities and what is actually verified at the time of inspection.

Below, we analyse each of these situations.

Ship's store list declaration

The first scenario concerns the proper declaration of items included in the ship's store list, which is carried out at the time of inward clearance before the customs authorities.

Argentine Customs meticulously examines every detail of ships' declarations and ship's store lists, imposing strict penalties whenever discrepancies are detected. For this reason, shipmasters and officers must pay particular attention to ensuring full compliance with

all port documentation required by the local shipping agent and/or the customs authorities.

In order to simplify, streamline and standardise customs declarations for ship's store manifests, Argentine Customs issued General Resolution N° 4317/2018, which approved a set of four standard forms to be used for declaring fuels, lubricants, chemicals and other items and supplies on board the vessel upon arrival at Argentine ports. The Resolution expressly provides that "the customs service shall not require a greater level of detail than that requested in each field of the forms".

While the implementation of these forms has introduced a certain degree of uniformity and legal certainty in the formalisation of ships' store declarations, some items remain open to interpretation at the time of declaration.

For instance, Form OM 1645 (Ship's Provisions Declaration) refers to "lubricating oil", while Form OM 1647 refers to "other lubricants". However, it is not entirely clear whether lubricating oil contained in sump tanks must be declared, whether quantities should be measured with engines running or stopped, or whether lubricants stored in drums, cans or other containers – whether intended for use in the main engine or for other purposes – must also be declared.

In light of the foregoing, it is evident that both the ship's Master and the ship-owner must exercise heightened diligence when preparing and submitting customs declarations relating to the ship's stores. Given the strict approach adopted by Argentine Customs and the potential legal and financial consequences arising from inaccuracies or ambiguities, any uncertainty regarding the correct completion of the ship's provisions list should be addressed in advance.

Bulk cargo shortage – customs claims

For several years, discrepancies during bulk carrier unloading operations have been increasingly observed in Argentina, particularly in relation to fertilisers. The following analysis focuses exclusively on the customs consequences arising from such cases.

When Argentine Customs detects a discrepancy between the quantities stated in the bills of lading and the quantities actually unloaded, the ship's agent has 48 hours to provide a reasonable explanation for the difference (Article 142, Argentine Customs Code).

If the discrepancy in cargo weight is not duly justified, Argentine Customs presumes – without admitting evidence to the contrary – that the missing quantity has been imported for consumption. Consequently, the shipper and the shipping agent are obliged to pay the import duties and taxes applicable to this fictitious import operation.

Furthermore, if the missing quantities exceed certain thresholds – 2% for liquid cargoes and 4% for bulk solids – the situation constitutes a customs offence for inaccurate declaration, resulting in a fine ranging from one to five times the CIF value of the missing cargo.

Customs Resolution No 4138-E/2017 provides that the choice of the method used to determine the weight of the discharged cargo lies with the importer, who may opt either for customs-approved shore scales or for the draft survey system.

In practice, importers frequently choose shore scales, a method that does not allow for any tolerance margins in the event that discrepancies are detected. By contrast, the draft survey system allows for a tolerance margin of 0.6% or 2.54 tonnes per centimetre (TPC), whichever is greater.

Conclusion

While each case must be assessed on its own specific facts and circumstances, experience shows that the implementation of preventive strategies and asset-risk mitigation measures places vessels, ship-owners and operators in a significantly more advantageous position when facing potential customs contingencies in Argentina.

Moreover, in cases where a customs claim has already materialised, timely follow-up, specialised legal advice and an appropriate defence strategy have repeatedly proven to be decisive in achieving a substantial reduction of the amounts claimed by the Argentine Customs

Authority and, in many cases, in limiting or avoiding the imposition of penalties altogether.

The Paraguay–Paraná Waterway

The last point we consider important to mention relates to the system known as the “Paraguay–Paraná Waterway”.

This is a natural international river system stretching 3,442 km along the Paraguay and Paraná rivers, which facilitates economic, commercial and operational integration between Brazil, Bolivia, Paraguay, Argentina and Uruguay, as a result of the international integration agreement known as the Paraguay–Paraná Waterway River Transport Agreement (Puerto Cárceles–Nueva Palmira).

This continuous river navigation route is widely used by the five countries that signed the agreement to transport bulk cargo, such as soybeans, corn, wheat and their derivatives (flour, oils, etc), as well as other plant-based cargo, iron ore and fuels.

Paraguay currently transports a cargo volume of around 20 million tonnes, and Argentina exports approximately 120 million tonnes of plant-based cargo to the world via this route.

Traffic on this corridor has been increasing exponentially year on year, making it an extremely important tool for regional and international trade in South America.



Law and Practice

Contributed by:

Richard Horton and Emma Van Wynen
Alexiou, Knowles & Co.

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Alexiou, Knowles & Co. is a leading Bahamian law firm providing expert legal services to both domestic and international clients. It is a full-service law firm with core practice areas covering: commercial and corporate litigation; admiralty and maritime; financial services; real estate and development; and trusts and estate planning. The firm is trusted to advise some of the most prominent individuals and corporations in The Bahamas and abroad, and is frequently engaged in some of the jurisdiction's largest and most

complex legal matters. The firm's admiralty and maritime team is widely recognised for its jurisdictional expertise and practical industry knowledge. This experienced and specialist team support clients across a wide range of shipping-related matters, including ship arrests on behalf of mortgagee banks, releases, pendente lite sales, priority disputes, insurance claims (acting on behalf of Lloyds insurers and owners), ship registrations and mortgages, and advising cargo interests and shippers on cargo claims.

Authors



Richard Horton is a partner in Alexiou Knowles & Co.'s litigation and dispute resolution practice group. He specialises in admiralty and maritime issues, and has expert knowledge in ship arrests, releases, sales and

determinations of priorities. Richard was recently involved in the much-publicised M/V Crystal Supreme Court dispute, which involved large maritime assets, complex creditor rights under Bahamian law, and high-value judicial sales of the cruise ships. Richard also leads the labour and employment team. He was called to the Bar of England and Wales in 2002. He has also been called to the Bar of the Commonwealth of The Bahamas, where he has been practising since 2005.



Emma Van Wynen joined Alexiou Knowles & Co. in 2024 and is an associate in the firm's litigation and dispute resolution practice group. Emma was called to the Bar of England and Wales and to the Bar of

the Commonwealth of The Bahamas in 2024. A member of the Honourable Society of Lincoln's Inn, Emma recently completed her pupillage with the firm, working in a variety of practice areas, including corporate and commercial law, banking and finance, admiralty and maritime law, and employment law. As an associate, Emma continues to work closely alongside Richard Horton in the firm's admiralty and maritime law department.

Alexiou, Knowles & Co.

St Andrew's Court
Frederick Street Steps
PO Box N-4805
Nassau
The Bahamas

Tel: +1 242 322 1126
Fax: +1 242 325 0768
Email: info@bahamaslaw.com
Web: www.bahamaslaw.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic laws establishing the authorities of the maritime and shipping courts in The Bahamas include:

- the Supreme Court Act, 1996, which confers admiralty jurisdiction on the Supreme Court;
- the Merchant Shipping Act, 1976, which governs ship registration, maritime obligations and seafarers' rights; and
- the Supreme Court Civil Procedure Rules, 2022, which regulate the procedure for admiralty proceedings, including actions in rem and the arrest of vessels.

The Supreme Court of the Commonwealth of The Bahamas is the principal court exercising admiralty jurisdiction in maritime and shipping matters. Appeals from the Supreme Court lie to the Court of Appeal, with a final right of appeal (with leave) to the Judicial Committee of the Privy Council in London, England.

Maritime and shipping claims commonly filed in The Bahamas include:

- disputes relating to possession and ownership of vessels;
- enforcement of ship mortgages;
- unpaid bunkers and crew wages;
- cargo loss or damage;
- groundings;
- collisions; and
- other claims for damage done by a ship.

These claims are typically brought in the Supreme Court as admiralty proceedings by way of actions in rem against the vessel.

1.2 Port State Control

The Bahamas Maritime Authority (BMA) acts as the technical regulator and competent authority for both flag state and port state control throughout The Bahamas, which is exercised in accordance with the Carib-

bean Memorandum of Understanding on Port State Control (CMOU). The BMA was established in 1995 by the Bahamas Maritime Authority Act, with the objective of promoting safer ships and cleaner seas as well as eliminating the operation of sub-standard ships in the Caribbean region through a harmonised system of port state control.

The BMA works in co-ordination with the Bahamas Port Department, a government agency under the Ministry of Energy and Transport that serves as the operational and territorial maritime authority, ensuring harbour safety, compliance with local regulations, and management of port infrastructure, with both the BMA and Port Department operating under overall policy direction from the Minister responsible for Maritime Affairs (the "Minister").

In the event of a marine casualty involving serious injury or loss of life, the Minister may initiate a preliminary review or direct that a formal marine investigation be conducted, to be supported or administered by the BMA. A formal investigation under these circumstances is carried out by a Wreck Commissioner, who may be a judge, chief magistrate, or an attorney of at least ten years' standing, assisted by one or more maritime assessors appointed for their technical expertise.

In instances of groundings, as with all marine casualties, the BMA must be notified. The procedure outlined above may also be utilised. See Sections 240A through 248 of the Merchant Shipping Act for further guidance on shipping casualties, inquiries and investigations.

With respect to marine pollution, the Minister is empowered to give effect to international maritime pollution conventions ratified by The Bahamas, including:

- the United Nations Convention on the Law of the Sea, 1982;
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- the Ballast Water Management Convention, 2004;
- the Anti-Fouling Systems Convention; and

- other international instruments addressing ship-source pollution and liability.

The Minister's powers in relation to pollution also include directing preventative or remedial measures, detaining vessels, and enforcing compliance and liability regimes where pollution occurs or is threatened.

Regarding wreck removal, the relevant port authority is empowered to:

- designate approved disposal or scuttling locations for wrecks and condemned vessels;
- order the removal, destruction or sinking of wrecks that constitute a hazard to navigation or the environment;
- carry out such removal at the owner's expense where the owner fails to comply; and
- notify the Minister of actions taken and co-ordinate further enforcement where required.

1.3 Domestic Legislation Applicable to Ship Registration

The primary domestic legislation governing registration of commercial and ocean-going vessels is the Merchant Shipping Act. Registration of smaller recreational vessels is governed by the Water Skiing and Motor Boat Control Act and the Boat Registration Act. The Port Department handles domestic registration of private pleasure craft; the BMA, as the responsible public authority for regulation and control of all matters related to shipping within The Bahamas, oversees registration of large commercial vessels and yachts.

1.4 Requirements for Ownership of Vessels

Vessels registered in The Bahamas are not required to be owned by Bahamian citizens. Foreign ownership is permitted, and ships of any nationality may be registered as Bahamian vessels provided they meet the applicable registration criteria.

In particular, ships of 1,600 gross tons or more engaged in international voyages may register as Bahamian regardless of the owner's nationality or place of incorporation. The Minister also has discretion to approve the registration of smaller seagoing vessels or yachts engaged in commercial or non-commercial activities (other than under a charter for the carriage of persons

for pleasure) that would not otherwise meet the tonnage threshold. The requirements for ownership of vessels registered in The Bahamas are set out under Section 9 of the Merchant Shipping Act.

Pursuant to Section 3 (5) of the Merchant Shipping Act, a ship that is under construction and whose keel has been laid may be registered in The Bahamas at that stage if it is wholly owned by Bahamian citizens or by Bahamian companies that are beneficially owned by Bahamian citizens, or if, regardless of the owner's nationality or place of incorporation, the completed ship will be 1,600 net tons or more. In such cases, the vessel may only be temporarily registered as a "ship being built", and the statutory requirements relating to survey, measurement and marking do not apply during the construction period.

1.5 Temporary Registration of Vessels

The laws of The Bahamas permit the temporary registration of vessels under specific conditions. As stated in 1.4 Requirements for Ownership of Vessels, ships under construction may be temporarily registered as ships being built, provided they meet the requirements of Section 3 (5) of the Merchant Shipping Act.

Provisional registration is also available during a flag-transfer procedure under Section 26 of the Merchant Shipping Act, which allows for provisional registration of up to six months (or for a longer period as a registrar or the director thinks fit) while the owner completes all documentary and survey requirements.

Dual registration is also possible under the Merchant Shipping Act Section 25 (and where the laws of the other flag allow it) for either of the following:

- Bahamian registered vessels to be bareboat chartered to another country's registry, where the bareboat charter is entered into with any citizen of a foreign country or with any corporate body established under the laws of a foreign country, whereby the Bahamian registration is deemed temporarily suspended; or
- a vessel registered in another country may be bareboat registered on the Bahamian register where the bareboat charter is entered into with any citizen of

The Bahamas or with any corporate body established under the laws of The Bahamas.

1.6 Registration of Mortgages

The BMA is the official authority responsible for maintaining the Bahamian Register of Ships, including the registration of ship mortgages, discharges and transfers. Ship mortgages may be registered at any of the BMA's offices, including Nassau, London, New York, Greece, Hong Kong and Tokyo.

The documentary requirements for registration of a mortgage in The Bahamas are as follows:

- mortgage registration form (Form R208), duly completed and notarised;
- written consent from all existing mortgagees to the registration of the new or additional mortgage (if applicable);
- registration fees, payable in accordance with BMA Bulletin No 81;
- attestation by an authorised witness (eg, notary public) confirming the identity, capacity and authority of the signatory; and
- supporting authority documents, where required (such as a notarised power of attorney or corporate constitutional documents).

1.7 Ship Ownership and Mortgages Registry

The shipping register (including mortgage details) in The Bahamas is treated as public record and may be inspected by members of the public at the registry office during normal business hours, usually for a prescribed fee.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Bahamian ship financing typically uses standard international loan or equity documents, secured by a first-ranking Bahamian statutory ship mortgage. Debt financing is protected by the mortgage plus assignments of earnings/insurances and share pledges, while equity investors rely mainly on contractual control and economic rights rather than vessel security. Ship mortgages under Bahamian law are simple, registration-based, ranked by time of registration (subject

to maritime liens) and give the lender strong sale and enforcement rights.

The most common Bahamian ship finance transactions are secured loan financings, where international lenders provide acquisition or refinancing debt to Bahamian SPVs secured by first-ranking Bahamian ship mortgages and related assignments. Also frequently seen are refinancings, sale-and-leaseback structures, fleet financings and (increasingly) equity or hybrid investments, all leveraging The Bahamas' established ship registry and lender-friendly legal and tax regime.

In addition to a Bahamian ship mortgage, lenders almost always require a broader security package, typically including assignments of earnings and insurances, share pledges over the ship-owning SPV, guarantees, and charges over bank accounts, to secure income streams and enhance recovery prospects.

2.2 Ship Leasing

Ship leasing transactions in The Bahamas have been increasing in recent years, particularly sale-and-leaseback and bareboat charter structures, as ship-owners seek alternatives to traditional bank financing. There has been a noticeable shift away from traditional bank lending towards Chinese leasing houses, private equity investors and other alternative credit providers.

In a lessor/lessee relationship, ownership remains with the lessor while the lessee holds only possession and use rights, whereas in a lender/borrower relationship, ownership stays with the borrower and the lender holds only a security interest. Enforcement also differs as lease defaults are typically resolved through arbitration, given their contractual nature, while ship mortgages are enforced through the Bahamian courts under the Merchant Shipping Act, a process that is often slower and may involve vessel liquidation. Sale-and-leaseback transactions are common and provide a faster, cleaner alternative to traditional mortgage enforcement.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The Bahamas is a signatory to a number of international conventions concerning pollution and wreck removal; these conventions are given force in Bahamian law through implementing statutes and regulations.

Pollution

The following conventions (and others) were given effect in The Bahamas by the Merchant Shipping (Oil Pollution) Act 1976 (as amended) and the subsidiary legislation made thereunder:

- the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocols of 1978 and 1997 (Annexes I, II, III, IV, V and VI);
- the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC), and the Protocols of 1976 and 1992;
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (FUND), and the Protocols of 1976 and 1992;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the "Bunker Convention"); and
- the International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties (INTERVENTION), 1969 and the Protocol of 1973.

Wreck Removal

The Nairobi International Convention on the Removal of Wrecks, 2007 was given effect in The Bahamas by the Merchant Shipping (Wreck Removal Convention) Regulations, 2015. The Merchant Shipping Act 1976 also applies to the removal of wrecks.

3.2 International Conventions: Collision and Salvage

The Bahamas is a signatory to several international conventions that impact on the liability of owners and interested parties in events of collision and salvage.

Collision

The Bahamas is a party to the Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), 1972, which is implemented in Bahamian law by the Merchant Shipping Act 1976 and its subsidiary legislation.

Salvage

The Bahamas is not a party to the International Convention on Salvage, 1989. Domestically, salvage provisions are included in the Merchant Shipping Act 1976 and its regulations, and the practice follows general international salvage principles.

3.3 Convention on Limitation of Liability for Maritime Claims

The 1996 Protocol amending the 1976 Convention on Limitation of Liability for Maritime Claims is not applicable in The Bahamas, nor has the 2012 amendment been accepted.

The 1976 Convention on Limitation of Liability for Maritime Claims was brought into force in The Bahamas by virtue of the Merchant Shipping (Maritime Claims Limitation of Liability) Act, 1989, as amended, and its subsidiary legislation.

3.4 Vienna Convention on the Law of Treaties

The Bahamas is not a signatory to the Vienna Convention on the Law of Treaties. However, because certain general principles contained in the Vienna Convention are reflective of customary international law, they will likely influence how such other treaties as the Convention on Limitation of Liability for Maritime Claims (so far as it is adopted into domestic law by the Merchant Shipping (Maritime Claims Limitation of Liability) Act, 1989, as amended, and its subsidiary legislation) are interpreted.

3.5 Procedure and Requirements for Establishing a Limitation Fund

A limitation fund may be constituted by:

- ship-owners (which means the owner, charterer, manager or operator of a seagoing ship);
- salvors; and
- their insurers.

The claims that may be limited are for death, personal injury, property loss or damage, etc.

A limitation fund may be constituted either before or after any legal proceedings are instituted in respect of claims subject to limitation in the Supreme Court.

The claim to establish the fund is brought by statement of claim in the Supreme Court, which must be served on at least one potential claimant. The action is in personam and service may therefore be effected out of the jurisdiction if necessary.

The fund must be constituted in a sum equal to the total maximum liability permitted for that casualty, calculated according to:

- the ship's gross tonnage; and
- the formulae for special drawing rights limits for damage to property and persons, (which is then converted into dollars by reference to the conversion rate set by the International Monetary Fund, and the Bahamas Central Bank may provide a certificate proving the relevant rate as a matter of conclusive evidence); plus
- interest at 6% calculated from the date of the casualty to the date of constituting the fund.

The fund may be constituted either by depositing the sum in the Supreme Court, or by producing a suitable guarantee.

Within seven days after a defendant acknowledges service, or within seven days after the time limited for acknowledging service, the claimant must issue an interlocutory application before a Supreme Court registrar asking for a decree limiting the claimant's liability, or for directions as to the further proceedings in the action. Defendants may dispute the limit sought by the claimant, which would be determined by a Supreme Court judge.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention, 2006 (MLC) is in force throughout The Bahamas and has been implemented into domestic law through the Merchant Shipping (Maritime Labour Convention) Regulations. The MLC establishes minimum international standards

for the working and living conditions of seafarers on Bahamian-flagged vessels, including:

- employment terms and conditions, including contracts, wages and hours of work/rest;
- accommodation, recreational facilities, and food and catering standards;
- medical care and health protection, including access to onboard medical facilities and shore-based medical services;
- training, certification and qualifications of seafarers; and
- welfare and social security protections, including repatriation rights and financial security for abandonment or injury.

In addition to the MLC regulations, the Merchant Shipping Act (which governs crew agreements, discharge procedures, and enforcement of seafarer contracts laws) also provides protections for seafarers.

4. Cargo Claims

4.1 Bills of Lading

The Hague Rules apply to bills of lading and cargo carriage from any port in The Bahamas to any other port (whether in The Bahamas or not), as enacted by the Carriage of Goods by Sea Act 1926.

4.2 Title to Sue on a Bill of Lading

Title to sue on a bill of lading in The Bahamas follows common law principles. There is no Bahamian equivalent of the UK Carriage of Goods by Sea Act 1926.

Shippers, consignees and lawful holders may sue, depending on the facts.

Assignments of rights are recognised, but must be proved – they are not automatic.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Whether the ship-owner is sued as carrier or actual carrier, its liability for cargo damages turns on breach of the following non-delegable duties.

- Seaworthiness (before and at the beginning of the voyage):
 - (a) properly manning, equipping and supplying the ship; and
 - (b) making holds, refrigerating chambers and cargo spaces fit and safe.
- Care of cargo:
 - (a) properly and carefully loading, handling, stowing, carrying, keeping, caring for and discharging the goods.

A breach of these duties would result in prima facie liability, but a ship-owner may avoid liability by proving that the loss resulted from, for example:

- act, neglect or default of the Master or crew in navigation or management of the ship;
- perils of the sea;
- fire (unless caused by actual fault or privity of the carrier); and
- act of God, act of war, inherent vice, insufficiency of packing, etc.

Under Article IV Rule 5 of the Hague Rules, liability is limited to GBP100 per package or unit, unless the nature and value of the goods were declared before shipment and inserted into the bill of lading.

The ship-owner may also invoke global limitation as mentioned in **3.5 Procedure and Requirements for Establishing a Limitation Fund**.

4.4 Misdeclaration of Cargo

Under Bahamian law (specifically, Section 5 of the Carriage of Goods by Sea Act 1926), a carrier can establish a claim against a shipper for misdeclaration of cargo, and the statutory regime provides the legal basis for it. However, there is very limited reported Bahamian case law directly on this specific point.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Paragraph 6 of Article III of the Hague Rules provides as follows:

“Written notice should be given of any loss or damage to cargo at the time of delivery, unless the loss or damage is not apparent, in which case the notice should

be given within three days of delivery, failing which the receipt without such notice would be prima facie evidence of the goods being in the condition described in the bill of lading.”

The written notice need not be given if the state of the goods has at the time of receipt been the subject of a joint survey or inspection.

In any case the carrier and ship would be discharged from all liability for loss or damage unless proceedings are brought within one year after delivery of the goods (or the date when the goods should have been delivered).

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The Bahamas is a party to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952.

Ship arrests in The Bahamas are covered by the following domestic laws:

- the Supreme Court Civil Procedure Rules 2022;
- the Supreme Court Act 1996;
- the Merchant Shipping Act 1976 (the Merchant Shipping Act 2021 has not yet come into force); and
- case law (the common law) derived from The Bahamas’ own courts, as well as the UK and other common law jurisdictions.

5.2 Maritime Liens

The Bahamas recognises the following maritime liens by way of statute:

- wages and other sums due to the Master, officers and other members of the ship’s complement in respect of their employment on the ship;
- port, canal and other waterway dues and pilotage dues, and any outstanding fees payable under the Merchant Shipping Act 1976 in respect of the ship;
- claims against the owner in respect of loss of life or personal injury occurring, whether on land or on

water, in direct connection with the operation of the ship;

- claims against the owner, based on tort and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship; and
- claims for salvage, wreck removal and contribution in general average.

There is some overlap between statutory maritime liens and common law maritime liens. All of the statutory maritime liens except for the second category above are also maritime liens at common law. Other maritime liens that arise solely by virtue of the common law (bottomry and respondentia) are now largely obsolete.

Not all maritime claims attract a maritime lien. The maritime claims that do not attract a maritime lien include claims for necessities (including bunkers) and contractual claims (including claims for breach of charterparty).

The following maritime claims may give rise to an arrest of a ship (all ships are subject to arrest, whether Bahamian or not, and whether registered or not, wherever the residence or domicile of their owners may be, and in relation to all claims wheresoever arising):

- any claim to the possession or ownership of a ship or to the ownership of any share therein;
- any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- any claim in respect of a mortgage of or a charge (whether legal or equitable, including mortgages and charges created under foreign law) on a ship or any share therein;
- any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried in a ship or for the restoration of a ship or any such goods after seizure or for droits of Admiralty; and
- in any case in which there is a maritime lien or other charge on any ship, aircraft or other property.

The following claims may give rise to the arrest of the relevant ship or a sister ship (see also 5.7 Sister-Ship Arrest):

- any claim for damage done by a ship;
- any claim for damage received by a ship;
- any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in its 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 the owners, charterers or persons 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 or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- any claim for loss of or damage to goods carried in a ship;
- 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;
- any claim in the nature of salvage;
- any claim in the nature of towage in respect of a ship or an aircraft;
- any claim in the nature of pilotage in respect of a ship or an aircraft;
- any claim in respect of goods or materials supplied to a ship for its operation or maintenance;
- any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- any claim by a Master or member of the crew of a ship for wages and any claim by or in respect of a Master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Act, is recoverable as wages in the court and in the manner in which wages may be recovered;
- any claim by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- any claim arising out of an act which is or is claimed to be a general average act; and
- any claim arising out of bottomry.

Time bars for maritime claims and liens (the same approach generally applies to both) are generally the same as for regular civil claims (ie, six years for claims in contract and tort and three years for claims including personal injury or death), although certain claims have a shorter time bar as follows:

- claims for oil pollution (ie, three years from the date of damage or six years from the date of the incident which caused the damage);
- claims for salvage (ie, two years);
- claims for damage or loss caused by another vessel or to its cargo, freight or property on board, or for loss of life or personal injuries suffered by any person on board another vessel caused by the vessel sought to be enforced against (ie, two years, unless the claimant can show that there was no reasonable opportunity of arresting the vessel within the jurisdiction of The Bahamas or the territorial waters of the ship's flag, or in which the claimant resides or has their principal place of business sooner);
- claims for personal injury or death to a passenger or for the loss of or damage to luggage, where the ship is flying the flag of or is registered in a state party to the Athens Convention 1974 (the Bahamas is a "state party"), or where the contract of carriage has been made in a state party or the place of departure or destination is a state party (ie, two years);
- claims to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injuries (ie, one year);
- cargo claims against the carrying ship (ie, one year); and
- in rare cases, an arrest may be refused where by reason of delay such arrest would be unjust (ie, laches).

5.3 Liability in Personam for Owners or Demise Charterers

Under Bahamian law, a vessel can be arrested regardless of its owner's personal liability on the merits constituting a recognised maritime lien. Maritime liens attach to the vessel itself rather than the owner, and they survive changes in ownership, even if the transfer is for value and without notice of the claim.

5.4 Unpaid Bunkers

A bunker supplier can generally arrest a vessel in connection with unpaid bunkers.

Physical suppliers of bunkers (in contrast to contractual suppliers) are not in contractual privity with the ship-owner, and have faced challenges in asserting their rights to arrest vessels.

If bunkers are ordered by a charterer and not the owner, the ability to arrest the vessel may be limited.

A charterer is generally not considered to have the authority to bind the vessel by ordering necessities unless expressly authorised by the owner.

5.5 Arresting a Vessel

In order to procure the arrest of property, the claimant has to:

- issue a statement of claim;
- make a search of the caveat book (though the caveat book is not available in electronic form and has fallen out of use) to confirm that there are no caveats against arrest;
- file a praecipe requesting the issuance of the warrant of arrest;
- file an affidavit to lead the application containing specified particulars (including the nature of the claim, though the court has discretion to order the issuance of the warrant even if all the particulars are not included);
- in the case of applications in respect to foreign ships with a flag state having a consulate in New Providence where the action is for possession or for wages, notice must be given to that consulate (except with leave of the court); and
- typically, the application is made by ex parte notice of application.

The affidavit may be sworn or affirmed by on the basis of instructions due to time constraints, but there is no longer any requirement for original affidavits to be filed, or for them to be apostilled, even if they are sworn or affirmed in non-Commonwealth countries. The affidavit must be notarised, and then a scanned copy can be filed electronically. There is no requirement for a power of attorney. Documents in a foreign

language should be translated and the translation certified.

Once the court orders the issuance of an arrest warrant, the attorneys for the party that has procured this must make a formal request to the Admiralty Marshal for service – this request must include an undertaking by the attorneys to be responsible for the reasonable costs and expenses involved in the service and subsequent custody of the vessel. Attorneys therefore generally require from their clients either the deposit of a sum of money to cover the estimated costs of the arrest (or for a certain timeframe under arrest) and/or, in the case of instructions from a reputable firm of solicitors, a back-to-back undertaking.

The warrant must be served by the Admiralty Marshal or their agent on the vessel, and the statement of claim is typically served at the same time.

5.6 Arresting Bunkers and Freight

It is not possible to arrest bunkers by themselves, although they might be subject to a freezing injunction – a more onerous process. Bunkers belonging to the vessel owners would be considered under arrest along with the vessel itself.

A warrant for the arrest of freight can be executed by serving it on the cargo itself. If cargo is on board a vessel that is arrested (and generally in such case the cargo itself would not be under arrest), it may be discharged by application to the court for an appropriate order, which would be at the cost of the cargo owners.

5.7 Sister-Ship Arrest

A sister-ship arrest is possible in The Bahamas. Under Sections 8 and 9 of the Supreme Court Act, the court may order the arrest of a vessel other than the one directly involved in the dispute, provided that the “sister-ship” is beneficially owned by the same person who would be liable in personam in an action against the original vessel (such as the owner, charterer, or person in possession or control). This type of arrest is used to secure maritime claims when the claimant cannot immediately arrest the vessel directly involved in the dispute.

Sister-ship arrests apply only to recognised maritime claims, as outlined under **5.2 Maritime Liens**, and the court will require evidence of common beneficial ownership and the existence of a qualifying claim. Sister-ship arrest can be an effective tool in The Bahamas, particularly given the jurisdiction’s active ports and anchorage points, making it attractive for claimants seeking maritime security.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, a claimant can also apply to obtain a freezing (“Mareva”) order, but must satisfy several conditions, including showing a “good arguable case” and a risk of non-satisfaction of judgment, and providing an undertaking in damages.

5.9 Releasing an Arrested Vessel

Assuming that the vessel is not sold by court order, it may be released in the following ways.

- By consent with the arresting party and any other interested party, either by way of settlement and/or provision of security acceptable to the claimant. The amount of security should be sufficient to cover the amount of the claim plus interest and legal costs. The form of security could be a bank or insurance company guarantee or P&I club letter of undertaking. Although it would be possible to open a joint account with attorneys on both sides and deposit the agreed amount there, practical delays are involved in opening such accounts. Another method the authors have used successfully is to deposit the agreed amount in the authors’ trust account subject to the terms of a letter of undertaking given by the firm to the arresting party. A form of consent is then filed with the court signed by the parties.
- By the provision of a bail bond to the court or payment into court. If there is a dispute as to the amount of the security, the court may determine the amount, though this is usually best done by way of adjustment after release in order to avoid delays.
- By application to the court where the arrest is, for example, improper or wrongful.

5.10 Procedure for the Judicial Sale of Arrested Ships

The procedure for the judicial sale of an arrested ship is that the arresting party files an application to the court supported by an affidavit. Such application may be made either after judgment or before (ie, “pendente lite”).

In the case of a sale *pendente lite*, the court must be satisfied that the vessel is a diminishing asset (ie, on the basis of evidence that the costs and expenses of the arrest are eroding its value) – if there is evidence that the equity in the vessel has already been extinguished by well-founded claims, this would make for an even stronger case. Such an order may be made in the face of an attempt by a defendant to defend the claim on its merits.

Usually (but not always) an appraisal is obtained by the Admiralty Marshal prior to the sale being advertised for sale in an international shipping publication. The bidding process is usually by sealed tender, though private sales have taken place as recently as 2015, albeit in special circumstances.

The Admiralty Marshal is liable for maintaining the vessel from arrest until sale, although the office of the Admiralty Marshal has no budget for such activities and the arresting party’s attorneys are therefore usually asked to pay such costs on an interim basis pursuant to their undertaking. Those expenses will be reimbursed to the service providers and/or the arresting party from the proceeds of sale as a priority.

In terms of priorities, a general framework (in order) is as follows:

- the Admiralty Marshal’s costs and expenses of the arrest and sale;
- the arresting party’s legal costs of the arrest and sale;
- the maritime liens in the order in which they are set out in **5.2 Maritime Liens**;
- mortgages, with Bahamian registered mortgages being afforded priority over other mortgages; and
- claims for necessities and contractual claims are usually ranked *pari passu* with each other.

There are many scenarios that can affect the ranking of priorities.

5.11 Insolvency Laws Applied by Maritime Courts

The closest Bahamian analogue to Chapter 11 of the United States Bankruptcy Code is found in Sections 160–167 of the Companies Act, whereby a scheme of arrangement can be proposed between a company and its creditors or shareholders.

With court approval and majority creditor consent (75% in value and majority in number), the scheme can restructure debts, reorganise ownership or effect other arrangements. Once sanctioned by the court, the scheme becomes binding on all creditors or the relevant class.

The Supreme Court can order the arrest and judicial sale of a vessel owned by owners that are under either “Chapter 11” proceedings or a scheme of arrangement pursuant to Sections 160–167 of the Companies Act, as there is no automatic moratorium under the Companies Act and the automatic stay under Chapter 11 does not apply in The Bahamas. However, the Supreme Court, upon application, could order the stay of sale proceedings if a compelling equitable reason is put forward. There is no automatic recognition of the US Chapter 11 insolvency proceeding.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The arresting party is only liable to the vessel owner for damages arising from wrongful arrest if the arrest was obtained maliciously or with gross negligence, amounting to *mala fides* (bad faith) or *crassa negligentia* (gross negligence). This is a very high burden. However, costs may be awarded against the arresting party if their claim against the vessel ultimately fails.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The Bahamas is a contracting state to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 and its 1976 Protocol,

which applies to the resolution of maritime passenger claims. As mentioned, the Bahamas is also a signatory to the 1976 Convention on Limitation of Liability for Maritime Claims, which also applies to claims for damage to property, including passenger luggage, in connection with a voyage. Both conventions were incorporated into Bahamian law by the Merchant Shipping (Maritime Claims Limitation of Liability) Act 1989, as amended.

As set out in **5.2 Maritime Liens**, the time limit for filing maritime passenger claims under the Athens Convention is two years calculated from either the date of disembarkation or the date when disembarkation should have occurred.

Owners/carriers may limit liability where the loss resulted from a shipping incident or other onboard occurrence, unless the passenger proves that either:

- the damage resulted from the carrier's fault or neglect; or
- the carrier acted recklessly and with knowledge that such damage would probably result.

Separate limits apply for:

- cabin luggage;
- vehicles and luggage carried in or on vehicles; and
- other luggage.

Owners may rely on these limits unless the passenger proves intentional or reckless conduct with knowledge of probable damage.

Although claims for personal injury would likely be recognised as a maritime lien (as mentioned in **5.2 Maritime Liens**, so long as they are in direct connection with the operation of the ship), the same would not be the case for claims for indemnities for personal injuries.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Bahamian courts generally recognise and enforce law and jurisdiction clauses stated in bills of lading and treat them as binding contractual agreements under the common law principle of freedom of contract. Instances where the court may not uphold a law and jurisdiction clause stated in a bill of lading include where:

- the clause is ambiguous or invalid;
- enforcement would contravene Bahamian public policy; or
- it conflicts with statutory protections under the Carriage of Goods by Sea Act or other applicable laws affecting cargo owners or third parties.

However, in the absence of the foregoing concerns, the Supreme Court will usually give effect to the parties' choice of governing law and forum.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

The Bahamian Supreme Court will enforce law and arbitration clauses of a charterparty only if they are clearly and expressly incorporated into the relevant bill of lading. If incorporation is unclear or ambiguous, the clause will not bind the bill of lading holder. Once properly incorporated, the Court will generally treat such clauses like any other contractual term, enforcing law and arbitration provisions in accordance with English common law principles subject to public policy and any statutory protections.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in The Bahamas, having been incorporated into domestic law through the Arbitration (Foreign Arbitral Awards) Act, which came into effect in 2010.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

While the Bahamian Supreme Court has the power to order the arrest of a vessel even where the underlying claim is subject to a foreign arbitration or jurisdiction clause, if an application is made to stay the proceedings the court will carefully consider the effect of such clauses and may stay the underlying proceedings if it would be inconsistent with a valid agreement to arbitrate or exclusive foreign jurisdiction, although the vessel would probably remain under arrest.

Claimants may therefore use a Bahamian ship arrest to preserve security while pursuing arbitration abroad, and the Supreme Court will generally support this, provided that the arrest does not unfairly prejudice the ship-owner. The Court will generally try to balance the claimant's right to security against the parties' agreement on forum/arbitration, sometimes allowing an arrest to preserve security while deferring the substantive dispute to the agreed forum.

If arbitration is commenced in a foreign country after a vessel has been arrested in The Bahamas, the Court will generally maintain the arrest as security for the claimant's potential award, unless the parties apply for its release. The Supreme Court in those instances recognises that the arrest is a conservatory remedy and separate from the merits of the dispute. If a valid foreign arbitration is under way, the courts may allow the arrest to continue or require the claimant to provide alternative security depending on the circumstances.

7.5 Domestic Arbitration Institutes

Despite not having a dedicated arbitration institute for maritime claims, The Bahamas is a viable seat for international commercial arbitration, including disputes involving shipping and maritime matters. Based on the UNCITRAL Model Law, arbitration in The Bahamas is governed primarily by the Arbitration Act, 2009, and for international disputes also relies on the International Commercial Arbitration Act, 2023. These statutes provide for the conduct of arbitration in The Bahamas, including the recognition and enforcement of arbitral agreements, the appointment of arbitrators, procedural rules and the enforcement of arbitral awards.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

A defendant served with proceedings in breach of a foreign jurisdiction or arbitration clause would typically apply (upon notice to the other parties to the proceedings) for a stay of proceedings pursuant to Section 9 of the Arbitration Act, 2009. The application must demonstrate the existence and validity of any foreign jurisdiction or arbitration clause, and that the dispute falls within its scope. Furthermore, an application under this rule may not be made unless and until the person served with the proceedings takes the appropriate procedural steps to acknowledge the proceedings against them.

For arbitration clauses, the defendant relies on the Arbitration Act, 2009 or the International Commercial Arbitration Act, 2023, requesting the court to compel arbitration. If proceedings have already been initiated in breach of a foreign court clause, the defendant may also seek an anti-suit injunction to restrain the claimant from continuing in the wrong forum. Where appropriate, the defendant can additionally request costs for defending proceedings improperly commenced in breach of the agreement. The court will grant relief unless satisfied that the arbitration agreement or clause is null and void, inoperative, or incapable of being performed.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The Bahamas is a tax-neutral jurisdiction that specifically does not impose income, capital gains or corporate taxes (among others, which are irrelevant in the context of shipping). As a result, both Bahamian-incorporated and foreign-incorporated shipping companies enjoy full exemption from corporate income tax on vessel income without the need for a formal tonnage tax or accelerated depreciation system.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Non-performance of a shipping contract in The Bahamas may be considered as force majeure, but only where the contract expressly includes a force majeure clause and the event qualifies, which will depend on the facts of each case and the precise wording of the clause.

Typical force majeure events such as acts of God, labour strikes, war, pandemics and so forth may qualify; however, mere difficulty in performance, expense or delay will not automatically constitute force majeure. The party relying on force majeure bears the burden of proof to demonstrate that the event occurred, that it directly caused the non-performance, and that no reasonable steps could have been taken to avoid or mitigate its effects. Prompt notification to the other party is also usually required, and failure to provide timely notice may preclude reliance on the clause.

A shipping contract will be considered frustrated only where performance is rendered objectively impossible by an unforeseen, supervening event beyond the control of the parties, and where the risk of that event has not been contemplated by the contract. Bahamian courts will not find frustration where non-performance arises from foreseeable circumstances including self-induced difficulties or ordinary commercial hardship, which might include late delivery, slow loading or unloading, or non-arrival of a chartered vessel due to operational inefficiencies.

Typical events that may give rise to frustration include the loss or total unavailability of a vessel, closure of a port by unforeseen government action or natural disaster, sudden regulatory or legal prohibition making a shipment illegal, etc. It is important to note, however, that standard contractual provisions will generally preclude a finding of frustration in The Bahamas.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

The Bahamas implements the IMO 2020 sulphur cap through its status as a state party to MARPOL

Annex VI, which regulates emissions from ships and applies to vessels of 400 gross tonnage and above on international voyages, as well as to any ship operating in Bahamian territorial waters or calling at Bahamian ports. The sulphur content of fuel oil must not exceed 0.50% m/m, except where a vessel uses an IMO-approved equivalent compliance method (such as an exhaust gas cleaning system) or where a stricter limit applies within designated emission control areas (0.10% m/m).

Compliance with these requirements in The Bahamas is enforced by the BMA in its capacity as both flag state and port state authority, principally through port state control inspections and flag state oversight, including verification of bunker delivery notes, fuel sampling, record-keeping and certification. While the regulatory framework clearly empowers inspection, detention and sanction for non-compliance, there are no widely reported or publicly documented enforcement proceedings or sanctions in The Bahamas to date that are specifically attributable to breaches of the IMO 2020 sulphur content limitation.

9.3 Trade Sanctions

The International Obligations (Economic and Ancillary Measures) Act, 1993 (as amended) (IOEAMA) provides for the imposition of economic sanctions and for taking ancillary measures to give effect to the international obligations of The Bahamas, such as UN international trade sanctions. The IOEAMA provides that, when the UN Security Council adopts a sanctions resolution, the text of that resolution (including annexes, schedules, amendments) has full force and effect as domestic law in The Bahamas from the date that the UN adopts it, without the need for separate enabling legislation for each resolution. As a result, UN-mandated sanctions are legally binding and enforceable in The Bahamas.

Section 3A of the IOEAMA is regularly referenced in public notices issued by the Central Bank and the Securities Commission of The Bahamas as the legal basis for implementing updated UN sanctions lists and measures. The IOEAMA works alongside the Anti-Terrorism Act, 2018 and the Anti-Terrorism Regulations, 2019, which also provide legal authority for the automatic domestic implementation of UN Security

Council sanctions related to terrorism and terrorism financing.

While The Bahamas does not automatically adopt foreign sanctions by default (such as those imposed by the EU, UK or USA on a specific country or company), such foreign sanctions carry legitimate commercial and regulatory weight in The Bahamas. Bahamian authorities and businesses take foreign sanctions seriously and will often take such measures into account in practice, particularly (for example) where correspondent banking or international insurers are concerned.

In relation to the war in Ukraine, The Bahamas has implemented the relevant UN sanctions regimes arising from the conflict, and the principal impact within the jurisdiction has been felt at a compliance and risk-management level, particularly within the financial services, shipping and trade finance sectors, rather than through widespread trade disruption or litigation. There are no widely reported public cases of Bahamian-incorporated entities being sanctioned under Ukraine-related regimes or of domestic court proceedings arising directly from breaches of such sanctions.

9.4 International Conflict

As a common law jurisdiction whose maritime and commercial law is closely aligned with English law, The Bahamas recognises that international conflicts and related disruptions to global shipping routes (including the war in Ukraine, attacks on vessels in or near the Red Sea, or loss of access to the Suez Canal) may give rise to significant legal and commercial implications, notwithstanding that such events occur outside Bahamian waters. While The Bahamas is not directly affected geographically by such conflicts, Bahamian courts and arbitral tribunals would address these issues by applying established principles of contract, insurance and maritime law, with close regard to common law English authorities.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The Merchant Shipping Act 2021, which is intended to repeal and replace the Merchant Shipping Act 1976, is expected to be brought into force this year (2026) along with a raft of new subsidiary legislation.

It is beyond the scope of this article to analyse the anticipated changes in detail, but suffice to say that it represents a substantial modernisation of the maritime legislation that has governed Bahamian shipping under the Merchant Shipping Act 1976. The 1976 Act was based heavily on the UK Merchant Shipping Act 1894 (together with certain later UK amending statutes – between 1906 and 1958), whereas the 2021 Act is modelled after the UK Merchant Shipping Act 1995 and brings The Bahamas into alignment with contemporary international maritime standards and the country's obligations under major IMO conventions.

Trends and Developments

Contributed by:

Richard Horton and Emma Van Wynen
Alexiou, Knowles & Co.

Alexiou, Knowles & Co. is a leading Bahamian law firm providing expert legal services to both domestic and international clients. It is a full-service law firm with core practice areas covering: commercial and corporate litigation; admiralty and maritime; financial services; real estate and development; and trusts and estate planning. The firm is trusted to advise some of the most prominent individuals and corporations in The Bahamas and abroad, and is frequently engaged in some of the jurisdiction's largest and most

complex legal matters. The firm's admiralty and maritime team is widely recognised for its jurisdictional expertise and practical industry knowledge. This experienced and specialist team support clients across a wide range of shipping-related matters, including ship arrests on behalf of mortgagee banks, releases, pendente lite sales, priority disputes, insurance claims (acting on behalf of Lloyds insurers and owners), ship registrations and mortgages, and advising cargo interests and shippers on cargo claims.

Authors



Richard Horton is a partner in Alexiou Knowles & Co.'s litigation and dispute resolution practice group. He specialises in admiralty and maritime issues, and has expert knowledge in ship arrests, releases, sales and

determinations of priorities. Richard was recently involved in the much-publicised M/V Crystal Supreme Court dispute, which involved large maritime assets, complex creditor rights under Bahamian law, and high-value judicial sales of the cruise ships. Richard also leads the labour and employment team. He was called to the Bar of England and Wales in 2002. He has also been called to the Bar of the Commonwealth of The Bahamas, where he has been practising since 2005.



Emma Van Wynen joined Alexiou Knowles & Co. in 2024 and is an associate in the firm's litigation and dispute resolution practice group. Emma was called to the Bar of England and Wales and to the Bar of

the Commonwealth of The Bahamas in 2024. A member of the Honourable Society of Lincoln's Inn, Emma recently completed her pupillage with the firm, working in a variety of practice areas, including corporate and commercial law, banking and finance, admiralty and maritime law, and employment law. As an associate, Emma continues to work closely alongside Richard Horton in the firm's admiralty and maritime law department.

Alexiou, Knowles & Co.

St Andrew's Court
Frederick Street Steps
PO Box N-4805
Nassau
The Bahamas

Tel: +1 242 322 1126
Fax: +1 242 325 0768
Email: info@bahamaslaw.com
Web: www.bahamaslaw.com



Introduction

Shipping has always been central to The Bahamas. What began as a haven for pirates, wreckers and smugglers evolved into a colonial trading post and a Prohibition-era trans-shipment hub, with each period helping to establish the island nation as a strategically positioned maritime jurisdiction. Located at the crossroads of major Atlantic and Caribbean shipping routes, and close to the eastern seaboard of the United States and the Panama Canal, the same geography that first attracted seafarers to The Bahamas now supports a sophisticated legal and regulatory framework governing modern shipping, admiralty and maritime commerce.

Over time, the Bahamas has established itself as a premier and internationally respected flag state, with the Bahamian Ship Registry ranking among the largest open registries globally and providing ship-owners with the convenience of registering their vessels under the Bahamian flag through any of the Bahamas Maritime Authority (BMA) offices in London, Nassau, New York, Hong Kong, Piraeus and Tokyo. The Bahamian flag maintains “White List” status under the Paris and Tokyo Memorandums of Understanding (MoUs), reflecting The Bahamas’ adherence to international maritime conventions and its commitment to administrative and safety standards across its fleet.

Bolstered by a legal system based on English common law, The Bahamas continues to attract ship-owners and other investors seeking a stable and predictable jurisdiction. A tax-neutral environment, The Bahamas has also seen sustained growth in both private and charter yacht sectors, driven by demand for reputable registration and flexible ownership structures. These developments have been accompanied by ongoing legislative and regulatory reform, most recently in the areas of port authority governance and environmental compliance, as the jurisdiction continues to align with evolving international standards.

Department of Inland Revenue’s Attempt to Charge VAT on Judicial Sale of Vessels

Contrary to well-established admiralty principles both in The Bahamas and throughout international practice, in 2023 the Bahamian government launched an unprecedented attempt to impose value-added

tax (VAT) on the judicial sale proceeds of two Crystal Cruises motor vessels known as the M/V *Crystal Symphony* and M/V *Crystal Serenity* (the “Vessels”).

The Vessels were arrested in Bahamian waters in February 2022 and were soon thereafter sold on a pendente lite basis for the combined sum of USD128 million. Roughly four months after the Vessels’ sale, the Office of the Attorney General, acting alongside the Department of Inland Revenue and the Comptroller of VAT, issued a notice to the Admiralty Marshal assessing VAT on the transaction in the amount of USD11.6 million. The government’s position stunned members of the jurisdiction’s maritime and legal sectors. If it had succeeded, the assessment would have constituted one of the single largest VAT claims ever advanced in The Bahamas and risked creating uncertainty for the jurisdiction’s ship financing and enforcement landscape.

At the heart of the government’s case was the contention that VAT was chargeable because the Vessels’ sale occurred within The Bahamas and involved Bahamian-flagged vessels. This argument departed from long-standing admiralty principles under which judicial sales of vessels have never been characterised as taxable commercial transactions or treated as attracting VAT. Attorneys representing the mortgagee bank and various other creditors engaged in a multi-year litigation dispute in connection with the Vessels, with many practitioners sharing a common goal of safeguarding the integrity of Bahamian admiralty jurisprudence, specifically in the face of the government’s novel position.

Ultimately, in a highly anticipated ruling delivered in February 2024, the Supreme Court of The Bahamas confirmed that VAT does not form part of the Admiralty Marshal’s recoverable expenses arising from a court ordered sale of vessels. In its decision, the Court endorsed established admiralty precedents and found no basis under Bahamian law or international maritime practice to support the inclusion of VAT as a Marshal’s expense, nor any authority indicating that judicial sales have historically been subject to VAT.

The Court further ordered the release of the full USD11.6 million, which had been held in a joint

account pending the determination of the government's tax appeal. In doing so, the Court cited the prolonged delays in the advancement of the VAT claim and held that it would not be in the interests of justice to continue withholding the funds from the judgment creditor bank, particularly considering the overwhelming authorities confirming that VAT was not chargeable on judicial sales.

This landmark decision provided reassurance that Bahamian courts will seek to uphold established admiralty standards and maintain a stable legal foundation that offers certainty with respect to future practice and general maritime litigation, particularly in ship financing and enforcement contexts.

Yachting

Charter yacht registration represents an area of growth within The Bahamas' maritime sector. In 2025, the BMA introduced targeted reforms to its yacht registration policies that affected both small charter yachts (SCYs, between 12 and 24 metres) and large charter yachts (LCYs, 24 metres and above), with particular focus on eligibility criteria and operational thresholds. With effect from 1 July 2025, the BMA no longer accepts new registrations of charter yachts below 20 metres. Vessels between 20 and 24 metres are subject to discretionary approval, while yachts of 24 metres and above continue to be eligible as of right. Existing yachts registered prior to 1 July 2025 are expressly grandfathered, provided they remain compliant with statutory and survey requirements.

These changes reflect a deliberate policy shift in the Bahamian yachting industry towards larger, ocean-capable vessels designed for extended operations and international charter service. Registration is no longer treated as a purely administrative exercise, but rather is now explicitly linked to compliance with the relevant yacht code and technical survey standards.

Alongside regulatory adjustments, the use of sophisticated ownership and registration structures has continued to grow in The Bahamas. Special purpose vehicles remain a common feature of yacht ownership, providing flexibility for asset protection and financing arrangements. The Bahamas' common law framework, with the final court of appeal being the

Judicial Committee of the Privy Council sitting in London, England (House of Lords), coupled with its established ship mortgage regime, provides clarity of title and creditor protection, which is especially important for high-value charter yachts.

Separately, with effect from 1 July 2025, The Bahamas implemented a revised cruising permit and fee structure under the Customs Management (Amendment) Regulations, 2025. Under the new rules, vessels of 34 feet and under are subject to a USD500 cruising permit fee; vessels exceeding 34 feet but not exceeding 100 feet are charged USD1,000, and vessels in excess of 100 feet are charged USD3,000. This represents a notable increase from the previous fee structure and has attracted significant industry attention.

While certain destinations – including Exuma and established superyacht hubs such as Staniel Cay – have reported little to no impact on vessel traffic, other regions (particularly Abaco) have expressed concern. Marina operators in those areas have reported reduced vessel numbers in the past few months, during what would traditionally be peak season, attributing this in part to the revised fee regime.

The Bahamian government has indicated that the increased fees were introduced with the aim of protecting national revenue and supporting environmental initiatives. However, feedback from marina operators, service providers and visiting yacht owners suggests that the changes may have had unintended commercial consequences, including deterring smaller vessels and short-stay visitors.

Recognising these concerns, the Ministry of Tourism acknowledged the need to strike a more effective balance, one that reflects national values, safeguards local interests, and reinforces The Bahamas' position as an open and welcoming jurisdiction for responsible yachting activity. The government has stated that a review of the current framework and its implementation is ongoing, with efforts under way to engage in constructive dialogue with marina operators, tour guides, service providers and small business owners.

These yachting developments underscore a broader policy emphasis on quality over quantity, and reinforce

The Bahamas' standing as a trusted jurisdiction for high-value maritime assets.

Environmental Regulation and Enforcement

As The Bahamas continues to grow as an attractive destination for both commercial and private vessels, environmental regulation has become increasingly crucial. Newly implemented legislation includes the Environmental Planning and Protection Act, 2019 (EPPA), which established a comprehensive statutory framework for environmental oversight and enforcement across a broad range of activities, including maritime operations. The EPPA represented a material departure from earlier approaches by consolidating regulatory authority and introducing for the first time the Department of Environmental Planning and Protection (DEPP). That framework was further strengthened by the Environmental Planning and Protection (Spot Fines) Regulations, 2024 and the Environmental Planning and Protection (Amendment) Act, 2024.

These laws have expanded the enforcement tools available to the government, enabling more immediate and proportionate responses to environmental breaches, including the imposition of administrative penalties and the recovery of remediation and restoration costs without the need for prolonged court proceedings. Most recently, in 2025 the DEPP relied on the Spot Fines Regulations when a barge in tow broke away from its tug and grounded on a reef off Abaco. Initial attention to the grounding focused on the looting of cargo from the stranded barge; however, the incident also reportedly resulted in extensive harm to the surrounding coral reef.

Specifically, Section 20 of the EPPA provides that any person who directly or indirectly cuts, carves, removes, displaces or breaks any underwater coral, plant growth or formation in the waters of The Bahamas commits an offence. Upon summary conviction, an offender is liable to a fine not exceeding USD10,000 or to imprisonment for a term not exceeding three years, or to both. Upon conviction on information, the offence attracts a fine not exceeding USD50,000 or imprisonment for a term not exceeding five years, or both.

Furthermore, the Director of the DEPP is empowered to recover compensation for environmental damage. This includes the cost of replacing, restoring or acquiring the equivalent of the damaged coral reef, or (where restoration is not feasible) the value of the loss of use of the reef. The Director may also recover the costs of damage assessments, remedial measures undertaken to minimise or prevent further harm to the reef, and the reasonable costs of monitoring the restored or replaced reef for a minimum period of ten years.

So far, the DEPP has indicated that it will impose an immediate spot fine in the amount of USD20,000, and that it considers the barge owner responsible for any restoration and remediation activities needed. These new pieces of legislation highlight a broader trend towards active enforcement and accountability for environmental impacts associated with maritime disasters.

Port Authority Reform

The Bahamas implemented significant changes to its port authority legislation in 2025 through the Port Authorities (Amendment) Act, 2025, which came into force on 1 July 2025. The amendments represent a substantive modernisation of the statutory regime governing port operations, marine traffic management, seabed use and navigational safety.

A central feature of the Amendment Act is the expansion of the Minister's regulation-making powers in relation to marine traffic and the upkeep of lighthouses, to name a few. The amendments provide a clear statutory basis for the establishment and regulation of anchorage zones, the management of maritime cabotage between port areas, preventative measures and responses for marine incidents, and the capacity to issue and broadcast navigational warnings. Collectively, these provisions strengthen the legal framework for safety management and co-ordinated incident response within declared port areas.

From an operational perspective, the introduction of mandatory Automatic Identification System (AIS) requirements for all foreign vessels measuring 50 feet or more represents a notable development. The obligation applies regardless of whether a vessel is docked, transiting or merely passing through Baha-

mian waters, and non-compliance constitutes an offence. Like the imposition of higher fees for visitor cruising permits, the new AIS requirement has sparked significant pushback from casual visitors. While the government has explained that the Royal Bahamas Defence Force finds AIS extremely helpful in locating vessels under a variety of circumstances, others have expressed concern that the AIS measure may serve to deter smaller boats and drive them away from visiting The Bahamas. No doubt, these measures would tend to prevent collisions and deter shadow fleet vessels from entering the jurisdiction.

The Port Authority amendments also fundamentally restructure the seabed leasing regime. Any person or entity undertaking construction or activity on or affecting the seabed (including jetties, wharves, marinas, moorings, pipelines and private destinations) must now obtain a formal seabed lease. Applications are subject to environmental compliance requirements and technical review, with express reference to the EPPA as a guide for the Minister's decision-making.

Seabed leases are capped at a maximum term of 25 years (subject to renewal) and are accompanied by prescribed lease rates and an annual seabed environmental levy. The legislation introduces a phased penalty structure for non-payment, authorises lease termination for breach, and restricts assignment or transfer without ministerial approval.

These reforms provide greater clarity around compliance obligations, environmental responsibility and operational risk, while emphasising The Bahamas' continued commitment to modern maritime governance aligned with international standards.

Modern Merchant Shipping Act Coming Into Force

The government of The Bahamas enacted a new Merchant Shipping Act in 2021 (the "MSA 2021"), modelled on the UK Merchant Shipping Act, 1995. It is beyond the scope of this article to analyse the anti-

pated changes in detail, but suffice to say that this new piece of legislation is intended and expected to bring about a substantial modernisation of the maritime legislation that has governed Bahamian shipping for decades, and brings The Bahamas into alignment with contemporary international maritime standards and the country's obligations under major IMO conventions.

The previous primary piece of shipping legislation in The Bahamas was the Merchant Shipping Act, 1976 (the "MSA 1976"); although the old legislation lent predictability to those familiar with UK shipping law, and was amended over the years and supplemented with other primary and secondary legislation to try to keep pace with developments in the industry (including the many international conventions that The Bahamas became a party to), the MSA 1976 itself was modelled after the UK Merchant Shipping Act, 1894 – The Bahamas therefore decided to start afresh with a more modern and clear regime.

Although the MSA 2021 was enacted in 2021, it was not immediately brought into force, in order to give time for all necessary complementary subsidiary legislation to be completed. At the time of writing, the MSA 1976 continues to apply; however, it is understood that the subsidiary legislation is nearing readiness, and the MSA 2021 is therefore expected to be brought into force in the coming weeks and months.

Outlook and Market Impact

Looking ahead, the convergence of enforcement-driven jurisprudence, environmental accountability and administrative reform is likely to further entrench The Bahamas' position as a leading maritime jurisdiction within the Atlantic and Caribbean regions. While compliance expectations will continue to evolve, the jurisdiction's commitment to clarity and alignment with international maritime norms is expected to remain a defining feature of its maritime offering in the year ahead.

BELGIUM



Law and Practice

Contributed by:

André Kegels

Kegels Advocaten

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Kegels Advocaten is a boutique law firm specialising in maritime, transport and logistics, as well as ITC (international trade and commodities) and related matters such as customs and excise, finance and

(marine) insurance. **Kegels Advocaten** has its roots in centuries of this type of legal work. It benefits from a well-established international network of correspondents covering the entire globe.

Author



André Kegels read law at Leuven Law School. After his training at the Brussels Bar, he worked in the UK at an English law firm and marine insurers. He then joined the Antwerp Bar, where he practised maritime,

transport and trade law. His English and French publications concern all aspects of maritime and transport law and the law of logistics. He is also a regular speaker at international conferences and a guest lecturer at universities, on topics such as ship-arrest, autonomous vessels and carriers' liability. He has been asked to assist in the re-drafting of the chapter in the Belgian Maritime Code on chartering and carriage on Belgian interior waterways. He is also an officer at the International Bar Association.

Kegels Advocaten

Mechelsesteenweg 196
B-2018
Antwerpen
Belgium

Tel: +32 3 206 60 60
Email: andre.kegels@kegels-advocaten.be
Web: www.kegels-advocaten.be

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Main Legislation

The main legislation establishing the authorities of the maritime and shipping courts in Belgium is as follows:

- the Belgian federal Judicial Code;
- the New Belgian federal Maritime Code (NBMC) (as of 1 September 2020);
- IMO-Conventions (such as the AFS-Convention, BWM-Convention, CSC-Convention, LL-Convention, MARPOL-Convention and Protocols 1978 and 1997, PAL-Convention, SFV-Convention, SOLAS-Convention and protocols 1978 and 1988, SRC-Convention, STCW-Convention, STCW-F-Convention and TMC-Convention); and
- the various regional shipping decrees.

It should also be noted that from 1 January 2025, the Act on Carriage over the Interior Waterways of 1936 has not been in force and has been replaced by additional provisions in the NBMC.

Common Maritime and Shipping Claims

The following claims are commonly filed in Belgium:

- cargo and charterparty claims;
- non-vessel operating common carrier (NVOCC) claims;
- ship arrests;
- salvage claims;
- collisions and groundings;
- stevedoring-related claims;
- ships' agency claims;
- customs and excise claims;
- criminal drug-related claims;
- port state control detention;
- marine insurance claims; and
- claims for defended marine investigations by way of court-appointed and marine-dedicated surveyors or assessors.

1.2 Port State Control

Status of the Paris MOU

Belgium is a party to the Paris Memorandum of Understanding on Port State Control (the "Paris MOU"), which is an agreement between 28 maritime authorities. This system of port state control applies in Belgium.

For more information, see the [Paris MOU website](#).

Port State Control

The maritime authority in Belgium is a specialised service of the Federal Public Service of Mobility and Transport: Port State Control (PSC), based in Antwerp.

The PSC's authorities and powers of inspection and control include:

- examination of the ship's documents (see Annex 10 of the Paris MOU Memorandum);
- verification of the overall condition of the ship, to determine whether it complies with various conventions; and
- controls on compliance with onboard operational requirements.

The PSC can:

- stop the ship;
- detain the ship;
- restrict operations of the ship;
- order the ship to move; and
- indicate measures to be taken by the ship to be released from PSC sanctions.

Decisions by the PSC are regularly appealed, especially when the vessel is detained. Records show that the courts do not often consider the PSC's decisions to be erroneous.

Since the enactment of the 2006 Maritime Labour Convention (MLC), and notably its recent amendments, the PSC has intensified scrutiny of onboard employment practices to verify their conformity with the MLC. Non-compliance is a frequent cause for sanctioning and even detention. For example, it was decided in a 2025 appeal related to the R/V *Belgica*, a research vessel manned by a military and civilian crew,

that by application of Article 29 of the UN Convention on the Law of the Sea (UNCLOS) and Article II.4 of the MLC, an interdiction to sail served on the vessel was valid as MLC provisions had not been respected in so far as the civilian crew was concerned.

Administrative sanctions can also be imposed when infringements are found by the PSC. Many fines were imposed on ship-owners for not respecting seafarers' rights during the pandemic. These fines can be appealed against.

The PSC does not have specific powers in relation to marine casualties such as grounding, pollution or wreck removal, nor in relation to seafarers' casualties. However, a marine incident of any nature will result in a PSC inspection, which may then result in sanctions.

Other Authorities

Other authorities can investigate such incidents – for instance, the investigative authorities of the Federal Bureau for the Investigation of Maritime Accidents (FEBIMA) or the Flemish OSB (investigation body for shipping accidents and incidents on inland waterways in Flanders), per EU Directive 2009/18, O.J., of 28 May 2009 (as adapted) – for the purposes of collecting evidence in order to advise on how to avoid similar incidents in the future. It is prohibited by statute law to use the reports of the FEBIMA (or OSB) as evidence in court proceedings.

The FEBIMA (or OSB) has authority for marine casualties and incidents whenever at least one of the following criteria is met:

- a Belgian-flagged vessel was involved;
- the casualty occurred within the Belgian territorial sea or Belgian internal waters; or
- a substantial Belgian interest was involved.

FEBIMA (or OSB) investigations include the hearing of witnesses. Those investigations may not be hampered. The FEBIMA (or OSB) can detain ships and can arrest any objects involved in an incident. It may also destroy objects for public health and safety reasons. Removing any object involved in an incident without the permission of the FEBIMA (or OSB) is prohibited.

The Public Prosecutor may also investigate these incidents, to determine if a criminal offence has been committed.

A court-appointed surveyor (sometimes referred to as an “assessor”) may also investigate for the purpose of determining the facts, causes and circumstances of an incident for use in court proceedings. Court surveying proceedings are defended actions. All parties to the proceedings will be invited and may be present and represented at every investigative step the court surveyor undertakes. A Belgian court will instruct a Belgian court surveyor if the facts to be determined can usefully be determined in Belgium. This is the rule even if the case on the merits is to be held in another jurisdiction.

1.3 Domestic Legislation Applicable to Ship Registration

The government authority handling the domestic registration of vessels is the Belgian Ship Registry located in Antwerp. This is a department of the Federal Public Service of Mobility and Transport.

The key legislation applicable to ship registration in Belgium is the NBMC, which has been applicable since 1 September 2020. It is of the utmost importance to realise the fundamental changes in statute law since this date.

1.4 Requirements for Ownership of Vessels

Registration is mandatory for sea-going ships under construction in Belgium, but optional for the following sea-going ships:

- those operated from Belgium; or
- those of which the owner or operator is either:
 - (a) a natural person who is a national of a member state of the European Economic Area;
 - (b) a natural person who has their domicile or principal residence in Belgium; or
 - (c) a legal person that has its actual seat (ie, place of registered office, central administration, or principal place of business) in one of the member states of the European Economic Area.

1.5 Temporary Registration of Vessels

Temporary Registration

A temporary registration is no more than a registration and a de-registration, which is possible in Belgium.

Bareboat Registration

Bareboat registration is possible in Belgium. If the bareboat charter provides for the vessel to enter another registry, the Belgian flag cannot be used for the duration of the bareboat charter. Also, a prior authorisation must be obtained from the authorities.

For a Belgian vessel in a foreign register, conditions precedent for receiving an authorisation include:

- contractual provisions in the bareboat charter agreement;
- the authorisation of the holder of certain in rem rights; and
- compatibility of the legislation of the receiving registry.

For a foreign vessel in the Belgian registry, conditions precedent for receiving an authorisation include the authorisation of the owner and of the receiving flag state, which will check on the condition of the vessel.

1.6 Registration of Mortgages

The Belgian Ship Registry, in Antwerp, maintains the registration of mortgages in Belgium.

Ships, ships under construction, and ships undergoing conversion can be encumbered with a ship mortgage.

Prior to a ship being registered in the Ship Register, taxes must have been paid.

The formalities are minimal. A ship mortgage can be established by an authentic or a private deed. The Belgian Ship Register requires the following information at the time of registration:

- the date of the deed;
- the form of the instrument and, if it is an authentic instrument, the indication of the public official from whom or the court from which it emanates;

- the surname and first names of the parties, in addition to:

- (a) for natural persons of Belgian nationality, their national register number;
- (b) for natural persons of foreign nationality, their domicile;
- (c) for legal persons under Belgian law, their company registration number; and
- (d) for legal entities under foreign law, the address of their registered office; and

- the nature and main elements of the transaction.

The following information is also required, where appropriate:

- the amount and the due date of the interest, in addition to the deadline for repayment of the principal;
- the conditions to which the claim is subject;
- the stipulation of possession of the vessel; and
- the choice of domicile.

1.7 Ship Ownership and Mortgages Registry

The Ship Register is held in the Belgian Ship Registry and is open to public inspection.

Certificates certifying the inscribed in rem and other rights can be obtained at minimal cost.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

There are no “typical” key terms and operative provisions of ship loan financing in Belgium. The financial structure will very much depend on the complexity of the financing required and the identity of lenders, borrowers and guarantors. The financing of a barge will be different from the financing of a holding with floating assets such as barges or seagoing vessels registered in different European registries.

Simple lending is still provided by classical financial institutions. Usually with a simple *hypothèque* or mortgage on the financed vessel. However, the pool of Belgian lenders is shrinking due to finance institutions concentrating their marine financing in a few European

jurisdictions. This often results in Belgian borrowers having to find lenders elsewhere in Europe.

For larger borrowings, such as by holdings with assets in different countries, borrowers may appeal to alternative finance providers such as foreign administrative agents, acting for institutional investors. This would then result in credit facilities that are asset-backed finance operations where not only the floating assets are pledged via mortgage or *hypothèque*, but also the receivables of – and even the shares in – the corporations owning the floating assets.

2.2 Ship Leasing

Leasing is a dangerous term because it can mean something completely different depending on the jurisdiction or type of “leasing”. In Belgium, an operational lease is not a financial lease or “rent-buy” agreement and is certainly not renting.

The type of financing for sea-going vessels is determined by the required tax outcome. The tonnage tax or accelerated depreciation provisions as referred to in **8. Ship-Owners’ Income Tax Relief** are taken into account.

The financing of interior barges via a rent-buy (a type of financial lease) needs to take some protective provisions in statute law into account.

3. Marine Casualties and Owners’ Liability

3.1 International Conventions: Pollution and Wreck Removal Pollution

The main applicable international conventions and relevant laws that will impact upon the liability of owners and interested parties in the event of pollution and wreck removal are as follows (however, please note that this list is not exhaustive):

- the NBMC, which also implements various international treaties and EU directives, and contains criminal liability provisions, reverses the burden of proof, and authorises authorities to arrest vessels

that are not in compliance, as well as providing for substantial fines and incarceration;

- to some extent, the Flemish Shipping Decree of 21 January 2022;
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 29 November 1969, and Protocol to the Convention, 2 November 1973 (the “Intervention Convention”);
- the International Convention for the Prevention of Pollution of the Sea by Oil, 12 May 1954 as amended (OILPOL);
- the International Convention for the Prevention of Pollution from Ships, 2 November 1973, and the Protocol to the Convention, 17 February 1978 (MARPOL 73/78);
- the 1982 United Nations Convention on the Law of the Sea, 10 December 1982 (the “Montego Bay Convention”, or UNCLOS);
- the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 27 November 1992, as amended in 2000 (the CLC 1992);
- the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 27 November 1992, as amended in 2000 (the “1992 Fund Convention”);
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, London, 3 March 2001 (the “2001 Bunker Oil Convention”);
- the 2003 Protocol Establishing a Supplementary Fund (the “2003 Supplementary Fund”);
- EU Directive 2005/35, O.J. L255/11, 30 September 2005, as amended, which has been implemented into Belgian law by various acts;
- the Belgian Statute of 20 January 1999 on the protection of the marine environment in the sea areas under Belgian jurisdiction, as amended (the “Marine Protection Act”) – this statute implements various international treaties and EU directives, and contains criminal liability provisions, reverses the burden of proof and authorises authorities to intervene in the case of incidents threatening the (marine or any other) environment, and it provides for substantial fines and incarceration;
- various legal instruments, enacted by the Federal State and the regions, each within their authority

in the implementation of Directive 2008/98 EC on waste (the “Waste Directive”); and

- the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004 (the “Ballast Water Management Convention”), which entered into force in Belgium on 8 September 2017.

EU Emission Trading System

The EU Emission Trading System (EU-ETS) has applied to shipping from 2024. This is the result of the drastically extended scope for shipping of the flag-neutral and route-based EU-ETS legislation (Directive 2003/87/EC, last amended by Directive (EU) 2023/959) and its implementing regulations, such as EU MRV-Regulation (Regulation (EU) 2015/757 on the monitoring, reporting and verification of greenhouse gas emissions from maritime transport, as amended in 2023). Central to this regulation is the requirement for a monitoring plan, evaluation by an external verification entity and approval by the relevant authority. The recent changes include not only the expanded range of greenhouse gases now covered under the MRV Regulation but also the specifications regarding the types and sizes of vessels required to report emissions and the routes on which it applies or will apply. The emissions to be reported on will be phased in, starting with 40% of emissions in 2024 and reaching 100% of emissions in 2028.

Wreck Removal

The law on wreck removal is extraordinarily complicated. The legislation applicable to an incident requiring wreck removal is dependent on:

- its location – Exclusive Economic Zone (EEZ), territorial waters or internal waters;
- the type of craft – sea-going vessel, barge or estuary vessel; and
- the date of the incident.

At present, this difference in applicable rules determines the following:

- if the authorities may impose a demand for wreck removal;
- if the liability of the authorities is a defence;

- if the ship-owner may refuse to execute the order to remove the wreck;
- if the ship-owner may limit their responsibility for wreck removal; and
- which thresholds apply if responsibility can be limited.

Wreck removal of sea-going vessels in Belgian national waters

In Belgian national waters (territorial sea and other sea waters), wreck removal is mainly covered by federal legislation. “Mainly” because there is some question as to the authority over the main waterways to the Flemish ports.

The 2007 Nairobi Convention on wreck removal and the NBMC apply.

The owner of the wreck (a definition that includes the owner, charterer or operator) must remove the wreck and its contents. This is a fundamental change in statute law since the NBMC came into force on 1 September 2020. Prior to the NBMC, the Belgian Supreme Court ruled that, once a wreck removal fund has been set up for a sea-going vessel, the authorities are no longer entitled to demand that the owner, charterer or operator remove the wreck at the owner’s expense. That principle has now been abandoned under the NBMC, as far as sea-going vessels are concerned.

The authorities have a direct right of action against the hull or liability (P&I) insurers, which shall not be released from their obligations under the insurance contracts until the claims of the competent authority are satisfied.

Wreck removal of sea-going vessels in Belgian interior waters – regional legislation

In 2022, the regional authorities adapted their legislation, to bring it in line with the federal legislation. There are some relevant differences, but such nuances are beyond the scope of this guide.

Wreck removal of interior barges (and limitation of liability)

Interior barges can limit liability, either by application of the Strasbourg Convention of 2012 on the Limita-

tion of Liability in Inland Navigation (CLNI) or by application of Belgian regional law.

If limitation under the CLNI is not possible Belgian regional law provides a similar possibility of limitation. Some reservations were made by some Belgian regions when adhering to the CLNI, in terms of pollution and wreck removal, for example. This seems to imply that two separate limitation funds may be required in some circumstances: one for pollution or wreck removal, and one for other liabilities.

3.2 International Conventions: Collision and Salvage

It should be noted that the location of the incident, the type of vessels and the persons involved have an influence on the legislation that will apply. Sea-going vessels colliding on the high seas will be subject to different rules from those colliding on internal waterways. More complex still, there is different legislation for interior barges. Moreover, on rivers and canals, specific rules derogate from the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs).

The following conventions and regulations apply in Belgium:

- the International Convention for the unification of certain rules of law with respect to collisions between vessels, Brussels, 23 September 1910 (the “1910 Collision Convention”);
- the International Convention on certain rules concerning civil jurisdiction in matters of collision, Brussels, 11 May 1952 (the “1952 Brussels Civil Jurisdiction Convention”);
- the International Convention for the unification of certain rules relating to penal jurisdiction in matters of collision or other incidents of navigation, Brussels, 10 May 1952 (the “1952 Brussels Penal Jurisdiction Convention”);
- the COLREGs;
- the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS) and its annexes;
- EU Regulation 864/2007, 11 July 2007 (“Rome II”); and

- various local navigation regulations regarding the territorial sea, the ports, the rivers, and canals (the “Local Navigation Regulations”).

Other provisions may also be relevant, such as:

- the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978;
- the International Safety Management Code (the “ISM Code”); and
- the International Ship and Port Facility Security Code (the “ISPS Code”).

If refuge is needed per EU Directive 2002/59 (as amended), the Maritime Salvage and Co-ordination Centre (MRCC) manages the incident for all authorities concerned.

3.3 Convention on Limitation of Liability for Maritime Claims Sea-Going Vessels

Limitation of liability in Belgium is determined by the London Convention regime (the “1996 LLMC-Regime”). For sea-going vessels, the following legislation applies:

- the LLMC Protocol of 1996, dated 2 May 1996 (the “LLMC 1996 Protocol”); and
- the 2015 LEG.5 (99) IMO Resolution raising the amounts (the “IMO Resolution”).

Domestic legislation (the NBMC) incorporates the LLMC Regime into Belgian law.

Non-Sea-Going Vessels

Different provisions apply for the limitation of liability for maritime claims against non-sea-going vessels, such as interior barges, including the CLNI and specific provisions for wreck removal and pollution in regional shipping law.

3.4 Vienna Convention on the Law of Treaties

The Vienna Convention has been adhered to by Belgium. Moreover, the *Cour de Cassation* (Belgium’s highest civil court) has, when required to interpret an international convention, ruled on numerous occasions using similar wording to the Vienna Convention.

3.5 Procedure and Requirements for Establishing a Limitation Fund

A limitation fund requires two court decisions. Both can be obtained within a few days. First, a potentially liable person requests authorisation from the court to set up a fund. The request indicates the amount of security to be issued. The security proposed is to be either a cash payment or a guarantee to the court. The court then orders the amounts to be paid or secured within a deadline. A fund administrator is also appointed. Once the amount of the fund has been paid or secured, the fund administrator drafts a report, which is presented to the court. The court issues a second decision, confirming that a limitation fund was constituted.

A potentially liable person can set up the fund. The amount of limitation is calculated in accordance with the provisions of the 1996 LLMC regime, the CLNI and/or the regional law, as noted in **3.3 Convention on Limitation of Liability for Maritime Claims**. The security proposed is to be either a cash payment or a guarantee to the court. The guarantee must be found acceptable by the court.

3.6 Seafarers' Safety and Owners' Liability

Belgium ratified the MLC through legislation passed on 17 September 2013. As a result, since 2014, statute law has incorporated the MLC, ensuring its implementation and enforcement within the country's legal framework. Subsequent amendments to the convention have also received approval. The law provides for penalties for non-compliance with the MLC.

Moreover, detention of a vessel by PSC due to non-compliance with the MLC is a frequent occurrence. Such detentions also lead to administrative sanctions. It is possible to oppose the findings of PSC or appeal against administrative sanctions; however, as the time bar for appealing administrative sanctions or opposing such findings is short, speed is of the essence. Additionally, the law allows for the possibility of criminal prosecution in cases of non-compliance with the MLC. See **1.2 Port State Control** for a discussion of the *R/V Belgica* case as an example of such sanctions/prosecutions.

4. Cargo Claims

4.1 Bills of Lading

The Hague–Visby Rules have been incorporated into the NBMC. In addition to their regular application, the Hague–Visby Rules as incorporated into Belgian law also apply, on a mandatory basis, to all carriage to and from Belgian ports. Conflicting provisions in the terms of carriage are to be disregarded. This principle has effect on foreign law or jurisdiction clauses; they are not opposable to cargo interests.

4.2 Title to Sue on a Bill of Lading

Under the NBMC, both the receiver and the shipper have title to sue. However, it should be noted that the burden of proof of the damages suffered is different. A third-party receiver only needs to establish the damages and their extent, not that it suffered them personally. A shipper must also establish that it suffered the damages.

Such a title to sue can be assigned.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Carriers' liability and limitation of liability for cargo damages is per the principles of the Hague–Visby Rules (as amended by the 1979 Special Drawing Rights Protocol). Depending on how the bills of lading or other transport documents are issued, the liability rests with the contractual carrier or the ship-owner, or both.

4.4 Misdeclaration of Cargo

The carrier can claim against the shipper for misdeclared cargo. A misdeclaration is an error or omission and leads to liability. This is the normal application of the Hague–Visby Rules and their principles.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar for filing a claim for damaged or lost cargo (either for breach of contract or for liability in tort) in Belgium is one year from delivery, unless the protection given by the rules on carriage would not apply, in which case the contractual provisions in the terms of carriage could be applicable.

Once the time bar runs out, it can be retrospectively extended. Great care should be taken to ensure that the appropriate wording is used when applying for an extension of the time bar; the wrong wording can often result in a refusal to extend. It is also important that the extension is obtained from the correct person(s) in favour of the correct person(s).

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The applicable convention regarding the arrests of vessels is the International Convention on Arrest of Ships, 1952 (the “1952 Arrest Convention”). Arrests are made either by application of the convention itself or by application of the NBMC, which incorporates the same rules.

Under Belgian law, there is a difference between maritime liens as rights in rem and maritime claims, which allow the arrest of a sea-going vessel.

The maritime claims for which a sea-going vessel can be arrested are listed in Article 1.1 of the 1952 Ship Arrest Convention. A “maritime claim” is one that relates to one or more of the following:

- damage caused by any ship, in a collision or otherwise;
- loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- salvage;
- an agreement relating to the use or hire of any ship, whether by charterparty or otherwise;
- an agreement relating to the carriage of goods in any ship, whether by charterparty or otherwise;
- loss of or damage to goods, including baggage carried in any ship;
- general average;
- bottomry;
- towage;
- pilotage;
- goods or materials, wherever supplied to a ship for her operation or maintenance;
- construction, repair or equipment of any ship or dock charges and dues;

- wages of Masters, officers or crew;
- Master’s disbursements, including disbursements made by shippers, charterers, or agents on behalf of a ship or her owner;
- disputes as to the title to or ownership of any ship;
- disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
- the mortgage or hypothecation of any ship;
- fines imposed by the Belgian authorities; and
- securities due by the owner, master or manager involved in an incident involving threatening pollution or damage.

Interestingly, the NBMC provides that an arrest for other claims is possible for vessels under the flag of a country that did not ratify the 1952 Arrest Convention. There does not seem to be any case law on this point yet.

5.2 Maritime Liens

The flag of the vessel determines the rights in rem.

In principle, Belgian jurisdiction will apply the rules of the flag state in respect of liens and mortgages. This means that Belgian law will almost never be applicable whenever issues concerning liens and mortgages arise. Indeed, most cases that require the application of liens and mortgages relate to foreign-flagged vessels.

Foreign-registered rights in rem on a vessel will be respected on the condition that the relevant ship registry, containing a minimum of information, is publicly consultable and is one from which extracts can be obtained.

Belgian-flagged vessels will be subject to Belgian law on liens and mortgages. Belgian law provides various categories of rights in rem on a sea-going vessel. The NBMC provides for “ship security rights” and has created a new type of right in rem: “ship’s priority rights”, which have priority over “privileged claims”. These two types of rights in rem take priority over the *hypothèque* (the Belgian equivalent of a mortgage).

Ship’s priority rights cover the various costs incurred by or for the account of the vessel from its last call into

port up until its public sale, such as port fees, crew costs, and maintenance expenses.

“Privileged claims” are similar but not identical to those of the 1924 convention on liens and mortgages. In 2021, the NBMC was amended to remove cargo claims from the list of “privileged claims”. It includes indemnities for injuries or fatalities of crew members and passengers.

5.3 Liability in Personam for Owners or Demise Charterers

The vessel in respect of which the maritime claim arose can always be arrested, even if the owner (or demise charterer) is not personally liable.

5.4 Unpaid Bunkers

A bunker supplier can arrest a vessel in connection with unpaid bunkers supplied to a vessel. In 2016, the Belgian Supreme Court ruled that, if an arrest is for deliveries (such as bunkers) made to the vessel, the claim must arise out of:

- a commitment entered by the charterer or ship-owner; or
- an obligation that can be attributed to them under the doctrine of trust.

Case law since then seems generally to accept that, with deliveries (such as bunkers) to a vessel, there is an apparent authority from the owner or the charterer, so that unless the supplier explicitly indicates that they do not consider the owner or the charterer to be the debtor, the order is attributable to that owner or charterer and the vessel can consequently be arrested.

The charterer can only contract for themselves. However, the vessel is the guarantee for the obligations of that charterer and can consequently be arrested. It is akin to a “mortgage” for debts of another.

5.5 Arresting a Vessel

An authorisation to arrest is requested of the arrest judge by way of an ex parte application filed by an attorney on behalf of a client. The judge usually (especially in Antwerp, Ghent and Bruges) gives a decision on the bench. A court bailiff thereafter serves the

decision to the Master of the vessel, and the vessel is then arrested.

No written power of attorney needs to be presented. In that application, all relevant information must be disclosed to the judge.

The court need not be provided with original documents; notarised and apostilled copies of the documents will suffice. Translation is needed only if the documents are in a language the judge does not understand. Documents in English do not need translation.

The statute law provides the possibility for the judge to impose a counter-security. It is no longer customarily ordered unless the judge is of the opinion that the claim is doubtful, and the arrestor is from a country where enforcement of a judgment on appeal for costs would be difficult.

5.6 Arresting Bunkers and Freight

It is possible to arrest bunkers (arrest of movables) and freight (third-party garnishment). The conditions and principles that apply to the arrest of these types of assets are different from those of a ship’s arrest.

For the arrest of a sea-going vessel, it is sufficient to allege a claim, which is usually not too difficult a test. For the arrest of any other assets, such as movables (bunkers), freight, bank accounts, etc, the arrestor must establish that certain conditions are present.

First, conditions in respect of the quality of the claim must be assessed; an arrest is possible if the claim is sufficiently:

- certain – ie, it must be a prima facie good claim;
- due – ie, it is payable immediately; and
- quantifiable – ie, the amount must be quantifiable.

Second, conditions in respect of the situation of the debtor (charterer) must be assessed. There must be urgency to secure the claim – eg, a debtor must be in financial difficulties.

5.7 Sister-Ship Arrest

Ships are “sisters” if they belong to the same physical or legal person and can be arrested if someone has a maritime claim against that person.

The same beneficial ownership of ships does not make them sister ships in the legal meaning and such beneficial ownership does not, on its own, allow an arrest.

In “alter ego” situations (the arrest of the assets of one for claims against another), it is necessary either to pierce the corporate veil, to prove collusion or to establish fraud. Belgian case law has arrived at such findings by applying standards that are similar to the “alter ego” relationship findings in US case law.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, all other assets of the debtor can be arrested/attached, including movable assets (bunkers), freight, bank accounts, etc.

For the conditions necessary to be allowed to proceed with such an arrest or attachment, see **5.6 Arresting Bunkers and Freight**.

5.9 Releasing an Arrested Vessel

Once arrested, the vessel can only be released by agreement between the parties or by court order. A court order for release usually means that the case was brought in court again, all parties to the conflict were heard and the judge ordered the release.

Arrest proceedings do not initiate the case on the merits itself. Separate proceedings in Belgium or elsewhere must be initiated to that effect.

The security must be issued by a first-class bank within the jurisdiction for the arrestor to be obliged to release the vessel from arrest or by a payment in court (via the State’s depository institution). Parties may agree on an alternative. Any such alternative cannot be imposed on the arrestor.

The security is to guarantee the in personam claim. If that person is not the owner, the claim against that

other person is to be secured. If the claim is against the charterer, the security is to guarantee that claim.

5.10 Procedure for the Judicial Sale of Arrested Ships

The procedure for the public sale of a vessel is a two or three-step judicial process:

- arrest of the vessel;
- first public auction with provisional adjudication; and
- second public auction if there is a higher bid within 15 days of the provisional adjudication (recent statutory changes have resulted in some doubt as to whether a second public auction is still a possibility).

Alternatively, after an arrest, a public sale can be organised by an online sales process, with only one auction running over a predetermined period.

In some circumstances, the court can allow a sale without this public process. The court that has ordered the public sale can be approached for the purpose of allowing a direct sale without going through the lengthy process of the public sale. If the rights of the totality of the known creditors, the debtor and the ship-owner are reasonably protected, the court may allow such a sale. The sales price must, at minimum, be equal to the market value of the vessel as established by an independent surveyor. The result is still a court-ordered forced sale of the vessel.

Further, if the loan agreement entitles the lender to take possession of the ship, specific proceedings can result in the public sale being avoided.

As regards maintenance and costs, as long as the vessel has not changed ownership the costs remain, in principle, for the account of the previous owner. The arrestor or any other party who has an interest could ask the court (or the acting court bailiff) to formally recognise the costs of caretaking. Those costs would then be privileged out of the proceeds of any subsequent sale.

The rights in rem will be determined per the law of the flag state. Foreign mortgages will be recognised if certain conditions in respect of publicity thereof are met.

For Belgian-flagged vessels, the *hypothèque* (Belgium does not know the concept of mortgages) comes after the ship's privileges.

5.11 Insolvency Laws Applied by Maritime Courts

In respect of insolvency, Belgium must abide by the EU Insolvency Regulation, in common with the rest of the EU.

As in many countries, the conflict between maritime law and insolvency law is still ongoing. To date, courts have given priority to the obligations arising out of the 1952 Arrest Convention and, in doing so, have set the insolvency protection aside. This is still very much a debated issue.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Courts are reluctant to condemn a party for wrongful arrest. A tort must have been committed. Losing the case on the merits, or the arrest being lifted, does not, by itself, establish that a tort has been committed by the arrestor.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

EU Regulations and the Athens Convention, as amended by the 2002 Protocol to protect passengers, apply in Belgium. Some Belgian legislation incorporates those provisions. Conflicting contractual agreements will be set aside.

The following apply:

- the NBMC (Article 2.6.2.34 and following);
- the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (the "Athens Convention", or PAL 1974) and the 2002 Protocol to PAL 1974 (the "PAL Protocol 2002");

- Regulation (EU) No 392/2009, of 23 April 2009, on the liability of carriers of passengers by sea in the event of accidents – note that this Regulation reinforces the PAL Protocol 2002, which was already applicable;
- Regulation (EU) No 1177/2010, of 24 November 2010, concerning rights when travelling by sea and inland waterways, amending Regulation (EC) 2006/2004; and
- the Belgian Statute Law on Travel Contracts, of 21 November 2017 (the "Travel Contracts Act").

Insofar as the PAL regime applies, the time bar is two years. The limitations and exonerations are per the PAL regime. These provisions have also been incorporated into the NBMC. Insofar as the Travel Contracts Act applies, the time bar is also two years. There is no limitation or exoneration of liability.

Claims for indemnities for personal injury or death of a passenger are recognised as a maritime lien under Belgian law. Nevertheless, such law will rarely be applicable because liens and mortgages are in principle determined by the law of the flag state. Such claims are maritime claims and entitle the arrest of the vessel.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The NBMC is of mandatory application on this point of law. The courts have now confirmed that in carriage to and from Belgium, foreign jurisdiction clauses are not opposable to cargo interests.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

The NBMC is of mandatory application on this point of law. There is no known case law on this point yet. However, courts will have to apply the same principles as under jurisdiction clauses (see **7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**). Consequently, in carriage to and from Belgium, arbitration clauses are not opposable to cargo interests.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Belgium.

Domestic law has incorporated the rules on arbitration into the Judicial Code.

However, the enforceability of an award may be refused by a Belgian court if the award has been obtained by disregarding the principles as to jurisdiction and arbitration clauses outlined in **7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading** and **7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading**. In the *M/V African Reefer* case, the maritime chamber of the Antwerp Court of Appeal decided that an English award was to be disregarded and could not be declared enforceable because it conflicted with the jurisdiction provisions. This decision, rendered under the previous Maritime Code, remains relevant under the NBMC.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

If the claim that is subject to a foreign arbitration and/or jurisdiction allows an arrest of the vessel, the fact that the merits of the case are to be heard abroad is no hindrance. The arrest is a protective measure. If the applicable law or agreements between the parties refer the case to another jurisdiction, an arrest is still possible. The security obtained by the arrest can be executed only once a foreign decision or award condemns the creditor.

7.5 Domestic Arbitration Institutes

There is no arbitration institute that deals solely with maritime matters. Such matters can be arbitrated before the Belgian Centre for Arbitration and Mediation (CEPANI), which also deals with other, mostly commercial, matters. Within the CEPANI there are specialised maritime arbitrators.

Belgium has a very vibrant marine insurance market. Most actors in the marine insurance market prefer local arbitration organised on an ad hoc basis.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

The authority of the Belgian court should be contested as a first defence based on a foreign jurisdiction or arbitration clause. Unless the clause is invalid or not opposable to the claimant, the court will respect it and declare itself to be without authority.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The Principles

Under Belgian law, both the tonnage tax regime and the accelerated depreciation regime are available. They are alternatives and cannot be used together. Careful consideration must be made as to which one needs to be applied and when.

Also, reinvested capital gains can be exempt from taxes. In addition, a vessel that comes into Belgian possession for the first time can, under certain conditions, deduct 30% of the purchase price. Again, these are alternatives to the tonnage tax and cannot be used together with that tonnage tax.

Tonnage Tax – General

Within the EU, the guidelines to be respected by the individual member states are set by the EU Commission in its “Guidelines on State Aid to Maritime Transport”. In November 2017, the EU Commission approved the Belgian support measures for maritime transport for another ten years. A few changes to the already existing Belgian rules had to be made to comply with those guidelines.

Interestingly, dividends paid by Belgian tonnage tax companies comply with the subject-to-tax condition.

Tonnage Tax – for Ships

A tonnage tax can be applied to shipping companies, core revenues from shipping activities and certain ancillary revenues that are closely connected to shipping activities (which are now capped at a maximum of 50% of a ship's operating revenues).

Tonnage Tax – for Towage and Dredging

On the condition that 50% of revenues from towage or dredging comes from the high seas, the tonnage tax can be applied.

Tonnage Tax – for Operators/Ship Managers

If certain conditions and minimum thresholds are met, ship-management activities and operating services could qualify for the Belgian tonnage tax regime.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Non-Performance and Force Majeure

In general, force majeure is an insurmountable obstacle to the fulfilment of commitments. The doctrine of impossibility implies that there are three conditions for the existence of force majeure: the performance of an obligation has become impossible due to circumstances that are not due to a fault of the debtor and that were unforeseeable and insurmountable for them.

Force majeure will, in principle, not be accepted to avoid monetary obligations.

It is essential that each party fulfils its obligations, even if their performance becomes more onerous either because the cost of performance increased or because the value of the counter-performance was reduced.

COVID-19 and force majeure

If an obligation must be performed (eg, transport of goods) but is made impossible by an unforeseen event (eg, a COVID-19 measure), then in some circumstances and depending on the factual circumstances, this could be considered as force majeure. The Belgian courts have dealt with matters relating to the non-performance of contractual obligations (in relation to shipping contracts or any other commercial contract) due to the COVID-19 pandemic and rarely concluded that a force majeure event was present.

Contractual Changes Due to Unduly Onerous Contract

Since 2022, new statute law has provided that the debtor may ask the creditor to renegotiate the contract with a view to its amendment or termination, albeit only in certain circumstances. Circumstances must have changed to render the performance of the contract unduly onerous, to such an extent that its performance can no longer reasonably be demanded. Such change must have been unforeseeable at the conclusion of the contract and must not be imputable to the debtor. In addition, the debtor must not have accepted to take that risk for their account and neither the law nor the contract may exclude the possibility of renegotiation. The parties are then obliged to renegotiate the contract. If no agreement can be reached, the president of the competent court will decide on the fate of the contract in urgency proceedings.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Belgium has implemented IMO 2020 (Annex VI MARPOL), limiting the sulphur content of fuel oil used on board ships to 0.50% mass by mass (m/m), which came into force on 1 January 2020. PSC is responsible for the enforcement of the sulphur content limitation.

As the Port of Antwerp is a major place for bunkering, the new sulphur limits have led to significant litigation already. Enforcement action is actively taken against non-compliance, and infringements are penalised accordingly. Time is of the essence when being confronted with “off-spec” bunkers, given the often short time bars that bunker suppliers provide for in their general terms and conditions.

9.3 Trade Sanctions

Belgium will in principle implement and enforce international trade sanctions if imposed by UN resolutions or EU regulations. It will not implement the law of the US, the UK or any other country in respect of trade sanctions. On the contrary, if any such trade sanctions would harm Belgian interests, the authorities could take protective action.

Still, the extra-territorial effect of some sanctions, such as the US Office of Foreign Assets Control Spe-

cially Designated Nationals (OFAC SDN) sanctions list, results in limitations on what Belgian entities are willing to do, even if under Belgian or EU law such limitations do not exist.

In respect of the Russia-Ukraine conflict, Belgium adheres to the EU regulations and its far-going sanctions. Especially Council Regulations (EU) No 833/2014 and (EU) No 269/2014 as adapted many times. Under both EU Regulations, derogations can be obtained from the competent authority of a member state, therefore also in Belgium.

9.4 International Conflict

Many Belgian transport and trading interests have been impacted by the war in Ukraine or incidents in the Red Sea, with increased litigation, especially with marine insurers, being one of the consequences.

As far as the carriage of goods, contracts of affreightment or charterparties are concerned, there are ongoing disputes stemming from the blockade of vessels and cargo in Ukrainian ports. Courts have been involved, notably ordering carriers with cargo on board at the onset of the war to issue bills of lading despite the vessels being blocked in Ukrainian ports.

Another area of contention involves cargo interests litigating with marine insurers over the concept of “abandonment” under the Antwerp Marine Policy. In essence, “abandonment” refers to a scenario in which cargo interests or vessel owners, having lost, or lost control over, cargo, can relinquish that cargo to the insurers. This concept is akin to a constructive total loss (CTL) under common law systems.

Some Belgian parties involved in maritime ventures have turned to mediation to equitably distribute the costs of transporting cargo to its destination among cargo interests, cargo insurers, and carriers or owners.

Moreover, many trades, international sales and commercial relationships have been abandoned due to the EU sanctions regime making them illegal. Even if the legal position is clear (usually force majeure), this situ-

ation poses particular challenges in sales contracts where the sanctioned party has already completed their part of the agreement, such as making a payment, but the Belgian party is subsequently barred from fulfilling their delivery obligations due to these sanctions.

Also, the EU sanctions are applicable to EU citizens, wherever they are in the world. This is a relatively novel approach by the EU, so proper legal advice is crucial. This wide-reaching enforcement has surprised many and highlights the importance of adherence to these sanctions. Special attention is required to prevent attempts to circumvent these sanctions, as such actions are strictly prohibited.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The NBMC entered into force on 1 September 2020 and covers most relevant Belgian regulations regarding not only arrest, privileges, and mortgages, but also carriage and chartering. It also focuses on the safety of shipping in accordance with the International Convention for the Safety of Life at Sea (SOLAS) regulations.

The NBMC has been changed numerous times already, so it is important to realise that knowledge acquired in 2021 or 2022 may no longer be relevant in 2024. From 2025 onwards new legislation also applies to the interior waterways sector.

In addition, the Belgian regions have enacted their own legislation since 2020 in the fields of law over which they have authority. In 2022, for example, the Flemish region enacted its Shipping Decree, which contains provisions regarding liability, limitation, wreck removal obligations, etc. All too often, local practitioners must explain that there is more than just “Belgian law” in Belgium.

BRAZIL

Law and Practice

Contributed by:

Godofredo Mendes Vianna, Camila Mendes Vianna Cardoso and Lucas Leite Marques
Kincaid | Mendes Vianna Advogados



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Kincaid | Mendes Vianna Advogados

Kincaid | Mendes Vianna Advogados was established in 1932 and has a long tradition of providing legal advice on maritime law and international trade to companies worldwide. With offices in Rio de Janeiro, São Paulo, Santos, Brasília and Vitória, the firm provides legal services in all its areas of specialism, adding value to clients' businesses, meeting clients' specific needs with unique solutions based on solid legal expertise, and significantly contributing to their busi-

ness strategy and consequent business growth. The firm's multidisciplinary practice was born out of its experience in international trade, which has expanded into various sectors and areas such as maritime, tax and customs, corporate, litigation and arbitration, insurance and reinsurance, ports and infrastructure, energy, oil and gas, environment, ESG, employment, aviation, compliance, railways and the public sector.

Authors



Godofredo Mendes Vianna is a partner at Kincaid | Mendes Vianna Advogados and has more than 30 years' experience in commercial law, with an emphasis on shipping, international trade, insurance and

energy matters, assisting clients in cross-border litigation and ADR. He is chair of the Maritime and Port Law Committee of the Rio de Janeiro Bar Association, co-ordinator of the postgraduate maritime course and port law course at the Getúlio Vargas Foundation, and a member of the Brazilian Association of Maritime Law. Godofredo has published numerous articles in journals related to shipping law.



Lucas Leite Marques is managing partner at Kincaid | Mendes Vianna Advogados, with over 20 years of expertise in maritime law, oil and gas, international trade, litigation and arbitration. He is Professor of

Maritime Law at FGV/RJ and Navigare Institute; immediate Past-President of the Transport & Logistics Law Commission of the International Association of Young Lawyers (AIJA); and a Member of the Brazilian Maritime Law Association and the Maritime and Port Law Commission of the Brazilian Bar Association in São Paulo. He is recommended in Shipping by Chambers and Partners.



Camila Mendes Vianna Cardoso is a partner at Kincaid | Mendes Vianna Advogados with experience in shipping, including sea carriage of cargo and foreign trade in general, rendering sound legal advice to

ship-owners, charterers, carriers, P&I clubs, insurers, maritime agents, terminals and port operators, shipyards, cargo owners and trading companies, shippers and consignees, and has experience in maritime law and the commercial, civil, tax, corporate insurance, environmental, administrative and litigation areas. Camila is a member of the Maritime and Port Law Commission of the Bar Association, Vice-President of Maritime and Port Law for the Brazilian Center for Mediation and Arbitration, and a member of the Brazilian Maritime Law Association.

Kincaid | Mendes Vianna Advogados

Av. Rio Branco
nº 01, 14th floor – Ed. RB1 – Centro
Rio de Janeiro – RJ
20090-003
Brazil

Tel: +55 21 2276 6200
Fax: +55 21 2276 6284
Email: marketing@kincaid.com.br
Web: www.kincaid.com.br



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Brazilian legal system is a state-court system, in which each state has the authority to organise and determine the matters that will be dealt with in each of its courts. For example, in the state court of Rio de Janeiro there are seven first-instance courts that have jurisdiction over commercial matters such as insolvency, bankruptcy, IP and maritime disputes, which sit apart from other civil matters. In the court of São Paulo at the end of 2023 the Specialised Centre of Justice 4.0 – Maritime, Port and Customs Law was established, and the service provided is 100% digital. However, there are no specialised courts in most states, and maritime matters are ruled by regular civil courts. Federal courts will have jurisdiction in some circumstances, such as if a state-owned vessel or a federal interest is involved.

In the above-mentioned judiciary system, the most common claims include charter-contract disputes, demurrage claims, cargo claims, arrests of vessels and indemnity claims for accidents involving vessels or their cargo.

It should also be noted that Brazil has an Admiralty Court, located in Rio de Janeiro. This court has nationwide jurisdiction to rule on maritime accidents and facts of navigation, and its main goal is to find the causes of the incident and the parties responsible for

it, and to apply the administrative penalties set forth in Law No 2,180/54. This court is not part of the judiciary system but is an administrative tribunal subordinated to the Ministry of Defence/Navy Command. The Admiralty Court adjudicates a wide variety of cases involving maritime accidents and facts of navigation, with the most common cases involving machine failures, collisions and other accidents.

1.2 Port State Control

Brazil follows the resolutions of the International Maritime Organization (IMO) on port state control and is a signatory to the Latin American Ship Control Agreement by the State of Porto (Viña del Mar Agreement), committing itself to maintaining an effective system of inspections of foreign vessels and aiming to ensure compliance with the international requirements applicable on board.

In this regard, port state control in Brazil is performed by qualified naval inspectors accredited by the Directorate of Ports and Coasts (DPC), as per regulations set forth in the NORMAM-203 and NORMAM-204 Ordinances.

The DPC has the authority to contribute to:

- the guidance and control of the merchant marine and related activities in the interests of national defence;
- the safety of waterway traffic;
- the prevention of pollution by vessels, platforms and the support stations thereof;

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- the formulation and enforcement of national policies relating to the sea;
- the implementation and inspection of laws and regulations at sea and inland waterways; and
- the qualification and certification of personnel for merchant marine and related activities.

The DPC may also:

- prepare guidelines;
- regulate pilotage services, establish pilotage zones where the use of that service is obligatory and specify the vessels exempted from the service;
- establish the safety crew of vessels, giving the interested parties the right to appeal when in disagreement with the established complement;
- establish the equipment and accessories that must be approved for use on board vessels and platforms, and establish the requirements for homologation – ie, approval;
- establish the minimum requirements for safety equipment and accessories for vessels and platforms;
- establish the limits of interior navigation;
- establish the requirements relating to safety and pollution prevention for vessels, platforms or support installations thereof;
- define maritime and interior areas for the construction of temporary refuges where vessels can anchor or beach for performance of repairs;
- execute surveys, either directly or through delegation to specialised entities;
- support the Admiralty Court and the Special Navy Prosecutor's Office regarding inquiries into navigational accidents or facts;
- manage the Maritime Professional Education Development Fund;
- organise and maintain the Maritime Professional Education System;
- exercise the functional supervision of the port captaincies and river captaincies, and their respective offices and agencies; and
- maintain exchanges with public or private entities, both domestic and foreign, and represent the navy at gatherings related to matters under its responsibility.

For example, port state control may stop vessels from sailing if there is any risk to navigation, life or the environment. It should also provide assistance to the Port Authority and Environmental Agencies in environmental matters.

Wreck removal is regulated by Law No 7,542/86, which grants the Brazilian maritime authorities, or any other authority with delegated powers, the power to order wreck removal by the responsible party if a wreck is deemed to be a danger or an obstacle to navigation, or to threaten damage to third parties or the environment. Navy Ordinance NORMAM-221 also establishes the requirements for obtaining a permit for a wreck removal.

1.3 Domestic Legislation Applicable to Ship Registration

In Brazil, there are two types of registrations for vessels: the Brazilian ownership registration and the Special Brazilian Registry (REB).

Registration in the Brazilian Vessel Ownership Registry is mandatory for all Brazilian vessels that have a gross tonnage of 100 or more employed in any kind of navigation. For vessels below this threshold of tonnage, the Ownership Registry is not handled by the Admiralty Court but by the port captaincy with jurisdiction over the vessel.

The REB is a secondary registry applicable to Brazilian vessels or to foreign vessels chartered by Brazilian Shipping Companies (EBNs) and authorised to operate under this regime, which provides specific legal and tax benefits.

Law No 7,652/88 is the main legislation applicable to the Brazilian ownership registration, while Law No 9,432/97 is the main legislation applicable to the REB registration, together with the ordinances from the Admiralty Court.

1.4 Requirements for Ownership of Vessels

The Brazilian registry is only available to Brazilian nationals and companies incorporated under Brazilian law. There is an exemption to this rule, related to the registration of yacht and leisure vessels, which could be registered under the Brazilian registry even

if they are not owned by Brazilian citizens or Brazilian companies. Although it is not possible to register ownership over a hull, it is possible to register a vessel under construction at the REB, which is used mostly to grant tax benefits to the hull's construction.

1.5 Temporary Registration of Vessels

The Brazilian Shipping Companies (EBNs) may temporarily charter foreign-flagged vessels with prior authorisation from ANTAQ, retaining the original flag; or alternatively, bareboat charter a foreign vessel to be temporarily registered in the REB with suspension of its original flag, thereby flying the Brazilian flag.

Regarding Brazilian-flagged vessels, Brazil does not allow dual registration suspension of the national flag for registration abroad or under a foreign flag.

1.6 Registration of Mortgages

Registration of ship finance agreements is not mandatory in Brazil, but encumbrances over vessels, such as mortgages, must be issued as a deed by a notary (a maritime notary if available in that jurisdiction) and further registered before the Admiralty Court, if related to a Brazilian-flagged vessel, in order to be considered valid and in effect in Brazil.

All maritime mortgages over Brazilian-flagged vessels must be constituted through a public deed and registered with the Admiralty Court. The information required to register a mortgage through a public deed is as follows:

- the amount of credit – an estimate or maximum amount thereof;
- the term established for repayment;
- the rate of interest, if applicable;
- the vessel's specifications, such as gross tonnage, deadweight tonnage and other identifying data;
- the certificate of insurance of the vessel; and
- in turn, mortgages over foreign-flagged vessels operating in Brazil cannot be registered before the Admiralty Court. For this reason, a common alternative in the Brazilian jurisdiction is to register such documents with the Registry of Titles and Deeds (RTD), with the purpose of mitigating risks, as such registration grants validity and publicity to foreign documents within the national territory.

1.7 Ship Ownership and Mortgages Registry

Information relating to ownership and encumbrances over national vessels can be obtained by any third party through certificates issued by the Admiralty Court. Information relating to financing documents and other types of guarantees is usually registered in the Titles and Deeds Registry (RTD), and would also be available through a request for certificates.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

In the context of Brazilian jurisdiction, Ship Loan Finance has specific terms and provisions that cater to both debt and equity financing, as well as ship mortgages.

First preferred mortgage (hipoteca marítima): Essential for securing debts against the vessel. It grants priority to the lender in case of default. Mortgages over Brazilian-flagged vessels must be registered with the Admiralty Court to be enforceable and provide priority to the lender. In turn, mortgages over foreign-flagged vessels operating in Brazil cannot be registered before the Admiralty Court.

For this reason, a common alternative in the Brazilian jurisdiction is to register such documents with the Registry of Titles and Deeds (RTD), with the purpose of mitigating risks, as such registration grants validity and publicity to foreign documents within the national territory. In case of default, the mortgagee has the right to repossess the vessel and sell it, ensuring the recovery of the debt.

Common transactions: Common transactions include:

- vessel acquisition financing – loans specifically for the purchase of new or used vessels;
- refinancing – restructuring existing debt to access better financing terms or lower interest rates; and
- shipbuilding financing – financing provided throughout the construction phases of new vessels.

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Security packages: Security packages include:

- assignments of rights – earnings generated by vessels may be assigned to lenders as security;
- insurance policies – lenders often require that insurance policies be assigned to them to cover risks associated with the vessel;
- corporate guarantees (or parent company guarantee) – guarantees from the ship owner's parent or affiliate companies to increase the security for lenders;
- bank accounts – lenders may seek security over accounts used for revenue from the vessel's operations; and
- pledge – pledge over the shares or quotas of the shipowning entity.

2.2 Ship Leasing

Ship leasing transactions have been increasing in Brazil, primarily due to:

- Flexibility – Leasing offers ship-owners and operators flexibility in financing without the burden of ownership or significant initial capital outlay;
- Tax benefits – Leasing can attract tax advantages, as lease payments may be treated as operating expenses; and
- Operational efficiency – Ship-owners prefer leasing to maintain liquidity and operational efficiency amidst fluctuating market conditions.

Investors looking for higher returns are increasingly entering the maritime financing space, providing competitive options. Chinese financial institutions and leasing companies have become prominent players in the ship financing landscape, often offering favourable terms and conditions.

Differences between lessor/lessee and lender/borrower relationships: Lessees have a contractual obligation to pay lease rents for the use of the vessel. Lessees typically operate the vessel, while lessors retain ownership. At the end of the lease term, the vessel is returned, usually in good condition as per agreed standards. On the other hand, borrowers are obligated to repay the loan principal and interest over a set term. Borrowers gain ownership of the vessel, taking on risks and benefits associated with owner-

ship; the vessel usually serves as collateral, with the lender holding a mortgage over it.

Enforcement: Courts will enforce mortgage rights through repossession or forced sale processes as per Brazilian law. In cases of lease defaults, lessors may pursue remedies outlined in the lease agreement, including repossession of the vessel. The jurisdiction typically respects the terms of the lease. The treatment of defaults may differ in formal court proceedings compared to arbitral tribunals, with the latter often providing a faster resolution suited to commercial disputes.

Sale and leaseback transactions: Sale and leaseback transactions have become more common in Brazil, allowing companies to free up capital by selling a vessel and leasing it back for continued use. This arrangement supports liquidity while ensuring ongoing access to the vessel's operational capabilities.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Brazil is not a signatory to the International Convention on the Removal of Wrecks, but has ratified the following maritime conventions related to pollution:

- the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC/1990);
- the International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78;
- the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC/69); and
- the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (CCAIMO).

Brazil has several domestic laws that regulate liability and procedures in case of wreck removal and pollution.

3.2 International Conventions: Collision and Salvage

Brazil has signed the following international conventions regarding the liability of ship-owners and carriers in relation to collisions and salvage:

- the International Convention of Private Law (Bustamante Code), executed in 1928;
- the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea (Brussels 1910);
- the Convention for the Unification of Certain Rules relating to the Immunity of State-owned Vessels (Brussels 1928);
- the Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels (Brussels 1924);
- the International Convention for the Safety of Life at Sea (SOLAS 1974);
- the SOLAS Protocol of 1978;
- the International Convention on Regulation for Preventing Collisions at Sea, 1983;
- the International Regulations for Preventing Collisions at Sea, 1972;
- the United Nations Convention on Law of the Sea, 1982; and
- the International Convention on Salvage, 1989.

However, Brazil is not a signatory of the Hague Rules, the Hague–Visby Rules or the Hamburg Rules.

Brazil also has domestic regulations on salvage (Law No 7,203/1984), which relate to liability in the case of accidents.

3.3 Convention on Limitation of Liability for Maritime Claims

Brazil is party to the 1924 International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels and the 1969 International Convention on Civil Liability for Oil Pollution Damage. However, it is not a signatory to more recent and relevant conventions that exclude or minimise the liability of owners, such as the Hague–Visby Rules, the Hamburg Rules and the 1976 Convention on Limitation of Liabilities for Maritime Claims.

The general rule in Brazil, as set forth in the Brazilian Civil Code, is that anyone who causes damage to another party shall fully compensate the damages caused. As Brazilian law does not provide for punitive damages, compensation is generally limited to the direct damages suffered by the party, including the actual losses and loss of profit. Indirect losses are generally excluded, unless otherwise agreed.

Moreover, Article 750 of the Brazilian Civil Code establishes that a carrier's liability is limited to the value inserted in the bill of lading.

As a general rule, liability could be limited under a contract. There have been some cases where the limitation of liability was tested, and judges accepted the validity of that limitation. Nevertheless, if the contract is considered a contract of adhesion, the limitation clause might be considered null and void by Brazilian courts.

In addition, the “knock-for-knock” regime is commonly adopted in charterparty and offshore contracts, under which each party assumes responsibility for its own losses related to personnel and property, regardless of fault or negligence. Such clauses are generally enforceable between commercial parties of equal bargaining power, and disputes arising under them are frequently resolved through arbitration.

3.4 Vienna Convention on the Law of Treaties

The Vienna Convention is applicable in Brazil.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Brazil is not a member of the International Oil Pollution Compensation Funds.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention is applicable in Brazil, together with domestic labour laws.

4. Cargo Claims

4.1 Bills of Lading

Brazil is not a signatory to the international conventions concerning bills of lading. Law No 9,611/98

regulates the multi-modal transport of cargo in Brazil and sets forth the rules for the issuance of multi-modal bills of lading and the rights and obligations of the multi-modal transport operator. In addition, there are a number of domestic commercial laws dealing with sea transport and the bill of lading, such as the 1850 Commercial Code, the National Tax Code and, mainly, the 2002 Brazilian Civil Code, which is the most complete and important legislation in terms of private and commercial law in Brazil.

4.2 Title to Sue on a Bill of Lading

All parties to the contract of carriage represented by the bill of lading have title to sue, such as the consignee, the shipper or the carrier, who are entitled to file a claim in the case of a breach of contractual obligations. The subrogated underwriters of the cargo are also entitled to a recovery lawsuit against the carrier under the bill of lading.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The general rule in Brazil, set forth in the Brazilian Civil Code, is that anyone who causes damage to the other party must fully compensate the damages caused. As Brazilian law does not provide for punitive damages, as a rule indemnity is limited to the direct damages suffered by the party. Indirect losses are generally excluded, unless otherwise agreed. Moreover, Article 750 of the Brazilian Civil Code establishes that the carrier's liability is limited to the value inserted in the bill of lading. Liability may also be limited by the parties under a contract. However, if the contract is considered a contract of adhesion, the limitation clause might be considered null and void by Brazilian courts.

4.4 Misdeclaration of Cargo

While there is no specific rule regulating liability for the misdeclaration of cargo in Brazil, general liability rules would apply in such a situation. Therefore, a carrier that suffers damages due to the misdeclaration of cargo by the shipper would, in principle, have a claim against the shipper.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

In general, a three-year time bar applies to indemnity and civil lawsuits related to unlawful acts, as

prescribed by the Brazilian Civil Code. Specifically in relation to cargo claims resulting from sea carriage, Federal Decree No 116/1967 provides a one-year time bar from the date of discharge, similarly to the Law on Multi-modal Transportation (Law No 9,611/98) and the Law for Inland Carriage (Law No 11,442/2007). A time bar may be interrupted once at court, through a judicial notification. Once interrupted, the time bar is renewed for an equal period. It is not possible to extend the time limit by agreement between the parties, as this is a question of legal certainty that cannot be changed by the will of the parties.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Brazil has not ratified the International Convention relating to the Arrest of Sea-Going Ships, 1952, nor the International Convention on Arrest of Ships, 1999. However, Brazil is part of the 1926 Brussels International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, which, despite not providing rules for the arrest of ships, establishes additional credits that will be admitted under Brazilian law to give rise to an arrest.

Usually, arrests are requested in Brazil following the rules prescribed by the Commercial Code, together with the Civil Procedural Code, which sets out the latter of which sets out the possibility to request injunctions to seize assets, such as an arrest of a vessel. The Civil Procedural Code determines some requirements to be met, such as to show the probability of the right and that there is an element of urgency – eg, the vessel may attempt to leave Brazilian waters.

5.2 Maritime Liens

Maritime liens in Brazil are governed by the Commercial Code and the 1926 Brussels Convention on Maritime Liens and Mortgages. Based on a joint interpretation of both of these, the following claims can be considered to give rise to maritime liens:

- federal taxes;
- legal costs and expenses;
- claims resulting from the employment of the Master, crew and ship personnel;

- indemnities due for salvage;
- general average contributions;
- obligations undertaken by the Master outside the port of registry for actual maintenance needs or continuation of the voyage;
- indemnities due as a result of collisions or any other maritime accident;
- ship mortgages;
- port dues, other than taxes;
- outstanding payments due for depositaries, storage and warehouse rentals and ship equipment;
- expenditure for the upkeep of the ship and her appurtenances, and maintenance expenses at the port of sale;
- short delivery and cargo losses;
- debts arising out of the construction of the vessel;
- expenses incurred for repairs of the vessel and her appurtenances; and
- the outstanding price of the vessel.

If the arrest is in rem, the creditor must have the privileged credit properly constituted, according to Article 1 of the 1926 Brussels Convention. If the arrest is filed in personam, the claimant must demonstrate the requirements previously mentioned that are applicable to injunction requests as determined by the Civil Procedural Code.

5.3 Liability in Personam for Owners or Demise Charterers

The personal liability of an owner or demise charterer is not required when attempting a ship arrest based on claims that attach to the vessel (in rem). However, the creditor must have the privileged credit properly constituted.

5.4 Unpaid Bunkers

According to the Commercial Code and the 1926 Brussels Convention, credits arising out of ship suppliers out of the port of registry, including bunkers, are considered privileged. Therefore, due to their legal nature, those credits have in rem effects and will attach to the vessel, making it possible to arrest the vessel even if the bunker supply contract was entered into with the charterer and not with the owner.

5.5 Arresting a Vessel

In order to initiate an arrest claim in court, parties must be represented by lawyers, the appointment of whom requires a power of attorney (POA). The POA must be signed by a representative of the company, duly empowered as per its by-laws or certificates. Such documents must also be duly notarised/legalised or apostilled (if the country in which the document is signed is a signatory of the Apostille Convention). In the case of urgency measures, such as an arrest, the Civil Procedural Code grants the party 15 days to present the POA to the case records after the filing of the claim. This deadline can be extended for an additional 15 days.

All foreign documents that are relevant to the claim must be translated into Portuguese by a sworn translator. If it is not possible to translate them before the filing of the arrest application, it is possible to request the judge to grant an extension for the presentation of these documents. However, it is recommendable for all documents to be presented upon the filing, as there is a risk of the judge understanding that said documents were necessary for the analysis of the arrest request, thereby delaying the decision of the arrest.

In states where the courts have electronic proceedings, scanned copies of the documents may be sufficient.

Finally, it should be highlighted that Brazil is a signatory to the Apostille Convention, which helps to avoid the time and costs associated with legalisation and singularisation procedures.

5.6 Arresting Bunkers and Freight

The arrest of bunkers is not a common practice within the Brazilian jurisdiction and there is no specific legislation providing for this possibility. However, it would be possible to request the arrest of bunkers based on the general rules set forth in the Civil Procedural Code. The general rules provide that a party may request an arrest of assets or security in general if that party is able to demonstrate both the liquidity of its credits and that there is a risk that the debtor and its assets may disappear in the near future.

It should be noted that the arrest of bunkers may involve logistic difficulties for the arresting party, as the claimant will be obliged to nominate a fiduciary agent to be responsible for the bunker and arrange a licensed facility to receive the bunker when it is eventually arrested.

5.7 Sister-Ship Arrest

Brazil is not a party to the arrest conventions, and the Brazilian legal system does not provide a specific regulation regarding the arrest of sister ships. If the claim is based on privileged creditors with effects in rem on the vessel, the claimant would be unlikely to obtain the arrest of another vessel of the debtor's fleet. However, if the arrest is in personam, in principle it may be possible to file a precautionary lawsuit against the ship-owner to arrest a sister ship and request security.

5.8 Other Ways of Obtaining Attachment Orders

The Civil Procedural Code establishes other forms of measures and injunctions that may be sought to obtain security and/or the compliance with a judicial order, the most common of which are the attachment of values and the seizure and constraint of assets, either liquid or illiquid.

5.9 Releasing an Arrested Vessel

In order to release an arrested ship, the ship-owner will have to request the release at the court, convincing the court to review the arrest decision; or provide a guarantee to replace the arrested vessel, plus the legal and attorneys' fees.

The most common type of guarantee is a judicial deposit or a letter of credit issued by a first-line bank headquartered in Brazil.

Protection and indemnity insurance (P&I) club letters of undertaking are not recognised by Brazilian law but may be accepted by the judge if they are accepted by the opposing party.

5.10 Procedure for the Judicial Sale of Arrested Ships

The judicial sale of vessels in Brazil follows the same general rules of asset bidding. The auctions are conducted by the public auctioneer in the course of a

judicial proceeding, who will adopt all necessary formalities to conduct the auction and sell the vessel under a commission.

An evaluation of the asset will be made by the court, and the public auctioneer will publish a Public Call announcing the auction for any interested party, which will contain a description of the object to be sold, the minimum price for the bid, the conditions of payment and the place where the auction will take place, among other details. The Public Call must be published at least five days prior to the auction date. As a rule, the Public Call must be made available on a web page to be determined by the judge. However, the judge may also determine that the Public Call be affixed in a local customary place and published in a newspaper of wide circulation.

The types of bonds required are as follows:

- to act ex officio – the Brazilian legal system does not oblige a bond constitution in order to sell a vessel extrajudicially;
- for vessel arrest – a guarantee may be required by the judge from claimants requesting an arrest to compensate eventual losses sustained by the vessel's interest in the case of a wrongful arrest, while the Civil Procedural Code also establishes that a guarantee must be presented by foreign claimants with no assets in Brazil in order to ensure payment of legal court costs and attorneys' fees;
- to lift arrest – the Brazilian legal system does not provide a specific list of bonds to be presented; usually, the bond would be a judicial deposit in cash or a letter of credit by a first-line bank, while P&I club letters of undertaking may be accepted, mainly depending on whether the other party accepts them; and
- for judicial sales – if the vessel holds a maritime lien, the Commercial Code establishes that an amount sufficient to guarantee the payment of maritime lien creditors must remain deposited until it is time-barred or until it is shown that it was paid, unless a guarantee is presented.

Furthermore, regarding the position of the mortgage in relation to other maritime claims, it should be noted that, based on the application of the Commercial

Code and the 1926 Brussels Convention, the priority of each credit is as follows:

- federal taxes;
- legal costs and expenses;
- claims resulting from the employment of the Master, crew and ship personnel;
- indemnities due for salvage;
- general average contributions;
- obligations undertaken by the Master outside the port of registry for actual maintenance needs or continuation of the voyage;
- indemnities due as a result of collisions or any other maritime accident;
- ship mortgages;
- port dues, other than taxes;
- outstanding payments due for depositaries, storage and warehouse rentals and ship equipment;
- expenditure for the upkeep of the ship and her appurtenances, and maintenance expenses at the port of sale;
- short delivery and cargo losses;
- debts arising out of the construction of the vessel;
- expenses incurred for repairs of the vessel and her appurtenances; and
- the outstanding price of the vessel.

5.11 Insolvency Laws Applied by Maritime Courts

The primary legislation governing insolvency and restructuring proceedings in Brazil is Law No 11,101/2005 (the Brazilian Business Insolvency Act), which incorporates the UNCITRAL Model Law on Cross-Border Insolvency to assist states with cases where the insolvent debtor has assets in more than one country or where some of the creditors of the debtor are not from the country where the insolvency proceedings are taking place.

Regarding a possible order of arrest and judicial sale of a vessel before the competent bankruptcy court, it should be noted that an asset cannot be arrested if it is considered essential for the preservation of the company's activity. Furthermore, the decision of the essentiality of the asset is a matter only for the bankruptcy court. If the interest is in the sale of the vessel, this must have been previously requested from the

bankruptcy court, as determined by Article 66 of Law No 11,101/2005.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The Civil Procedural Code allows the defendant of a wrongful arrest to seek indemnity and compensation for all losses suffered as a result of the wrongful arrest. That compensation can be assessed and liquidated in the same legal proceedings as the arrest.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Brazil is not a signatory to the Athens Convention or its protocols. While being transported or on cruise trips, Brazilian and foreign passengers have their rights supported by both the Brazilian Civil Code and the Brazilian Consumer Code, which establish the right to full reparation to the passenger or consumer, plus non-material damages.

The time bar to file a claim based on the Brazilian Consumer Act is five years.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The Civil Procedural Code expressly recognises forum selection clauses as valid and binding, so such clauses should be complied with. In relation to bills of lading specifically, there are some court decisions considering a bill of lading to be a contract of adhesion, when the issuer (ship-owner) establishes its clauses without negotiation with the other party and the other party is considered not to have expressly agreed. However, it will be very important to verify whether the party adhering to the contract had or should have had knowledge of what it was accepting with the contract.

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7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

As mentioned in 7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading, if the contracting parties expressly agree on a specific arbitration clause, that clause shall be binding.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Brazil has ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The enforcement of foreign judgments and awards in Brazil depends on an exequatur, to be obtained through a procedure regulated by the internal procedural rules of the Superior Court of Justice and by the provisions of the Civil Procedural Code of 2015. The exequatur is the authorisation granted by the Superior Court of Justice for all procedures requested by a foreign judicial authority to be validly executed in the jurisdiction of the competent Brazilian judge. The Superior Court of Justice recognises foreign judgments and awards if they are not contrary to the Brazilian legal order, public policy, national sovereignty or good moral conduct. When the exequatur is granted, the award is forwarded to the federal judge of the state in which it will be enforced.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Brazil has not ratified the International Convention on Arrest of Ships. According to domestic legislation, in order to request an arrest in Brazil, Brazilian courts must also have jurisdiction over the relevant claim. It is not permissible to file an arrest simply as a precautionary matter to secure a claim that will be attempted in another jurisdiction, although it is possible to seek a precautionary order prior to arbitration.

7.5 Domestic Arbitration Institutes

Brazil has domestic arbitral institutions with arbitrators specialised in maritime matters, such as:

- the Brazilian Center for Mediation and Arbitration (CBMA);
- the Ciesp/Fiesp Chamber of Conciliation, Mediation and Arbitration;

- the Center for Arbitration and Mediation of the Chamber of Commerce Brazil–Canada (CAM-CCBC);
- the Brazilian Maritime Law Association; and
- the Mediation and Arbitration Chamber of the Getúlio Vargas Foundation.

The CBMA, for instance, has a specialised commission to deal with maritime and port-related disputes, composed of competent and qualified practitioners and arbitrators with the expertise to address the growing number of disputes in this sector.

Arbitration is an increasing practice in Brazil, following the arbitration law (Law No 9,307/96), the ratification of the New York Convention in 2002, the ratification of the CISG in 2013, the enactment of a mediation law in 2015 and the reform of the Arbitration Act in 2015 and the Civil Procedural Code in 2015, which provides for a mandatory mediation procedure prior to judicial disputes.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

The defendant should challenge the court's jurisdiction when presenting its defence by alleging that a foreign court or arbitration clause should be observed. Therefore, if a lawsuit is filed in breach of an arbitration or foreign jurisdiction clause, the case can be extinguished in accordance with the Civil Procedural Code, as long as the defendant invokes that clause.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Brazilian tax legislation provides for a zero withholding tax (WHT) rate reduction on the payment of charter hire abroad, unless the beneficiary is located in a "low-tax jurisdiction", in which case WHT is triggered at 25%.

For charter-hire payment, credit or remittances in the so-called "split contract structure" applied to oil and gas exploration and production (E&P) and regasification activities, there are maximum charter ratios vis-à-

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vis the total charter and service contract for purposes of qualifying for the WHT zero rate reduction.

Hires exceeding these ratios will be subject to WHT at 15%, or at 25% for beneficiaries that are located in “low-tax jurisdictions” or subject to a “privileged tax regime”.

As of 1 January 2018, the maximum charter ratios are as follows:

- 70% for vessels with floating production, storage or discharge systems;
- 65% for rig vessels for the drilling, completing and maintenance of wells; and
- 50% for other types of vessels.

The maximum charter ratios do not apply to vessels used in offshore support services.

For foreign ship-owners with local subsidiaries in Brazil, it is important to mention that as of 2026, the Brazilian tax rules impose a 10% WHT over dividends distributions.

In addition to the income tax’s effects, Brazilian indirect tax rules are undergoing a Tax Reform under Consumption Taxes between 2026 and 2032. Accordingly, the current indirect taxes (PIS, COFINS, IPI, ICMS and ISS) are being gradually replaced by two value added taxes (CBS and IBS) and a Selective Tax (IS). These new rules are still pending of regulation and will likely be affecting the taxation cross-border charters into Brazil.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Brazilian law defines force majeure as any necessary and unavoidable event enabling the protection of parties from liability in the event of delays or prevention of performance, as well as excluding liability for the breach of contract, as per Article 393 of the Brazilian Civil Code. In addition, the Brazilian Civil Code allows the parties to freely allocate the risks for force majeure

events in the contract, with reasons for why it is necessary to analyse each contract.

Brazilian courts tend to consider unpredictable events or predictable events with unpredictable consequences to be force majeure. To rely on force majeure, the party seeking to invoke the argument must demonstrate:

- that there has been a force majeure event; and
- how this event relates to the specific contract and the impossibility to comply with a contract obligation.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

As a signatory country of the International Convention for the Prevention of Pollution from Ships (MARPOL), Brazil implemented national measures to meet with the guidelines of the IMO 2020 Regulation (IMO 2020). In view of this, the Brazilian National Agency for Petroleum, Natural Gas and Biofuels (ANP) undertook a review in its normative resolutions and, in 2019, enacted Resolution No 789/2019, imposing a cap of 0.5% sulphur content of any oil used on vessels. Despite the limit, the resolution allowed a 3.5% sulphur cap for vessels using exhaust gas cleaning systems (scrubbers), as long as the equipment is approved by a Classification Society and the scrubbers carry an approved plan for compliance with the guidelines set forth in IMO 2020.

In 2020 and 2021, the ANP enacted new resolutions seeking the improvement of the use of biofuels and the control of the fossil fuels used. As an example, producers and importers of marine fuel must submit a sample of the fuel to be marketed for analysis in order to obtain the “Quality Certificate”, a document detailing the composition of the fuel. Most recently, in November 2022, ANP issued Resolution No 903, further detailing the quality and sulphur levels allowed in bunker fuel and marine fuel, as well as quality procedures, and allowing for vessels with emissions control systems to use fuel with higher sulphur levels.

For any violation of the ANP’s resolutions, administrative sanctions provided for by law shall be applied. These may vary from a mere application of a fine to

the suspension or cancellation of activities in Brazil. In addition to administrative sanctions, civil and criminal liability may be attributed to a party that violates the ANP's resolutions. In accordance with the ANP's regulations concerning the sulphur limit for marine fuel, the DPC also issued a normative resolution with the guidelines of IMO 2020 (Circular 7/2019). The DPC is responsible for supervising vessels and verifying whether the fuel complies with IMO 2020, representing the Brazilian maritime authority.

9.3 Trade Sanctions

Brazil has not incorporated international trade sanctions as part of its domestic law. However, as many large Brazilian companies are listed in the US and/or UK, it is not unusual to see references to sanctions clauses in contracts.

9.4 International Conflict

Although Brazil exports commodities and imports a substantial quantity of fertilisers, sometimes connected with the regions at war, normally those carriages and contracts are subject to English law and there are no relevant cases dealing with legal aspects related to the war in Ukraine.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

In 2022, the Brazilian Congress enacted a Federal Law amending the rules applicable to cabotage transportation, bringing changes for the maritime carriage between Brazilian ports, and providing flexibility for the operation of foreign flag vessels in some circumstances.

Such Law is commonly called the “BR do Mar”. BR do Mar meaning, in English, BR of the Sea, a nickname that assigns such law as an important federal highway of the sea, connecting domestic ports through ocean carriage and waterway systems, similarly to the inland highway system for road transportation.

The BR of the sea updates the former regulatory framework of 1997, but it was only recently, on July 2025, that this new law was officially regulated.

After more than three years of waiting a Federal Decree was recently published, formally regulating the “BR do Mar” programme and establishing detailed rules, sustainability criteria for vessels, and new parameters for fleet expansion under the programme, launching a new era for cabotage in Brazil.

The Decree was followed by regulations issued by the National Agency for Waterway Transportation (ANTAQ), updating the rules over the chartering of vessels and obtaining authorisation to operate as a Brazilian Shipping Companies (EBNs), observing the innovations implemented by the new BR do Mar.

For decades, the use of foreign-flagged vessels in Brazil in domestic trade was only admitted where Brazilian-flagged vessels were not available or when the shipping company owned Brazilian tonnage.

This regime has substantially changed with the new law, which now allows more flexibility for foreign-flagged vessels to trade in Brazilian cabotage.

One of the main changes is the possibility for Brazilian shipping companies to time-charter vessels from foreign entities through the programme to Foster the Cabotage Transportation, such as:

- fleet expansion;
- replacement of vessels being constructed or under repair;
- for engagement in long-term contracts; and
- for use in so-called “special cabotage operations”.

The new law also provides a gradual increase in the number of foreign vessels that can be bareboat-chartered by Brazilian shipping companies with suspension of the original flag without the prior approval of ANTAQ, subject to limits established by the BR do Mar regulatory Decree.

The BR do Mar programme also introduced the concept of Brazilian Investment Shipping Companies (EBINs), which are entities whose corporate purpose

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is to charter vessels to Brazilian or foreign shipping companies. Accordingly, an EBIN may own and charter vessels without being required to demonstrate commercial operation. This framework enables new contractual arrangements and financing opportunities. EBINs shall be registered with ANTAQ if they intend to use their tonnage rights, but prior authorisation from the Agency is not required to exercise their activities.

In addition, the new law also brings changes relating to additional freight, ship finance, insurance requirements, allowance for fleet growth in case of sustainable vessels, and amendments to the *Adicional ao Frete para Renovação da Marinha Mercante* (AFRMM) and *Fundo da Marinha Mercante* (FMM) rules, as well as other matters. Many of these innovations are not restricted to the cabotage market, but also applicable to other shipping modalities in Brazil.

Trends and Developments

Contributed by:

Livia Sancio and Alice Studart
Salomão Advogados

Salomão Advogados is a leading Brazilian law firm with a team of over 90 lawyers, recognised for its strong focus on litigation, arbitration and dispute resolution, including a dedicated shipping and maritime practice. The firm handles disputes of all sizes, both domestic and international, and regularly acts in high-value and technically complex cases before state, federal and higher courts, as well as major arbitration institutions in Brazil and abroad. Its maritime exper-

tise covers cargo carriage, ship arrests, collisions, groundings, pollution claims, charterparty disputes and regulatory matters, often involving cross-disciplinary issues under maritime, civil and environmental law. The team also has extensive experience in administrative litigation before regulatory agencies, public authorities and state-owned entities, combining strategic advisory support with robust contentious capabilities.

Authors



Livia Sancio is a partner at Salomão Advogados and focuses on dispute resolution in the shipping sector, with particular expertise in litigation, arbitration and pre-litigation strategies. She also advises on

contract analysis and legal consultancy, assisting clients with complex maritime agreements and high-value disputes. She holds an LLM in Maritime Law from the University of Southampton and she is Vice-President of the Maritime, Port and Admiralty Law Committee of the Brazilian Bar Association in Rio de Janeiro (OAB/RJ). She also acts as an arbitrator at the Brazilian Center for Mediation and Arbitration (CBMA) and is a founding member of the Women in Shipping and Trade Association (WISTA) in Brazil.



Alice Studart is a partner at Salomão Advogados with extensive experience in administrative and judicial litigation, with a particular focus on disputes relating to carriage of goods by sea, logistics, oil and gas, customs and

agribusiness. She holds an LLM in Civil Law and Civil Procedural Law (2020) and a specialisation degree in Maritime Law (2011), both from Fundação Getulio Vargas (FGV). She is a member of the Maritime, Port and Admiralty Law Committee of the Brazilian Bar Association in Rio de Janeiro (OAB/RJ), a member of the Women in Shipping and Trade Association (WISTA) and of the Brazilian Association of Maritime Law (ABDM).

Salomão Advogados

Av. Almirante Barroso 52, 31º andar - Centro
Rio de Janeiro / RJ
CEP 20.031-918

Tel: +55 (21) 3212-6400
Email: contato@salomaoadv.com.br
Web: www.salomaoadv.com.br



Infrastructure and Logistics Alternatives: Sector Development With Legal Certainty

Brazil, with its extensive coastline, is a maritime powerhouse and home to some of the largest ports in Latin America. In 2024, the country handled more than 1.3 billion tonnes of cargo, and approximately 1.2 billion tonnes between January and October 2025, placing Brazil among the world's largest logistics and trade markets. These figures underscore Brazil's strategic relevance to global trade, particularly in the export of commodities, oil and gas products, agricultural goods and containerised cargo.

Although consolidated official data for 2025 are still being finalised, partial figures suggest that port activity maintained a strong growth trajectory throughout the year. In response to increasing cargo volumes and persistent logistical bottlenecks, Brazil has pursued a series of investments in port infrastructure and intensified dialogue with the private sector. Despite these efforts, the multiplicity of regulatory rules issued by different public authorities, together with their frequent amendment, continues to pose challenges to legal and regulatory predictability – an issue that remains particularly relevant heading into 2026.

One of the most anticipated milestones is the mega-auction of the Santos 10 Container Terminal (Tecon 10), scheduled for March 2026. The project involves a minimum estimated investment of approximately BRL6.4 billion and provides for a 25-year concession term, with the ambition of significantly expanding container handling capacity at Santos – the largest port complex in Latin America. The initiative is intended to strengthen Brazil's position in global container trade, enhance national logistics competitiveness and attract long-term private investment.

The Expansion of Cabotage Shipping as a Logistics Strategy

Despite the considerable potential and length of Brazil's coastline, cabotage shipping continues to account for a relatively modest share of the national transport matrix. Recent data indicate that cabotage represents approximately 12% of domestic transport, a limited proportion given the country's extensive coastal geography.

Road transport remains the dominant mode within Brazil's logistics system, with significant implications for costs and greenhouse gas emissions. Against this backdrop, the expansion of cabotage is increasingly viewed as a central pillar of Brazil's strategy for logistics modernisation and transport decarbonisation.

To support this development, in 2025 Brazil enacted the decree regulating the “BR do Mar” programme, an initiative designed to modernise cabotage legislation, stimulate competition and enhance market efficiency. The programme introduces more flexible rules for the chartering of foreign-flagged vessels and creates incentives for the entry of new market participants.

The regulatory framework also includes provisions aimed at encouraging the use of sustainable vessels and reducing emissions in the maritime sector. It is expected that, in 2026, supplementary ordinances will further define the criteria and guidelines applicable to “green vessels” in cabotage operations, reinforcing the sector's environmental commitments.

Inland Waterway Navigation

Within the broader agenda of logistics diversification, inland waterway navigation has emerged as a viable alternative to reduce costs and improve efficiency in domestic cargo flows. The first waterway concession auctions are expected to take place in 2026, marking a significant institutional shift, as many of these waterways have historically been managed directly by the public sector.

The Ministry of Ports and Airports has indicated that the new concession model seeks to attract private investment and expand the role of inland navigation within Brazil's logistics matrix. As a transport mode that emits up to five times less greenhouse gases than road transport, inland waterways also offer strong potential for integration with international routes, particularly those connecting Brazil to neighbouring markets such as Argentina and Uruguay via the Paraguay River, thereby enhancing the competitiveness of Brazilian agribusiness.

Decarbonisation and Energy Transition

Maritime transport accounts for approximately 90% of global trade while contributing around 3% of global

greenhouse gas emissions. This dual role places the sector at the centre of climate policy discussions, both internationally and within the domestic agendas of major trading nations.

In Brazil, the importance of maritime transport is even more pronounced due to the country's extensive coastline, its reliance on long-haul shipping routes and the need to integrate multiple logistics modes to ensure efficient movement of goods and passengers.

Brazil is particularly well positioned to play a leading role in the maritime energy transition, notably as a supplier of sustainable biofuels suitable for shipping. Biofuels such as biodiesel and ethanol, including those produced from residual feedstocks (such as used cooking oil), have already been authorised for use in vessels by the National Agency of Petroleum, Natural Gas and Biofuels (ANP), largely due to their compatibility with existing propulsion systems.

While European regulatory models tend to prioritise alternative fuels such as green ammonia, hydrogen and methanol, Brazil's longstanding experience with biofuels may offer a competitive and complementary pathway aligned with international climate commitments.

In December 2025, the Brazilian government launched the National Ports Decarbonisation Programme (PND-Ports) and the National Navigation Decarbonisation Programme (PND-Navigation), which include measures such as port electrification to supply clean energy to berthed vessels and reduce reliance on fossil fuels in port and shipping operations.

Reinforcing its sustainable credentials, Brazil hosted COP30 – the United Nations Climate Change Conference – in 2025. In 2026, the Net Zero agenda for Brazilian shipping is expected to be shaped by alignment with the latest guidelines of the International Maritime Organization, as well as by continued technological progress in sustainable fuels.

Oil and Gas: Energy Transition Alongside Continued Exploration

The energy transition presents Brazil with both challenges and strategic opportunities. On the one

hand, the country holds extensive oil and natural gas reserves, including substantial untapped offshore potential; on the other, it faces increasing international pressure to accelerate the adoption of cleaner energy sources.

Petrobras has articulated a strategy centred on a “just transition”, combining low-carbon initiatives with the continued and responsible exploration of offshore hydrocarbons, reflecting the understanding that the transition will be gradual and structurally complex.

One of the most contested areas is the Brazilian Equatorial Margin, which encompasses several sedimentary basins with high reserve potential, comparable to recent discoveries in Guyana and Suriname. Estimates suggest that the region may contain between 10 and 30 billion barrels of oil, potentially expanding Brazil's reserves significantly. After years of regulatory and technical discussions, in 2025 Petrobras obtained environmental licences to commence exploratory drilling near the mouth of the Amazon River, in the state of Amapá. At the same time, environmental organisations, Indigenous groups and traditional communities filed legal challenges seeking to suspend drilling – a debate expected to intensify in 2026.

Also in 2025, Brazil obtained international recognition of its claim over approximately 360,000 sq km of additional extended continental shelf, expanding the legal basis for future offshore exploration. The region remains the subject of intense debate between economic development objectives and environmental protection concerns, a tension likely to gain further prominence in 2026.

Finally, the ongoing review of time-based regulations applicable to offshore support vessels – particularly those affecting the engagement of foreign operators – is expected to be one of the sector's key “hot topics”, with the potential to attract new market entrants.

SSE – Container Segregation and Delivery Service: Overview and Analysis of STJ and STF Decisions

The legality of the Container Segregation and Delivery Service (SSE) charge has been one of the most complex and contentious issues in Brazilian port law,

with debates spanning more than two decades and expected to remain prominent throughout 2026.

In Brazil, port operators charge ship-owners a bundle of services (the so-called “box rate”) for loading and discharging vessels, covering vertical and horizontal container movements up to their placement in the yard. These costs are passed on to cargo interests through the Terminal Handling Charge (THC), which is charged together with freight.

Following discharge, cargo may be stored within the container terminal itself (“wet ports”), which provides bonded storage until delivery to the importer, or transferred to retroport terminals (also referred to as “dry ports”).

The SSE emerged as an additional charge intended to reimburse terminals for specific costs incurred in segregating and delivering containers to retroport terminals within certain logistics flows.

The SSE charge was expressly regulated by ANTAQ Resolution No. 72/2022, which governs container handling and storage services at port facilities and expressly authorises the separate charging of SSE (or “THC2”) in addition to the traditional THC.

Nevertheless, the legality of this charge has generated intense debate. In 2022, the Federal Court of Accounts (TCU) ordered the suspension of SSE charges, considering them anti-competitive due to their potential to distort competition between wet and dry ports, and recommended greater regulatory clarity from ANTAQ, the federal regulatory agency responsible for overseeing the waterway transportation sector. In 2024, upon review, the TCU reiterated the potential risk of double charging through THC and SSE, although its technical staff concluded that the SSE charge was justified and highlighted the adverse effects of a blanket prohibition.

The issue was subsequently brought before Brazil’s superior courts.

In September 2024, the First Panel of the Superior Court of Justice (STJ), ruling on Special Appeals Nos. 1,899,040 and 1,906,785, held by majority that the

charging of SSE by port operators in relation to retroport terminals could constitute an abuse of dominant position in the form of price squeeze, in violation of Brazil’s Competition Law (Law No. 12,529/2011). The decision is not final and remains subject to appeal.

In October 2025, however, Justice Dias Toffoli of the Supreme Federal Court (STF), when analysing a writ of mandamus filed by the Brazilian Association of Container Terminals (ABRATEC), held that the TCU had exceeded its authority by prohibiting a charge regulated by ANTAQ. The ruling restored the effectiveness of Resolution No. 72/2022 and authorised the continued charging of SSE under ANTAQ’s regulatory oversight.

These decisions highlight the divergence of interpretations among regulatory, administrative and judicial bodies, leaving the controversy unresolved and reinforcing the importance of legal certainty and regulatory clarity regarding SSE charges in 2026.

ANTAQ Decision No. 521/2025 – Demurrage Limitations and Cargo Retention

In addition to SSE, another closely related issue that has attracted significant attention concerns demurrage, the charge for container use beyond the agreed free time.

In August 2025, ANTAQ issued Decision No. 521/2025, setting out a revised regulatory approach to demurrage charges. Under this framework, demurrage is only considered legitimate where: (i) the delay in returning the container results from the user’s interest, choice, fault or business risk; and (ii) the overstay does not result from operational failures or omissions attributable to the carrier, the port terminal or the empty container depot.

This approach departs from the traditional maxim “once on demurrage, always on demurrage”, as demurrage accrual must be suspended from the first unsuccessful attempt to return the container where the delay is not attributable to the user.

The decision also reinforces transparency obligations on intermediaries when passing demurrage charges on to users and recognises that cargo retention as a coercive measure is permissible only in limited circum-

stances, such as unpaid freight or general average, while prohibiting the refusal of new shipments due to default under contracts already being performed.

At the same time, the ruling raises questions regarding the limits of regulatory authority, given that the assessment of specific factual circumstances and the legality of charges under civil law ultimately falls within the remit of the judiciary.

Legal Nature of Demurrage

The legal nature of demurrage remains another contentious issue likely to gain prominence in 2026. Traditionally, Brazilian jurisprudence – including consolidated precedents of the STJ – has treated demurrage as compensation for the use of containers beyond the agreed free time, without limitation to the value of the container, reflecting its function as compensation for equipment unavailability.

However, in September 2025, the Fourth Panel of the STJ departed from this line of authority and held that container demurrage has the legal nature of a penalty clause, establishing that the amount charged by carriers should be limited to the value of the container itself, unless additional material damages are proven.

The issue remains far from settled, and further judicial clarification and potential harmonisation of case law are expected throughout 2026.

Final Remarks

In summary, the Brazilian landscape for 2026 is characterised by growing demand, a robust investment agenda and increasing pressure for logistics efficiency, with particular emphasis on structural initiatives such as the Tecon 10 auction and the expansion of concession models across additional transport modes. At the same time, sector development is taking place

within a complex and fragmented regulatory environment, in which the multiplicity of rules and the rapid evolution of regulatory guidelines increase compliance costs and render predictability – a critical element for capital-intensive projects – an increasingly valuable asset.

This context is further heightened by the fact that 2026 is an election year in Brazil, a circumstance that traditionally intensifies political, institutional and regulatory debate, with potential direct implications for policy formulation and implementation in the logistics and maritime sectors.

Against this backdrop, logistics diversification through cabotage and inland waterway navigation emerges as a key driver of both competitiveness and decarbonisation, particularly in a country whose transport matrix remains heavily road-based. The BR do Mar framework and the expected supplementary rules on sustainable vessels point towards alignment with the energy transition, while government programmes signal efforts to accelerate sustainability within the maritime and port environment. In parallel, offshore activities remain strategically relevant: while the energy transition advances, oil and gas exploration – particularly in the Equatorial Margin – will continue to sit at the centre of technical, socio-environmental and judicial debate.

Finally, regulatory and contractual disputes in the sector reaffirm that infrastructure development depends not only on investment, but also on institutional coordination and legal certainty. For 2026, the central challenge lies in fostering a stable and transparent regulatory environment capable of encouraging investment, innovation and sustainability, while ensuring access to effective dispute resolution mechanisms where necessary.



Law and Practice

Contributed by:

Rui Fernandes, Andrea Fernandes and Conal Calvert
Gardiner Roberts LLP

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and by recruiting the best talent, is in keeping with the Gardiner Roberts’ clients-first philosophy – one which has buoyed and supported Gardiner Roberts for nearly 100 years. The future of Gardiner Roberts lives in our determination to help clients grow their businesses and by continuing to earn their confidence with their ongoing legal needs. Its transportation and logistics practice group is one of the top teams in the country.

Authors



Rui Fernandes provides advice with respect to marine contract and commercial law. He is a qualified mediator and arbitrator and obtained his FCI Arb in 2020. Rui has appeared as senior counsel in trial and appellate

courts and agencies across Canada: The Supreme Court of Canada, The Federal Court, Ontario, Nova Scotia, British Columbia, Alberta, Canadian Transportation Agency, and Transportation Appeal Tribunal of Canada. He has written nine texts, including the Halsbury series on Maritime Law.



Conal Calvert is an associate lawyer in the transportation and logistics law group at Gardiner Roberts LLP. His practice encompasses a range of disputes involving all manner of maritime and transportation issues

including cargo litigation matters, property damage and casualty claims, and regulatory proceedings before the federal and provincial governments. Conal is a member of the Canadian Transport Lawyers Association and the Canadian Maritime Law Association.



Andrea Fernandes is an experienced and versatile lawyer specialising in maritime and transportation matters. She has experience in dealing with cargo disputes, property damage and casualty matters, collisions, limitation

of liability proceedings, contract disputes and vessel arrests. Andrea has represented clients in the courts of many Canadian jurisdictions including Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia and PEI, and in the Federal Court. She is a director of the Canadian Maritime Law Association and the Canadian Transportation Lawyers Association. Andrea is co-author of “The Law of Freight Forwarding and Freight Brokering in Common Law Jurisdictions”, Aerospark Press, 2022.

Gardiner Roberts LLP

3600-22 Adelaide St West
Toronto
Ontario M5H 4E3
Canada

Tel: +1 416 865 6600
Fax: +1 416 865 6636
Email: contactGR@grllp.com
Web: www.grllp.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Authority for navigation and shipping matters lies with the federal government and disputes arising from maritime matters are heard in the Federal Court, which is Canada's admiralty court. The Federal Court is a single circuit court for the country hearing matters locally. While the superior courts of the provinces maintain concurrent subject-matter jurisdiction, in practice the Federal Court is the venue for marine and shipping disputes. Personal injury matters arising from maritime issues are frequently brought in the superior courts.

The authority of the maritime courts in Canada is established by the Federal Courts Act, and the principal legislation dealing with marine matters includes the following, together with their respective regulations:

- Canada Marine Act;
- Marine Insurance Act;
- Marine Liability Act; and
- Canada Shipping Act 2001.

Some provinces have legislation dealing with similar areas but the federal legislation is of primary concern.

Common maritime and shipping claims heard in Federal Court are disputes with respect to the following:

- ownership title and possession of ships;
- ship mortgages;
- claims for damage or loss of life and personal injury caused by or occurring in connection with a ship;
- damage or loss of cargo or goods carried on a ship;
- claims arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading regardless of the place of the damage or loss;
- disputes related to charterparty agreements, salvage, towage or pilotage;
- disputes related to ship supplies and services;
- contracts related to construction, repair and equipping of ships;
- crew wages and advances made on account of the ship;
- dock charges, harbour dues or tolls;
- claims in connection with contracts of marine insurance;
- general average; and
- claims related to pollution by vessels.

1.2 Port State Control

The Marine Safety and Security Branch of Transport Canada is responsible for port state control in Canada. Transport Canada ensures compliance with various international obligations and domestic laws and regulations, including:

- International Convention for the Safety of Life at Sea (SOLAS);
- International Convention for the Prevention of Pollution from Ships (MARPOL);

- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW);
- Tokyo MOU and Paris MOU; and
- domestic laws applicable to vessels in Canadian waters.

In port, Transport Canada inspectors may board and inspect foreign vessels to verify safety and compliance with Canadian and international laws and may order that issues be addressed before the vessel is permitted to leave port. If issues are not addressed, particularly as concerns pollutants, Transport Canada can issue fines and lay charges against the ship-owners.

Transport Canada is also responsible for investigating accidents to verify compliance with federal laws and regulations, including labour laws. In cases of more serious accidents and incidents, the Transportation Safety Board may also opt to investigate.

The Canadian Coast Guard regulates marine traffic and is responsible for screening vessels and issuing clearance to ships prior to entry into Canadian waters. Vessels entering Canadian waters must report their identity, condition, destination and any pollutants or dangerous cargo carried aboard. Unlike its American counterpart, the Canadian Coast Guard is not a law enforcement agency, although it provides operational support to law enforcement agencies in respect of maritime security. Transport Canada will also work alongside law enforcement authorities where appropriate, usually the Royal Canadian Mounted Police and the Canada Border Services Agency.

1.3 Domestic Legislation Applicable to Ship Registration

The Canada Shipping Act 2001 (CSA) and its regulations govern ship registration in Canada with Transport Canada responsible for the registration of vessels. Registered vessels are listed in separate registries depending on gross tonnage, with vessels exceeding 15 GT registered with the Canadian Register of Vessels and those of less than 15 GT in the Small Vessel Register.

1.4 Requirements for Ownership of Vessels

A Canadian registered vessel may be jointly owned by up to five persons, one of whom must be a “qualified person”, which is defined as either a Canadian corporation or a Canadian citizen or permanent resident. A non-citizen may own a Canadian registered vessel if they are a permanent resident or if they do so jointly with a Canadian corporation or citizen. In the event that an unqualified person is the registered owner of the vessel, any interested person may apply to the Federal Court for an order for the sale of the vessel, or their share in the vessel, to a qualified person.

An exception to this rule is that a foreign corporation may own a vessel registered in Canada if a subsidiary of that corporation registered in Canada, an employee or director of a branch office of that corporation carrying on business in Canada, or a ship management company incorporated in Canada is acting in respect to all matters relating to the vessel.

A vessel under construction cannot be entered into the registry but it can be recorded with Transport Canada. This allows the party building the vessel or the intended owner to register a shipbuilder’s mortgage, secure a vessel registration number and reserve a name for the vessel.

1.5 Temporary Registration of Vessels

A vessel may be temporarily registered in Canada provided that it is bare-boat chartered exclusively to a “qualified person”, but the registration in the foreign jurisdiction must be suspended in respect of the right to fly that state’s flag for the duration of the charter and the registration period.

Canada does not permit the dual registration of vessels except insofar as this is part of a temporary registration of a bare-boat charter as described above.

1.6 Registration of Mortgages

Ship mortgages must be filed with the Chief Registrar of the Canadian Registry of Vessels, who maintains the registry of such mortgages pursuant to the Canada Shipping Act 2001 (CSA). A mortgage may only be registered under the CSA for vessels appearing in the register.

A party registering a ship's mortgage must submit a Mortgage Form supplied by Transport Canada which includes:

- the names and addresses of the mortgagors and mortgagees;
- the principal amount; and
- additional details such as the rate of interest, method of payment or the date on which the collateral agreement was executed.

Notwithstanding the ship mortgage requirements of the CSA, the provinces maintain concurrent jurisdiction over security interests in vessels in accordance with their respective personal property security regimes and security interests on vessels may be perfected in those registries as well.

1.7 Ship Ownership and Mortgages Registry

The ship mortgage register is not publicly accessible but non-owners may file a request with Transport Canada and pay a fee in order to access information in the registry.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship loan financing typically involves a mortgage or line of credit secured against the ship asset or other assets. Some debt and equity financing is also done in exchange for shares. Personal guarantees may be requested. Most common are ship mortgages, which can be registered on the ship registry for registered vessels.

2.2 Ship Leasing

There has not been an increase in ship leasing transactions in Canada. Lender/borrower relationships are typically backed by a ship mortgage. Lessor/lessee relationships may be backed by personal guarantees. Courts and arbitral tribunals treat both relationships as contractual relationships. Sale and leaseback transactions occur in Canada.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Canada is a signatory to and has implemented a number of international conventions that will impact upon the liability of owners and interested parties in events of pollution and wreck removal. A brief summary of these conventions is as follows.

- International Convention on Civil Liability for Oil Pollution Damage, 1992 (the "1992 CLC") – Ratified by Canada in 1998 and in force in 1999. Holds ship-owners strictly liable for oil pollution damage from persistent oils (eg, tankers), with compulsory insurance and limits based on tonnage and Special Drawing Rights (SDR).
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the "1992 Fund Convention") and 2003 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the "Supplementary Fund Protocol") – The 1992 Fund Convention was ratified by Canada in 1998 and in force in 1999. The Supplementary Fund Protocol was ratified by Canada in 2009 and in force in 2010. They establish mechanisms for compensation beyond the ship-owner's limit under the CLC. They are financed by contributions from any person who has received more than the set amounts of crude oil and/or heavy fuel oil in one calendar year in a member state.
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the "Bunkers Convention") – Ratified by Canada in 2009 and in force in 2010. Extends strict liability and compulsory insurance to all seagoing vessels carrying bunker fuel ($\geq 1,000$ GT), with liability limits based on tonnage of the ship.
- International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 ("MARPOL 73/78") – The MARPOL Convention and the Protocol of 1978 entered into force in October 1983. All six annexes have entered into force. MARPOL 73/78 governs pollution prevention from ships (oil, noxious substances,

sewage, garbage, air emissions) via technical and operational standards. Canada has adopted most aspects of the MARPOL Convention under the Canada Shipping Act 2001, while domestic legislation with stronger restrictions regarding sewage discharge in Canadian Arctic Waters are in force.

- International Convention on Oil Pollution Preparedness, Response and Co-operation (the “1990 OPRC”) – Ratified and in force in Canada in 1995. Provides for oil pollution preparedness and mutual response co-operation. The Canada Shipping Act 2001 gives effect to the OPRC and provides the legislative frameworks in order to meet the requirements under the convention. The Canadian Coast Guard has various national and international contingency plans in place to fulfil Canada’s obligations under the convention.
- Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the “2010 HNS Protocol”) – Ratified by Canada in 2018. Creates liability, compensation and reporting obligations for hazardous and noxious substances cargoes; Canada implemented the 2010 HNS Protocol via amendments to Canada’s Marine Liability Act 2001 and the Marine Liability and Information Returns Regulations.
- International Convention on Salvage, 1989 – Ratified and entered into force in Canada in 1996, subject to a reservation that the convention does not apply when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the seabed. Governs salvage operations, including those involving pollutive wrecks.
- Nairobi International Convention on the Removal of Wrecks, 2007 – Entered into force in Canada in 2019. The convention imposes strict liability for wreck removal on ship-owners, mandates compulsory insurance, enables coastal states to act when ship-owners fail, and provides for liability limits under the International Convention on Limitation of Liability for Maritime Claims (LLMC). However, Canada has taken a reservation on the application of the LLMC to claims related to wreck removal. Ship-owners are not able to limit liability for claims related to the raising, removal, destruction or

rendering harmless of a ship that is sunk, wrecked, stranded or abandoned. Canada also extended the application domestically to non-seagoing vessels.

Canada has various domestic laws that apply in events relating to pollution and wreck removal.

- Marine Liability Act 2001 (MLA) – Among other things, the MLA implements the CLC, 1992 Fund Convention, Bunkers Convention, 2010 HNS Protocol, International Convention on Salvage, 1989, and enhances Canada’s Ship-source Oil Pollution Fund (SOPF) to include oil from unknown sources.
- Marine Liability and Information Return Regulations (SOR/2016-307) – Require exporters/importers of bulk oil and HNS to report quantities and pay levies to fund pollution liabilities.
- Canada Shipping Act 2001 and its various pollution regulations – Encompass MARPOL implementation, oil pollution prevention, pollutant discharge reporting, Arctic pollution prevention, sewage, and infrastructure for response organisations.
- Ship source Oil Pollution Fund (SOPF) – A federal fund established under the Marine Liability Act, which compensates for clean-up and damage in Canadian waters resulting from ship-source oil spills when other sources are unavailable.
- Wrecked, Abandoned or Hazardous Vessels Act 2019 – Implements the Nairobi Convention domestically, prohibits abandonment, and empowers government to intervene and seek recovery.

3.2 International Conventions: Collision and Salvage

Canada has incorporated the principles of the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (the “1910 Brussels Convention”) into Canadian maritime law primarily through the Marine Liability Act and the Canada Shipping Act 2001.

Canada’s Marine Liability Act establishes the legal framework for who pays for damages, sets liability limits, mandates insurance for passenger vessels, and outlines compensation for injuries, damages and losses in Canadian waters.

Canada has also incorporated the International Regulations for Preventing Collisions at Sea (COLREGs) of 1972 into its domestic Collision Regulations under the Canada Shipping Act 2001, which establishes the rules for safe navigation and preventing collisions, and dictates post-collision duties. Canada made certain domestic modifications and supplementations to the COLREGs.

As for salvage, in 1996 Canada ratified and entered into force the International Convention on Salvage, 1989, subject to a reservation that the convention does not apply when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the seabed. The Canada Shipping Act 2001 implements this convention directly in Schedule 3. Canada's Marine Liability Act 2001 defines "salvor" and enables limitation of liability under the International Convention on Limitation of Liability for Maritime Claims (LLMC).

3.3 Convention on Limitation of Liability for Maritime Claims

Canada ratified the 1996 Protocol on 9 May 2008 and it entered into force on 7 August 2008. The 1996 Protocol is incorporated into Canadian domestic law through the Marine Liability Act 2001. However, Canada has taken a reservation on the application of the LLMC to claims related to wreck removal. Ship-owners are not able to limit liability for claims related to the raising, removal, destruction or rendering harmless of a ship that is sunk, wrecked, stranded or abandoned. Canada also extended the application domestically to non-seagoing vessels. The 2012 amendments to the 1996 Protocol have not been ratified or implemented.

3.4 Vienna Convention on the Law of Treaties

Canada acceded to the 1969 Vienna Convention on the Law of Treaties on 14 October 1970 and the convention entered into force on 27 January 1980. Courts may apply its interpretative framework to international treaties incorporated into domestic law. For the Convention on Limitation of Liability for Maritime Claims and 1996 Protocol, which came into force after the 1969 Vienna Convention on the Law of Treaties, Canadian courts can apply the Vienna rules to interpret their domestic effect under Canada's Marine Liability Act.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Under Canada's Marine Liability Act 2001 (MLA), establishing a limitation fund for maritime claims follows the legal structure based on the Convention on Limitation of Liability for Maritime Claims 1976 and its 1996 Protocol (LLMC).

Under the MLA, persons entitled to limit liability are: the owner, charterer, manager and operator of all ships (and not just "seagoing" ships) and any person with an interest in or possession of a ship. Additionally, an owner of a dock, canal or port may also limit liability.

The person seeking limitation applies to the Federal Court (Admiralty Court) in Canada. The person may assert the right to limitation of liability in a defence filed, or by way of action or counterclaim for declaratory relief. The limits of liability are generally calculated based on the ship's gross tonnage and, for passenger ships, the number of passengers. The limits of liability are established by Articles 6 and 7 of the LLMC and Sections 28, 29 and 30 of the MLA.

A deposit is required; however, the Federal Court may determine what form of guarantee it considers to be adequate for the purposes of paragraph 2 of Article 11 of the LLMC.

3.6 Seafarers' Safety and Owners' Liability

Canada ratified the Maritime Labour Convention, 2006 (MLC) on 15 June 2010 and the convention took effect in Canada on 20 August 2013. Various regulations under the Canada Shipping Act 2001, such as the Marine Personnel Regulations (Part 3) and the Vessel Construction and Equipment Regulations (SOR/2023-257), implement provisions of the MLC. The Merchant Seaman Compensation Act 1985 (c. M-6) provides compensation to seafarers for injuries and workplace accidents, supplementing the MLC protections. The Canada Labour Code (R.S.C. 1985, c. L-2) through the Maritime Occupational Health and Safety Regulations (SOR/2010-120) also applies to seafarers aboard Canadian-registered ships.

4. Cargo Claims

4.1 Bills of Lading

Canada's MLA incorporates the Hague-Visby Rules (Brussels Protocol 1968), giving them the force of law for contracts for the carriage of goods by water between Canada and other "Contracting States", and for contracts on domestic routes (Canada-to-Canada, direct or via foreign ports) unless a bill of lading is absent and the contract expressly excludes them.

4.2 Title to Sue on a Bill of Lading

Under Section 2 of the Bills of Lading Act 1985, every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes on or by reason of the consignment or endorsement, has and is vested with all rights of action and is subject to all liabilities in respect of those goods as if the contract contained in the bill of lading had been made with such party.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Canada's MLA incorporates the Hague-Visby Rules (Brussels Protocol 1968) and the LLMC Convention as amended by the Protocol of 1996.

Under Article I of the Hague-Visby Rules, a "carrier" includes the owner or charterer who enters into a contract of carriage with a shipper. Article III of the Hague-Visby Rules sets out the responsibilities and liabilities of the carrier. Article IV of the Hague-Visby Rules sets out the rights and immunities of the carrier and ship including the limits of liability.

Article VIII of the Hague-Visby Rules provides that the provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the liability of owners of vessels.

Part 3 of Canada's MLA incorporates the LLMC Convention. Article 1 of the LLMC Convention entitles ship-owners and salvors to limit their liability. "Ship-owners" is defined as the owner, charterer, manager and operator of a seagoing ship. Article 6 of the LLMC Convention set out the general limits.

Under Section 25 (1)(b) of Canada's MLA, the definition of "shipowners" in the LLMC Convention is extended to include non-seagoing ships and any person who has an interest in or possession of a ship from and including its launching. Section 29 (b) of Canada's MLA provides that the maximum liability for cargo damage maritime claims involving a ship of less than 300 GT is CAD750,000.

4.4 Misdeclaration of Cargo

Under Article III of the Hague-Visby Rules, which are incorporated into Canada's Marine Liability Act (MLA), the shipper is deemed to have guaranteed to the carrier the accuracy of the marks, number, quantity and weight of the goods and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. There are no current reported judgments approving or denying claims made against the shipper for misdeclaration of cargo.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Article VI of the Hague-Visby Rules, which are incorporated into Canada's Marine Liability Act (MLA), legal action must be commenced within one year from the delivery date – or, for non-delivery, within one year of the date the goods should have been delivered. This applies whether the action is founded in contract or in tort. This period may be extended if the parties agree after the cause of action has arisen. If no bill of lading or similar document of title applies to the carriage, for example if a sea waybill was issued, then the time bar set out in the terms and conditions of said seaway bill would likely apply.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Canada is not a signatory to any international conventions on ship arrest. Instead, ship arrests are governed by the Federal Courts Act and the Federal Court Rules.

5.2 Maritime Liens

Maritime liens are not necessarily distinguished from maritime claims, except in so far as maritime liens are by definition in rem against the vessel itself, though

they can likely also be brought as a claim in personam against the owners of the vessel.

No maritime lien arises for the provision of necessities to a Canadian vessel, but Canada's MLA provides that a statutory lien arises for necessities supplied to a foreign vessel by persons carrying on business in Canada as well as for repairs, stevedoring and light-erage.

A maritime lien arising in another jurisdiction will be recognised in Canadian law even where the basis for that lien does not exist in Canadian law. The validity of such a lien will be assessed by the Canadian court in accordance with the law of the jurisdiction in which it arises.

Canadian law recognises four kinds of maritime liens:

- for damages to or by a vessel;
- salvage liens;
- Master's disbursements and Master's and seamen's wages; and
- bottomry and respondentia.

Canadian law does not recognise a maritime lien for injuries to the crew.

Maritime liens arise without notice, do not require registration and are enforceable by an action in rem against the vessel, which may be arrested to satisfy the lien. A maritime lien will rank in priority above other claims against the vessel regardless of when they arose, including a ship's mortgage. The statute of limitations of the province in which the lien arises will govern, which is generally two years in Canada.

Maritime liens will ordinarily be extinguished by the payment of the lien, the posting of security into court to secure the ship's release, or the loss of the vessel but will not expire upon the sale of the vessel, except by court order, or the bankruptcy of the owner.

Maritime liens may arise as a result of a bare-boat or time charter but the lien claimant may have to prove that the charterer was acting as the owner's agent in incurring the debt depending on the particular circumstances.

5.3 Liability in Personam for Owners or Demise Charterers

The maritime liens recognised in Canadian law are against the vessel itself and do not require that the ship's owners also be liable in personam. In circumstances where no lien arises, it may be necessary for the claimant to demonstrate that a charterer was acting as the owner's agent in order for a debt to arise against the vessel making it liable for arrest.

A vessel can be arrested for maritime liens arising as a result of a bare-boat or time charterparty but the lien claimant may have to prove that the charterer was acting as the owner's agent in incurring the debt.

5.4 Unpaid Bunkers

A bunker supplier can arrest a vessel in connection with unpaid bunkers if a Canadian bunker supplier has supplied a foreign-owned vessel in Canada or if the enforcement of a valid lien for unpaid bunkers from a foreign jurisdiction is sought in Canada.

A maritime lien for necessities is against the vessel itself and will generally not depend on whether the bunkers were ordered by the charterer rather than the owner. As with any claim for necessities, the lien claimant must show it provided the bunkers in question in order to obtain the lien. The lien cannot be for any bunkers carried by the vessel.

5.5 Arresting a Vessel

The procedures for arresting a vessel are set out in the Federal Courts Rules. The party seeking to arrest the vessel must first file a Statement of Claim and an Affidavit to Lead Warrant upon receipt of which the Court will issue a Warrant. The Statement of Claim, Affidavit to Lead Warrant and Warrant must be served on the vessel. The Warrant is national in scope and once served the vessel cannot be moved without the permission of the Court or consent of the parties. There is no requirement that the arresting party provide security.

The arresting party does not need to file copies of documents supporting the claim or the grounds for arrest in order to obtain the Warrant. However, such documents will be needed later in the litigation and may be filed with the Federal Court in either English

or French. A certified translation will be required for documents in any other language.

5.6 Arresting Bunkers and Freight

It is possible to arrest freight and bunkers provided that the action relates to the specific property contemplated in the contract at issue. With respect to bunkers, they would need to be the bunkers at issue and not merely bunkers possessed by the ship-owner.

5.7 Sister-Ship Arrest

The Federal Courts Act provides that any action which can be brought against a ship can be brought against any other ship with the same beneficial owner. That each vessel is owned by a separate company both with the same owner, does not operate to defeat the sister-ship arrest provisions. The Federal Court will not issue separate warrants for a vessel and its sister-ship so the claimant must elect to pursue one or the other.

5.8 Other Ways of Obtaining Attachment Orders

Attachment orders or warrants may be obtained against cargo and other material and supplies provided to the vessel.

5.9 Releasing an Arrested Vessel

The parties may agree to the release of the vessel on whatever terms they decide. Such terms could include a letter of undertaking from a P&I club but this would be an arrangement between the parties and is not a court-approved form of security.

The court will release an arrested vessel upon a cash payment into court of the amount claimed or otherwise upon receipt of security or bail, which can take the form of a bank guaranty, a surety bond from a company licensed to do business in Canada, or a bail bond in the form prescribed by the court. The bank guaranty does not need to be from a Canadian bank, though it would be preferable in most circumstances.

5.10 Procedure for the Judicial Sale of Arrested Ships

The arresting party may move, before or after judgment, for sale of the vessel. There is no set procedure for the judicial sale of a vessel but a court may direct that the vessel be appraised, that notice be given to

parties who may have a claim to the proceeds of the sale, and require public posting of the proposed sale setting out timelines and procedures for advancing such a claim. The court may decide that the vessel be sold either by public auction or private sale.

Possession of the vessel does not pass to the arresting party and remains with the ship-owner during the course of the arrest. Expenses for maintaining the vessel therefore remain with the owner during that time. Where the owner of the vessel does not pay those expenses, the court may order that the vessel be surrendered to the possession of the sheriff, but the sheriff will not ordinarily pay for the upkeep of the vessel. Some other interested party will be required to pay the expenses associated with maintaining the vessel during that time, whether it is a mortgagee or, if no party interested in the vessel can be found, the arresting party itself.

The priority of claims in respect of vessels sold pursuant to a court order are:

- marshal's expenses of arrest, including expenses incurred to maintain the vessel during the arrest;
- costs of selling the ship, including costs incurred by the sheriff;
- possessory liens arising before the maritime liens;
- maritime liens;
- possessory liens arising after maritime liens;
- mortgages, in order or registration; and
- statutory rights in rem, such as claims for the supplies of necessities.

5.11 Insolvency Laws Applied by Maritime Courts

Canada's equivalent of "Chapter 11" of the United States Bankruptcy Code proceedings are found in the Companies' Creditors Arrangement Act and the Bankruptcy and Insolvency Act.

A party with a true maritime lien, as opposed to statutory rights in rem, is considered a secured creditor under the Bankruptcy and Insolvency Act and will not be subject to a stay of proceedings under its provisions. Where a vessel has been arrested and is the subject of a judicial sale, the Federal Court of Canada will not stop the sale and surrender the vessel to the

trustee in bankruptcy unless the trustee pays into court the amounts claimed in relation to the sale of the arrested vessel in the Federal Court action.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The court will order that damages be paid for a wrongful ship arrest only if malice or gross negligence on the part of the arresting party can be proven.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Canada's MLA sets out the laws applicable to the resolution of maritime passenger claims. The MLA incorporates both the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended by the Protocol of 1990 (the "Athens Convention"), and the LLMC Convention.

Generally speaking, the Athens Convention applies to limit liability for injuries suffered by passengers, typically paying, aboard a vessel being operated for a commercial purpose. The LLMC Convention limits liability for all other personal injuries and deaths that occur on board a ship or arise directly from its operation.

Section 27 of the MLA provides that Canada is a state party to the LLMC Convention. The limits of liability are found at Articles 6 and 7 of the LLMC Convention. For ships of less than 300 GT, Sections 28 and 29 of the MLA set out the limits of liability for claims for loss of life or personal injury to passengers.

Section 37 of the MLA provides that Articles 1 to 22 of the Athens Convention have force of law in Canada. The MLA expands the scope beyond purely international voyages to apply to domestic voyages as well. The limits of liability are found under Articles 7 and 8 of the Athens Convention. Where the total amount that would be payable to all claimants under the Athens Convention limitation of liability exceeds the limit of liability set out in Article 7 of the LLMC Convention, a ship-owner may limit such claims to the amount of

the LLMC Convention limit through a pro rata scaling of each claim.

Under Article 16 of the Athens Convention, any action for damages arising out of the death of or personal injury to a passenger or the loss of or damage to luggage shall be time-barred after a period of two years.

Under Section 14 of the MLA, no action may be commenced by the dependants of the person injured or deceased later than two years after the cause of action arose. Under Section 23 (1) of the MLA, no action may be commenced later than two years after the loss or injury arose to enforce a claim or lien against a ship in collision or its owners in respect of any loss to another ship, its cargo or other property on board, or any loss of earnings of that other ship, or for damages for loss of life or personal injury suffered by any person on board that other ship, caused by the fault or neglect of the former ship, whether that ship is wholly or partly at fault or negligent. Under Section 140 of the MLA, except as otherwise provided in the MLA or any other federal statute, no proceedings under Canadian maritime law may be commenced later than three years after the day on which the cause of action arises.

Claims for indemnities for personal injury of a passenger are recognised as maritime claims rather than maritime liens. Maritime liens are reserved for bottomry and respondentia, salvage, collision, seamen's wages, Master's disbursements, and goods and services provided to foreign ships.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The Courts in Canada will recognise and enforce foreign law and jurisdiction clauses stated in bills of lading under certain circumstances.

Section 46 of MLA allows cargo claimants the option to sue in Canada despite an exclusive foreign jurisdiction clause. It states the following.

“46 (1) If a contract for the carriage of goods by water provides for the adjudication or arbitration of claims arising under the contract in a place other than Canada, a claimant may institute judicial or arbitral proceedings in a court or arbitral tribunal in Canada that would be competent to determine the claim if the contract had referred the claim to Canada, if:

(a) the actual port of loading or discharge, or the intended port of loading or discharge under the contract, is in Canada;

(b) the person against whom the claim is made resides or has a place of business, branch or agency in Canada; or

(c) the contract was made in Canada.

(2) Notwithstanding subsection (1), the parties to a contract referred to in that subsection may, after a claim arises under the contract, designate the place where the claimant may institute judicial or arbitral proceedings.”

Section 46 of the MLA does not define “a contract for the carriage of goods by water”. However, the courts have determined that the meaning can be imported from Article 1 (b) of the Hague-Visby Rules, which is incorporated into Canadian law by Section 43 of the MLA. Article 1 (b) of the Hague-Visby Rules defines that a contract of carriage applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by water, including any bill of lading or any similar document. The court will have to determine the true nature and effect of the shipping document in order to determine whether a stay of the proceedings in favour of another jurisdiction is appropriate. If the shipping document is determined to be akin to a waybill, then Section 46 of the MLA will not apply. See *Arc-en-Ciel Produce Inc. v BF Leticia (Ship)* [2023] 1 FCR 520.

Where Section 46 of the MLA is not applicable, the courts will apply the “strong cause” test. The test requires that the court take into account all the circumstances of the particular case. These include factors such as:

- in what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial;
- whether the law of the foreign court applies and, if so, whether it differs in any material respects;
- what country either party is connected to, and how closely;
- whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages; and
- whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:
 - (a) be deprived of security for that claim;
 - (b) be unable to enforce any judgment obtained;
 - (c) be faced with a time-bar not applicable in Canada; or
 - (d) for political, racial, religious or other reasons be unlikely to get a fair trial.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Arbitration clauses are subject to the same judicial principles as jurisdiction clauses as well as Section 46 of the MLA. Arbitration clauses are enforceable in Canada.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) entered into force in Canada in 1986. Canada made one reservation – it applies only to commercial disputes, except in Quebec, which does not apply that commercial disputes limitation.

Canada has implemented the New York Convention through the United Nations Foreign Arbitral Awards Convention Act 1985 and the Commercial Arbitration Act 1985. In addition, all provinces and territories in Canada have legislation giving domestic effect to the New York Convention for matters that fall under provincial jurisdiction.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The Federal Court of Canada will order the arrest of a vessel and permit attachment even when the under-

lying dispute is subject to a foreign arbitration or foreign court pursuant to a bill of lading or charterparty clause. While the Court may stay the substantive proceedings in favour of the designated foreign tribunal, it will typically maintain the arrest or security to safeguard the claimant's interests while the dispute is resolved elsewhere.

7.5 Domestic Arbitration Institutes

Canada does not have a domestic arbitration institute that specialises in maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Where proceedings are commenced in breach of a foreign jurisdiction or arbitration clause, the defendant can apply to the court for a stay of the proceedings. Under Section 50 (1) of the Federal Courts Act 1985, the Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter (i) on the ground that the claim is being proceeded with in another court or jurisdiction; or (ii) where for any other reason it is in the interest of justice that the proceedings be stayed.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Tax relief for income earned by vessel owners primarily involves exemptions for international shipping income for non-residents whose country extends a similar exemption to Canadian companies.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

The application of force majeure is contract driven and is dependent on the force majeure clause. Typically, the party invoking force majeure must demonstrate that the event was beyond its control. Frustration is a common law principle which applies when in the

circumstances performance of the contract is impossible.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Canada has fully implemented the IMO 2020 rule. Transport Canada is responsible for monitoring and enforcement actions. There are a number of enforcement actions every year in Canada.

9.3 Trade Sanctions

Canada recognises international trade sanctions under the United Nations Act and the Special Economic Measures Act. For example, under these laws there are sanctions linked to Russia's ongoing violations of Ukraine's sovereignty. Individuals have been sanctioned. See, for example, *Makarov v Canada (Foreign Affairs)*, 2025 FCA 223. Canada has a formal mechanism to authorise financial transactions or other dealings that are otherwise prohibited under its sanctions regime. The Minister of Foreign Affairs may issue permits or certificates to activities and transactions. Permits and certificates are granted on an exceptional basis.

9.4 International Conflict

Given its geographic location, there have not been any direct impacts of ongoing global conflicts in Canada outside the trade sanctions arising from the Russian invasion of Ukraine. Canada has imposed sanctions against a number of countries, organisations and individuals. Indirect impacts from delays are present. There have not been any recent cases in Canadian courts showing the impact of international conflicts on Canadian shipping.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The following points are worth noting.

- Employment law for interprovincial or international shipping for companies operating in Canada is governed by the Canada Labour Code.

- Pilotage – Canada has a number of pilotage regions administered by pilotage authorities. The use of pilots in some regions is compulsory. A pilot will guide ships through local waters for a fee. The limitation of a pilot is CAD1,000 for any damage.
- Towage in Canada is usually governed by a towage contract with standard towing conditions.
- Shipbuilders and repairers are governed by contract and have common law possessory liens (in addition to contractually created liens) for fees.
- Marine Insurance is governed by the Marine Insurance Act 1993, which is based on the English 1906 Act.



Law and Practice

Contributed by:

Ricardo Rozas, Max Morgan and Stefano Perretta

JJR Abogados

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JJR Abogados is a Chilean law firm based in Santiago. JJR provides a complete range of legal services with a particular focus on complex matters and cases, and in practice areas that require a high degree of specialisation, such as international transactions, international trade, maritime law, insurance and reinsurance, telecommunications, media and technology, litigation and dispute resolution. JJR's shipping practice incorporates vast experience in complex cases and deep knowledge of these issues. JJR has earned a significant reputation for its work representing (among others) major ship-owners, charterers,

underwriters, and P&I and defence clubs. The firm's services cover comprehensive legal assistance in all areas related to shipping and transport, including conflict resolution in all aspects of shipping, non-contentious advice on all types of shipping contracts, air and land transport, major casualty and emergency response, admiralty, cargo claims, pollution, marine insurance, charterparties, salvage and towage, collisions, groundings and fires, recovery actions, ship agency, ship financing, wreck removal and regulatory issues.

Authors



Ricardo Rozas is a partner at JJR and leads its transport, insurance and reinsurance practice group. He has vast experience in all aspect of shipping and logistics, including bills of lading, charterparties, cargo

claims, admiralty law, pollution, personal injury, arrest of vessels, international trade and related conflict resolution. He was the first Latin-American Chair of the Maritime and Land Transport Committee of the International Bar Association (2015–2016), and currently serves as an advisory board member. He is a regular speaker at conferences around the world and the author of several publications.



Max Morgan is a partner at JJR. He specialises in maritime transportation, with experience in collisions, spillages, cargo claims, arrest of vessels, maritime insurance and related conflict resolution. He is also

experienced in non-marine insurance and reinsurance, as well as in commercial, maritime and insurance litigation. He is the leader of the transportation and insurance litigation department at the firm. He has advised and defended several companies, P&I clubs, underwriters and reinsurers in notable cases in recent years, both in arbitrations and before ordinary courts.



Stefano Perretta is an associate at JJR who works in the transport, insurance and reinsurance practice group, and who mainly specialises in related litigation work. Stefano graduated from the School of Law of

the Adolfo Ibáñez University, Santiago. He also holds an LLM in International Law, Investment, Commerce and Arbitration from Ruprecht-Karls-Universität Heidelberg, jointly with the University of Chile.

JJR Abogados

Isidora Goyenechea 3250
Piso 4
Las Condes
Santiago, RM
755 0083
Chile

Tel: +562 2580 9300
Email: rozasa@jjr.cl
Web: www.jjr.cl



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The legislative framework for shipping in Chile is constructed from various regulations and laws, for which the main sources are as follows:

- Book III of the Chilean Code of Commerce (the “Code of Commerce”), About Navigation and Maritime Trade (Articles 823 to 1250), which includes general provisions and specific chapters on vessel ownership, liens, ship-owners, masters, ship agents, navigation contracts, navigation risks, marine insurance and procedural issues;
- the Navigation Law (Decree Law 2222/78);
- the Merchant Navy Law (Decree Law 3059/79);
- international conventions, such as the UN Convention on the Carriage of Goods by Sea 1978 (the “Hamburg Rules”), the International Convention for the Safety of Life at Sea, 1974 (SOLAS), the Maritime Labour Convention 2006 (MLC) and the International Convention on Civil Liability for Oil Pollution Damage 1969, replaced by the 1992 Protocol (the “CLC 1992”); and
- regulations issued by the Chilean Maritime Authority.

Under Chilean practice, commonly filed maritime and shipping claims are related to cargo claims under the

Chilean adoption of the Hamburg Rules. Arrest petitions are also common.

As regards competent courts, Article 1203 of the Code of Commerce establishes the general principle that the resolution of all maritime disputes, including those relating to marine insurance, is subject to mandatory arbitration. However, the ordinary civil courts may hear maritime disputes in certain cases, including:

- if the parties mutually agree to this (either by including it in the contract from which the dispute originates or by prior written agreement);
- if a criminal action could arise from the same facts (in this case the civil action can be filed before either the criminal court or an arbitrator);
- claims in respect of oil pollution as set out under paragraph 4, Title IX of the Navigation Law;
- claims in which the state harbour or customs agencies are involved; and
- claims in which the amount at stake is less than 5,000 units of account (special drawing rights, also known as SDR, as defined by the International Monetary Fund), provided that the claimant submits its claim before the ordinary courts.

In addition, specific petitions for the appointment of an arbitrator, ship arrest and constitution of limitation funds are heard by ordinary civil courts.

1.2 Port State Control

The government agency responsible for port state control is the General Directorate of Maritime Territory

and Merchant Marine (also known as DIRECTEMAR). Its main powers can be summarised as follows:

- ensuring the safety of navigation and the protection of human life at sea, and overseeing compliance with the national and international provisions on these matters;
- controlling and overseeing ships' and naval artifacts' material to ensure their efficiency and seaworthiness;
- ensuring compliance with laws, regulations and other provisions concerning the technical and professional issues relating to the Chilean merchant navy;
- monitoring and ensuring compliance with public order and discipline on board vessels and naval artifacts;
- sanctioning crew members for professional misconduct/lack of due diligence or faults against public order, safety and discipline;
- enforcing safety measures in connection with vessels, naval artifacts, port operations and (generally) maritime, river and lake activities;
- initiating a maritime enquiry into accidents and losses involving vessels or persons in Chilean territorial waters, channels, lakes or navigable rivers to determine the causes and the parties responsible, and to establish the professional, technical and disciplinary liabilities that may apply;
- exercising maritime police faculties; and
- ensuring the preservation of the marine environment.

1.3 Domestic Legislation Applicable to Ship Registration

Any type of vessel (whether constructed or under construction) or naval device can be registered at the following registries kept by DIRECTEMAR:

- the Large Vessels Registry;
- the Minor Vessels Registry;
- the Vessels in Construction Registry;
- the Naval Devices Registry; and
- the Mortgage, Liens and Prohibitions Registry.

The rules relevant to the organisation and operation of registries, and the procedures, formalities and requirements of registration, are contained in the Navigation

Law and the Regulations for Registration of Vessels and Naval Artifacts (Decree 163 of 1981).

1.4 Requirements for Ownership of Vessels

Merchant vessels can be registered by Chilean nationals or citizens. If the owner is a corporation, it must meet the following requirements to be deemed Chilean:

- having its registered offices and true and effective headquarters in Chile;
- having a Chilean president, manager and majority of directors or administrators, as the case may be; and
- the majority of the equity capital being owned by Chilean individuals or bodies corporate.

Special vessels (eg, tugboats, dredgers, scientific or recreational vessels) can be registered in Chile by foreign natural persons as long as they are domiciled in the country or their main place of business is located locally (this rule does not apply to fishing vessels).

Without prejudice to the foregoing, applying the principle of international reciprocity, the Maritime Authority may – under conditions of equivalence – release from the above requirements fishing companies incorporated in Chile with a majority participation of foreign capital, when in the country of origin of such capital there are requirements for the registration of foreign vessels and provisions for the development of fishing activities in accordance with said principle, which can be used by natural or legal persons from Chile.

Vessels under construction can be registered in a special registry for this purpose. Once the construction is completed, the owner must request its registration in the corresponding ship's registry.

1.5 Temporary Registration of Vessels

According to the Navigation Law, in the event of an international conflict that seriously affects the normality of Chile's international maritime trade or of imminent danger of such a conflict, the President of the Republic is empowered to authorise – on a temporary basis – the use of the national flag by certain vessels that are hired by national companies.

In addition, dual registration of national merchant vessels would be acceptable when, for reasons of obvious convenience to domestic interests, the President of Chile authorises the bareboat charter of national vessels for a certain period. In such cases, the vessel must fly a foreign flag, although her Chilean registration will continue in effect.

1.6 Registration of Mortgages

The registration of mortgages is kept by DIRECTEMAR. As regards documentary requirements, mortgages, liens and prohibitions related to vessels over 50 gross tons must be registered, for their validity, in the Mortgage, Liens and Prohibitions Registry mentioned in **1.3 Domestic Legislation Applicable to Ship Registration**.

The naval mortgage must be granted by public deed. The mortgage deed and the contract to which it refers may be the same. When the mortgage is granted abroad, it shall be governed by the law of the place of its granting. For registration in Chile, the mortgage shall be recorded – at least – in a written document whose signatures are authorised by a minister of faith or by a Chilean consul.

1.7 Ship Ownership and Mortgages Registry

Registries are available to the public.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Generally, Chile's ship finance market mirrors international best practices, although a good part of the ship finance is placed abroad. As regards debt financing, the key terms and operative provisions of typical ship loan financing in Chilean jurisdiction in loans backed by ship mortgage may include:

- loan-to-value (LTV);
- repayment and tenor; and
- interest rate and covenants (as regards ship mortgages, see **1.3 Domestic Legislation Applicable to Ship Registration**, **1.6 Registration of Mortgages** and **1.7 Ship Ownership and Mortgages Registry**).

In addition, beyond ship mortgage, other items may include the assignment of insurance policies and/or charter income, share pledge over special purpose vehicles (SPVs) and additional documents, such as guarantee assignments, refund guarantees, account pledges and customary lender update covenants. On the other hand, equity financing may comprise issues such as SPV incorporation, shareholders' agreements and investors' profiles.

2.2 Ship Leasing

As opposed to ship mortgages, ship leasing transactions are not subject to specific local maritime regulations and thus must be dealt with under Chilean general provisions on lease or foreign law. In this respect, global trends show a marked rise in ship leasing – especially sale-and-leaseback and bareboat charters – with Asia-Pacific leading growth. This aligns with Chile's maritime trade environment, suggesting likely adoption there as well.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Pollution

The key legislation, rules and conventions in force in Chile for regulating sea pollution are as follows:

- the CLC 1992 on hydrocarbon spills from vessels carrying oil in bulk as cargo;
- the CLC 1969 and supplementary norms set forth by the Navigation Law on hydrocarbon spills from vessels not carrying oil in bulk as cargo or spillage of other hazardous substances;
- the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (the "OILPOL Convention") (with its amendments of 1962 and 1969);
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the "London Convention");
- the International Convention for the Prevention of Pollution from Ships, 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)); and

- Article 136 of the Fishing Law (Law No 18,892), which refers to criminal liability for spills that cause damage to hydro-biological resources, covering both malicious acts and negligence, and which extends to companies' criminal liability (liability for negligence was introduced by Law No 21,132, which modernised and strengthened the exercise of the public function of the National Fisheries Service).

Wreck Removal

Wreck removal is regulated under the Chilean Navigation Law. In general, the Chilean Maritime Authority can order the pertinent proprietor, owner or operator to adopt all necessary measures, at their own cost, to proceed with removal of the wreck within a specified term. In February 2018, the Navigation Law was subject to an important amendment to strengthen marine environment preservation and navigation safety (Amended by Law No 21,066, which introduced new wreck removal provisions).

3.2 International Conventions: Collision and Salvage Collisions

Articles 1116 to 1125 of the Code of Commerce set out the main regulations applicable to collisions. The Navigation Law and the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) also apply.

Chilean collision regulations apply to damage that arises, for example, from a collision between two or more vessels or from waves caused by the movement of a vessel resulting in damage to other vessels, cargo or people on board, even if an actual collision does not occur (under Chilean law, a "vessel" is a maritime device that can move either on its own or by external means).

These rules also apply to events occurring in fluvial waters, lakes and any other navigable waterway. In addition, Chilean collision regulations apply to collision damage that arises between vessels under the same ownership or administration.

Salvage

Salvage is regulated in Articles 1128 to 1157 of the Code of Commerce (services rendered to a vessel or other property in damage). These rules are based on the Comité Maritime International's draft International Convention (Montreal 1981) and the International Convention on Salvage 1989.

3.3 Convention on Limitation of Liability for Maritime Claims

Tonnage Limitation

Chilean regulations that refer to tonnage limitation (ie, Articles 889 to 904 of the Code of Commerce) are inspired by both the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships and Protocol of Signature 1957, and the Convention on Limitation of Liability for Maritime Claims 1976 (the "LLMC Convention 1976"). With respect to the tonnage limitation figures, the Code of Commerce follows the LLMC Convention 1976. In addition, the Code of Commerce establishes a specific set of procedural provisions in connection with the constitution and distribution of the corresponding limitation fund.

The types of claims subject to limitation are as follows:

- death or personal injury and damage to property on board;
- death or personal injury caused by any person for whom the owner is responsible, whether on board or on shore (in the latter case, their acts must be related to the operation of the ship or to the loading, discharging or carriage of the relevant goods);
- loss or damage to other goods, including the cargo, caused by the same person or people, grounds, places and circumstances as given in the point directly above; and
- resulting liability concerning the damage caused by a vessel to harbour works, dry docks, basins and waterways.

The people entitled to limit liability pursuant to this regime are as follows:

- the ship-owner as defined by Chilean regulations;
- the ship-owner's staff;
- liability insurers;

- the operator, carrier, charterer and the ship's proprietor, if a different person or entity from the ship-owner as defined by Chilean regulations; and
- individual employees of any person specified in the point directly above, including the Master and members of the crew, if sued.

3.4 Vienna Convention on the Law of Treaties

The Vienna Convention is applicable in Chile.

3.5 Procedure and Requirements for Establishing a Limitation Fund

The procedure for establishing a limitation fund in connection with general civil liability is regulated in the Code of Commerce (Article 1210 et seq). Its main features are as follows.

Persons Entitled to Commence Limitation Proceedings

Any of the persons listed in **3.3 Convention on Limitation of Liability for Maritime Claims**, who consider themselves entitled to limit liability under the Chilean general limitation regime, may come before any of the courts mentioned below and ask that a procedure be initiated, aimed at constituting the fund and verifying and settling credits and distribution in accordance with the priorities provided by law.

Competent Courts

It will be up to an appropriate court to investigate all the matters referred to in **3.3 Convention on Limitation of Liability for Maritime Claims** and any that are an accessory or of consequence to them.

When the limitation of liability refers to a vessel registered in Chile, it will be the civil court that lies within the jurisdiction of the port of registration of the vessel that has competence.

If dealing with a foreign vessel, the appropriate Chilean civil court of the port where the accident occurred or of the first Chilean port of call after the accident has competence. Failing either of these, whatever court has jurisdiction in the place where the vessel was first retained or where a guarantee for the vessel had first been granted has competence.

When such a procedure has still not been brought in any of the courts mentioned above and the limitation of liability is filed in another trial as a defence, the same court before which it is being pleaded will be able to hear the case on limitation, so long as it is an ordinary one. If dealing with a court of arbitration, copies of the pertinent background information will be sent to the court that is able to hear the case in accordance with the preceding points so that, before this court, the action aimed at constituting and distributing the limitation of liability fund can be brought.

In these cases, the defence for limitation of liability by constituting the fund may only be made when answering the lawsuit action.

Term for Exercising Limitation of Liability by Constituting a Fund

Except in the case discussed above, where the court before which limitation of liability is being pleaded hears the case, limitation of liability by constituting a fund may be exercised up to the expiry of the deadline for filing defences within foreclosure proceedings or within the deadline of the summons referred to in Article 233 of the Chilean Code of Civil Procedure in court-ordered enforcement proceedings.

Resolution Declaring Commencement of Proceedings

The court, after examining whether the applicant's calculations of the amount of the fund fall in line with the pertinent provisions, will issue a ruling in which it will declare that proceedings have begun. At the same time, it will rule on the options offered for the constitution of the fund, ordering them to be complied with, if it approves them.

In the same resolution, it will mention the sum that the petitioner shall place at the disposal of the court to cover all costs of proceedings, and it will appoint a receiver plus a deputy to conduct and carry out all the acts and operations that they are entrusted with in this capacity. These appointments shall fall upon persons who are on the list of receivers mentioned in the Chilean Bankruptcy Law, and it will not be necessary for their appointment to be ratified at a later date by the board of creditors.

Rules Regarding Cash and Guarantees

When money is handed over for the constitution of the fund, the court will deposit it in a bank, with the knowledge of the receiver and the interested parties. Any readjustments and interest obtained therefrom will be added to the fund to the benefit of the creditors. If the fund has been constituted by means of a guarantee, its amount will accrue current interest wherever the court sits, and it will be left on record in the document establishing the guarantee.

Limitation of Civil Liability for Damage From Spillage of Hydrocarbons and Other Hazardous Substances

Spillage of hydrocarbons from seagoing vessels carrying oil in bulk as cargo is subject to the CLC 1992.

Spillage of hydrocarbons from vessels not carrying oil in bulk as cargo or spillage of other hazardous substances is subject to the terms of the CLC 1969 and supplementary norms set forth by the Chilean Navigation Law, including those for fund constitution and distribution.

3.6 Seafarers' Safety and Owners' Liability

In January 2019, Chile enacted the Maritime Labour Convention (MLC). Other applicable domestic regulations are the Labour Code, the Navigation Law and the general regulations on order, safety and discipline of ships and the coastline.

4. Cargo Claims

4.1 Bills of Lading

In 1982, Chile ratified the Hamburg Rules and then included them in the Code of Commerce in 1988 (paragraph 3, Title V, Book III), with minimal changes (the "Chilean adoption of the Hamburg Rules").

4.2 Title to Sue on a Bill of Lading

Under the Chilean adoption of the Hamburg Rules, a "contract of carriage by sea" means "any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another". In this respect, a contract which involves carriage by sea and carriage by some other means is, for the purposes of Chilean law, deemed to be a contract of

carriage by sea only in so far as it relates to the carriage by sea.

In turn, the Chilean adoption of the Hamburg Rules provides that the bill of lading "is a document which establishes the existence of a contract of maritime transport and verifies that the carrier has taken charge or has loaded the goods and has undertaken to deliver them against presentation of that document to a determined person to his order or to the bearer".

In this respect, under the Chilean adoption of the Hamburg Rules, "shipper" means:

- any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier; and
- any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

In addition, under the Chilean adoption of the Hamburg Rules, "consignee" means "the person entitled by a document of title to take delivery of the goods".

Notwithstanding that there is some debate among local scholars as regards the nature of the contract of carriage by sea, under Chilean practice title to sue will usually be associated with the lawful holder of the bill of lading, which includes the shipper, consignee, endorsees and subrogated insurers, as the case may be.

As regards assignment of title to sue, this can generally be done following the assignment rules contained in the Chilean Civil Code.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The Chilean adoption of the Hamburg Rules recognises a basic distinction between the "carrier" (also known as the "contractual carrier") and the "actual carrier". The former is defined as "any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper" and the latter as "any person to whom the performance of the carriage of the goods, or part of the carriage,

has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted”.

The above distinction has simplified the identity of the carrier problem, as anyone who issues a bill of lading as a principal may be treated as a contractual carrier. This applies even to freight forwarders if they issue their own “house” bill of lading and, as a matter of Chilean practice, many cargo claims are normally based on these documents alone.

In this respect, where the performance of the carriage or part thereof has been entrusted to an actual carrier, the carrier nevertheless remains responsible for the entire carriage. The carrier is jointly and severally responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of their staff and agents acting within the scope of their employment. Additionally, all the provisions governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by them.

Under the Chilean adoption of the Hamburg Rules, one of the main principles is that the liability of the carrier is based on presumed fault or neglect. Accordingly, the carrier is liable for loss resulting from loss or damage to the goods, as well as from delay in delivery, if the occurrence that caused the loss, damage or delay took place while the goods were in the carrier's charge. If the ship-owner is deemed an actual carrier (as opposed to a carrier as defined above) and damage occurs during their custody period, such ship-owner would be liable. However, in Chile a carrier may avoid liability if they discharge the burden of proving that they, their staff or their agents adopted all measures that could reasonably be required to avoid the cause of loss or damage and the consequences thereof.

Regarding limitation in connection with contracts of carriage of goods by sea, Chilean law draws a distinction between lost or damaged goods and delayed goods. In the former case, the carrier's liability is limited to an amount equal to 835 Special Drawing Rights (SDR) per package or other shipping unit, or 2.5 SDR per kilogram of gross weight, if the latter is higher.

In the case of delayed goods, the carrier's liability is limited to an amount equivalent to 2.5 times the freight payable for the goods delayed, but not exceeding the total sum of the freight payable under the respective contract of carriage by sea. It is worth noting that the above rules do not compromise either the interests arising from the value of the damaged goods or the judicial costs.

4.4 Misdeclaration of Cargo

Under the Chilean adoption of the Hamburg Rules, the shipper is subject to a general rule that they are not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, their staff or their agents; nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on their part. In addition, the shipper is subject to further special rules on dangerous goods.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Chilean maritime law, the general principle is that any action relating to maritime disputes is time-barred after two years. Actions relating to passage contracts, freight, general average and contributions are time-barred within six months. In addition, in the case of collision actions, the two-year period is extended to three years if the responsible vessel was not arrested or detained while in Chilean jurisdictional waters, provided that the vessel abandoned them without calling at a Chilean port after the collision.

As to time extensions, under Chilean maritime law the running of the corresponding limitation period can be interrupted by a declaration in writing to the claimant by the person to whom the limitation period applies. This can be done successively, but the corresponding period shall run again as of the date of the last declaration.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Chile has not ratified any international convention regarding the arrest of ships. However, the fundamen-

tal regulations applicable to ship arrest found in Book III, Title VIII, paragraph 5 of the Code of Commerce, About the Procedure to Arrest Vessels and Their Release (Article 1231 et seq) are loosely based on the principles set forth under the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, 10 May 1952).

Under Chilean law, a vessel may be arrested if the requesting party has a credit that entitles it to do so. These credits may be of two types – namely:

- privileged credits as set forth by Articles 844, 845 and 846 of the Code of Commerce; or
- credits other than those mentioned in the first point above.

Under Chilean law, there is no statutory definition for privileged credits. However, they may be defined as those that give rise to a maritime lien and allow for requesting an arrest as per the special rules set forth by Book III, Title VIII, paragraph 5 of the Code of Commerce (Article 1231 et seq). Articles 844, 845 and 846 of the Code of Commerce establish and distinguish the following groups of privileged credits.

Credits Under Article 844 of the Code of Commerce

These include:

- legal costs and other disbursements caused by reason of a suit, in the common interest of the creditors, for the preservation of the vessel or for its forced alienation and distribution of the yield;
- the remuneration and other benefits arising from the contracts of embarkation of the vessel's crew, in accordance with labour regulations and civil law that regulate the concurrence of these credits, together with the emoluments paid to the pilots at the service of the vessel – this privilege applies to the indemnities that are due for death or bodily injuries of the surviving employees ashore, on board or in the water, and always provided that they stem from accidents related directly to the trading of the vessel;
- the charges and rates of ports, channels and navigable waters, together with fiscal charges in respect of signalling and pilotage;

- the expenses and remunerations due in respect of assistance rendered at sea and general average contribution – this privilege applies to the reimbursement of expenses and sacrifices incurred by the relevant authority or third parties, in order to prevent or minimise pollution damages or hydro-carbon spills or other contaminating substances to the environment or third-party property, when the fund of limitation of liability has not been constituted as established in Title IX of the Chilean Law of Navigation; and
- the indemnities for damages or losses caused to other vessels, to port works, piers or navigable waters, or to cargo or luggage, as a consequence of a collision or other accidents during navigation, when the respective action is not susceptible to being founded upon a contract, and the damages are in respect of bodily injury to the passengers and crew of these other vessels.

Credits Under Article 845 of the Code of Commerce

These include mortgage credits on large vessels (ie, vessels over 50 GT) and secured credits on minor vessels (ie, vessels up to 50 GT).

Credits Under Article 846 of the Code of Commerce

These include:

- credits in respect of the sale price, construction, repair and equipping of the vessel;
- credits in respect of supply of products or materials that are indispensable for the trading or conservation of the vessel;
- credits arising from contracts of passage money, affreightment or carriage of goods, including the indemnities for damages, lack and short deliveries of cargo and luggage, and the credits deriving from damages in respect of contamination or the spilling of hydrocarbons or other contaminating substances;
- credits in respect of disbursements incurred by the Master, agents or third parties, for account of the owner, and for the purpose of trading the vessel, including agency service; and

- credits in respect of insurance premiums concerning the vessel, be they hull, machinery or third-party liability.

The privileged credits of Article 844 enjoy privilege over the vessel in the order enumerated in Article 844, with preference over mortgage credits and the privileged credits of Article 846. Mortgage credits are preferred to those of Article 846, which in turn follow the rank indicated under Article 846.

In this respect, it is worth noting that the privileged credits established by the aforementioned provisions have preference and exclude all other general or specific privileges regulated by other legal bodies, when referring to the same goods and rights. However, the rules regarding priorities and privileges in matters of pollution or for avoiding damages from spills of hazardous substances – which are established in international treaties in force in Chile and in the Navigation Law – have preference over the provisions of Book III, Title III of the Code of Commerce, About Privileges and Naval Mortgage, in the specific matters to which they refer.

5.2 Maritime Liens

See 5.1 Ship Arrests.

5.3 Liability in Personam for Owners or Demise Charterers

The Chilean system does not contemplate in rem actions. However, it is worth noting that the maritime privileges also confer upon the creditor the right to pursue the vessel in whosoever's possession she may be. In addition, the lien on the ship granted by a privileged credit can be exercised not only against the actual ship to which the privileged credit relates, but also against a ship in the same ownership or a ship in the same administration or operated by the same person.

In this respect, according to Article 882 of the Code of Commerce, the ship-owner (*armador*) is the “person or corporation, whether or not the proprietor of the vessel, who trades or dispatches it under their name”. The same article defines the operator as “the person who is not the owner but who executes transport and other vessel exploitation contracts according to a power of attorney granted by the former, assuming liability therefrom” (under Chilean law, a bareboat

charterer has the status of a ship-owner, with the same rights and obligations).

On the other hand, the concepts of ship administration or management are not expressly defined in the Code of Commerce.

5.4 Unpaid Bunkers

As pointed out in 5.1 Ship Arrests, Chilean maritime privileges include those arising from credits in respect of supply of products or materials that are indispensable for the trading or conservation of the vessel, which includes the supply of bunkers. For these purposes, Chilean law does not distinguish between contractual or actual suppliers. It does not matter whether the bunkers were supplied to a chartered vessel and whether the bunkers were ordered by the charterer and not by the owner.

5.5 Arresting a Vessel

Under Chilean law, the general rule is that either individuals or corporations are required to be represented by a counsel when arresting a vessel, which means granting a power of attorney (POA) with judicial faculties. The POA must follow Chilean law and practice, and the quickest way to produce it is via the local ship agent assisting the vessel at the pertinent Chilean port (they are entitled to do so on behalf of the owner).

Regarding security, if the court considers that the supporting documents provided by the arrest petitioner are not sufficient, or the petitioner states that they are not yet available to them, the court may require that countersecurity be provided for the potential damages that may result if, subsequently, it is found that the petition lacked basis. As to the form and amount of damages, there are no specific rules, so this is up to the court.

5.6 Arresting Bunkers and Freight

There are no specific regulations for arresting bunkers and freight in Chile. This could be achieved by means of the general rules set forth by the Code of Civil Procedure regarding pre-judicial and precautionary measures, but is not an easy exercise owing to formalities and timing restrictions.

5.7 Sister-Ship Arrest

As pointed out in 5.3 **Liability in Personam for Owners or Demise Charterers**, a lien on a ship granted by a privileged credit can be exercised not only against the actual ship to which the privileged credit relates, but also on a ship in the same ownership or a ship in the same administration or operated by the same person.

5.8 Other Ways of Obtaining Attachment Orders

An arrest requested by invoking a credit other than privileged ones – namely, a credit not covered under Articles 844, 845 and 846 of the Code of Commerce (see 5.1 **Ship Arrests**) – is subject to the general rules set forth by the Code of Civil Procedure regarding pre-judicial and precautionary measures. That said, in Chilean practice it is unusual to petition an arrest in accordance with the general rules of the Code of Civil Procedure.

5.9 Releasing an Arrested Vessel

As regards security for lifting an arrest, the amount of security is usually established by the court based on the petition of the arresting party. The amount cannot exceed the value of the arrested vessel and can be reviewed subsequently through incidental proceedings. Regarding the form of security, there are no specific rules, and this will depend on the court's resolution; however, the security most usually requested and granted is a bank guarantee issued by order of the court. As soon as the security is provided, the court shall lift the vessel arrest without delay.

For a long time, protection and indemnity insurance (P&I) club letters of undertaking were accepted only if agreed by the arrest petitioner, mainly owing to the fact that Chilean courts were not accustomed to them. However, in a case of an arrest following a pollution incident, the court hearing the arrest accepted a letter of undertaking with no prior approval from the arrest petitioner.

5.10 Procedure for the Judicial Sale of Arrested Ships

In accordance with the Code of Commerce, the judicial sale of a vessel, whether voluntary or forced, must observe the rules and formalities set forth by the Code

of Civil Procedure for the judicial sale of real estate. The procedure may take between a couple of months and one or two years depending on the debtor's behaviour during the proceedings. Court costs are usually minor but other costs might be incurred, such as those relating to the administration of the attached property (incumbent on a depositary who has to render account for their administration before the pertinent court).

5.11 Insolvency Laws Applied by Maritime Courts

In Chile, there is no scheme of insolvency laws analogous to Chapter 11 of the United States Bankruptcy Code.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Under Chilean law, the arresting party must attach antecedents that constitute presumption of the right being claimed. If the court considers that the supporting documents are not sufficient or the petitioner states they are not yet available to them, the court may require that countersecurity be provided for the potential damage that may be caused if, subsequently, it is found that the petition lacked basis.

In addition, when an arrest has been decreed a pre-judicial precautionary measure (ie, a measure to secure the outcome of a subsequent substantive action), the petitioner is obliged to file its complaint requesting that the decreed arrest remain in force within a period that, in principle, is ten days but that may be extended for up to a total of 30 days, provided there is a sound basis for doing so. Non-fulfilment of this obligation will result in cancellation of the arrest and liability for the damage that may have been caused, on the irrefutable presumption that the grounds for the arrest were fraudulent. In addition, if the arrest was wrongful, fraudulent or lacked basis, the defendant may claim damages in separate ordinary proceedings subject to the general rules set forth by the Code of Civil Procedure.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The Athens Convention on the Carriage of Passengers and their Luggage by Sea, 1974 (the “Athens Convention”) is not applicable in Chile. However, passengers’ rights and the liability of the carrier are regulated by the Code of Commerce (Articles 1044 to 1078), which is based on the Athens Convention. In addition, if a travel agent is involved, the Chilean Consumer Protection Act may also apply.

In this respect, it should be noted that claims for indemnities for personal injury of a passenger are recognised as privileged credits, which allow for requesting a vessel arrest (see 5.1 **Ship Arrests**).

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

As regards charterparties, Chilean law applies the principle of freedom of contract. Accordingly, the law and jurisdiction clauses stated in bills of lading should be recognised and enforced by Chilean courts.

As regards carriage of goods by sea, the provisions of the Chilean adoption of the Hamburg Rules are compulsorily applicable regardless of the nationality of the ship, carrier, actual carrier, shipper, consignee or any other interested person if:

- the port of loading or discharge as provided for in the contract of carriage by sea is located in Chile;
- the bill of lading or other document evidencing the contract of carriage by sea (such as the sea waybill, through bill of lading or short form bill of lading) stipulates that the contract will be governed by Chilean law (such as through a “paramount clause”); or
- one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in Chile.

Accordingly, and as opposed to charterparties, foreign law and jurisdiction clauses stated in bills of lading issued under a contract of carriage of goods by sea should not be recognised and enforced by Chilean courts. In this respect, it is worth noting that paramount clauses have, on occasion, been held as unwritten by the Chilean Supreme Court where they would be contrary to public order rules of law.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Courts in Chile recognise and enforce law and arbitration clauses of charterparties incorporated into the relevant bill of lading. Nonetheless, a bill of lading issued in compliance with a charterparty is covered under the Chilean adoption of the Hamburg Rules if it governs the relation between the carrier and the holder of the bill of lading other than the charterer.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Chile is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the “New York Convention”). In this respect, foreign judgments and arbitral awards are enforced through the exequatur process. This is considered in the Code of Civil Procedure, under which judgments issued in a foreign country shall be given force in Chile by existing treaties.

For a foreign judgment to be enforced, the procedures set out in Chilean law shall be followed, unless they have been modified by existing treaties. If there are no treaties concerning the matter in question, Chile shall grant to the judgment the same force as granted to Chilean judgments by the jurisdiction in which the judgment was made. If the judgment comes from a jurisdiction that does not enforce Chilean judgments, it shall not be enforced in Chile. If none of the previous rules may be applied, foreign judgments shall be enforced in Chile provided that:

- they contain nothing contrary to the laws of the Republic, except that procedural rules to which the case would have been subject in Chile shall not be considered;
- they are not contrary to national jurisdiction;

- the party against whom enforcement is sought was duly served with process, except that the party may still be able to allege that, for other reasons, it was prevented from making a defence; and
- they are not subject to appeals or further review in the country of origin.

Procedure for Enforcement of a Foreign Judgment

A duly legalised copy of the judgment – officially translated into Spanish, if necessary – must be presented to the Chilean Supreme Court to begin the exequatur process. In the case of an arbitral award, its authenticity must be certified by attestation of a high court of the originating jurisdiction.

Notice of the enforcement request must be served on the party against whom it is sought. That party must respond within 15 days (which may be extended depending on where the party is domiciled). An opinion from an independent court official is also requested by the Supreme Court.

The Supreme Court considers the matter in a hearing at which the parties may make oral statements.

After enforcement is allowed, the judgment must be presented to the competent civil court to commence an executive proceeding (under which the defendant's assets can be foreclosed, if applicable).

In respect of foreign arbitral awards, the Law on International Commercial Arbitration (Law No 19,971) – based on the UNCITRAL Model Law – was passed in 2004. Article 35 of that law regulates the recognition and enforcement of foreign arbitral awards, and Article 36 lists the defences that can be asserted against enforcement and regulates orders of stay. In addition, Article 9 of said law makes it possible to request from a local court any of the interim measures set forth under Chilean procedural regulations, such as attachments or goods retention, to protect the outcome of a foreign arbitration award. This criterion has already been tested in the context of international arbitration proceedings relating to a shipping dispute.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Chilean procedural regulations are silent on this matter. However, when an arrest is decreed as a prejudicial precautionary measure (ie, a measure to secure the outcome of a subsequent substantive action), it would be possible to arrest to obtain security and then pursue proceedings on the merits elsewhere. Note that the procedural obligations established must be met – namely filing the petitioner's complaint requesting that the decreed arrest remains in force for a period that, in principle, is ten days but that may be extended for up to a total of 30 days provided there is sound basis for doing so (see 5.12 Damages in the Event of Wrongful Arrest of a Vessel). However, this is an option that has to be further tested in Chilean courts.

7.5 Domestic Arbitration Institutes

As pointed out in 1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts, Article 1203 of the Code of Commerce establishes the general principle that the resolution of all maritime disputes, including those relating to marine insurance, is subject to mandatory arbitration.

Although Chile has well-known arbitration centres (including the Santiago Arbitration and Mediation Centre (CAM)) that provide maritime arbitrators, most cases are handled through ad hoc arbitration.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Under Chilean law, the defendant can oppose a specific defence based on lack of jurisdiction.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The Chilean Merchant Navy Law (Decree Law 3059/79) contains certain special tax regulations, subsidies and tax cuts. Among others, owners that carry out cargo and passenger transport from abroad to Chile, and vice versa, can recover VAT charged when purchasing goods or using services intended for their activity.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under Chilean law, a force majeure or fortuitous act is defined as “the unexpected that it is not possible to resist, such as a sinking, an earthquake, the taking of enemies, the acts of authority performed by a public official, etc” (Article 45 of the Chilean Civil Code).

Generally, in Chilean practice, to sustain force majeure as an exception to liability, three cumulative conditions must be met:

- irresistibility;
- unpredictability; and
- unimputability.

The above conditions must also be met in the context of non-performance of a shipping contract.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

The cap on the sulphur content of fuel oil used in Chilean domestic territorial waters is that established in the MARPOL Convention. Enforcement of these requirements is carried out by the local representative of the vessel's flag state authority, and the sulphur content is verified according to the bunker delivery note certificates for the bunker's supply.

9.3 Trade Sanctions

Generally, Chile has recognised several UN resolutions on trade sanctions.

In this respect, Article 38 of Law 19,913 (which created the so-called Financial Analysis Unit and modified several provisions related to money laundering (Law 19,913)), states that all natural and legal persons indicated in Article 3 of Law 19,913 (ie, banks and financial institutions, factoring companies, leasing companies, securitisation companies, etc) are required to inform the Financial Analysis Unit of all acts, transactions or operations carried out or attempted by any of the natural or legal persons identified in the lists drawn up by the Committees established in the UN's Security Council Resolutions 1267 of 1999, 1333 of 2000, 1373

of 2001, 1390 of 2002, 1718 of 2006, 1737 of 2006, 1747 of 2007, 1803 of 2008, 1929 of 2010, 1988 of 2011, 1989 of 2011, 2253 of 2015, 2356 of 2017 and 2371 of 2017, and in subsequent resolutions or any other resolutions that add to or replace them and that are contained in supreme decrees published in the Chilean Official Gazette.

In addition, the aforementioned Article 38 establishes a brief legal procedure whereby the Financial Analysis Unit must request, without prior notice to the affected party and for a specific period, that a Minister of the Court of Appeals of Santiago adopt one or more measures to avoid the use or exploitation of goods, values or money subject to the act, transaction or operation and must ensure that sanctioned parties do not benefit from such goods or come to ultimately possess them.

The provision also stipulates an appeal remedy for the review of the measures in favour of the affected party.

As regards other regulations enacted as part of US, UK or any other country's law, generally Chilean law does not recognise these; however, sound Chilean compliance practice does consider them (particularly their extraterritorial effects).

9.4 International Conflict

The authors are not aware of recent cases dealt with by Chilean courts on maritime disputes relating to non-performance of obligations owing to the war in Ukraine.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Law 21,132

Law 21,132 came into force on 31 January 2019 with the aim of modernising and strengthening the Chilean National Fishing Service (SERNAPESCA). Among other things, the law amended the General Fisheries and Aquaculture Law (Law 18,892, or the “Fishing Law”) and the Corporate Criminal Liability Law (Law 20,393) in connection with the criminal consequences of water spills.

Law 21,132 introduced new definitions of criminal offences in connection with marine biological resources, including the exploitation of banned natural resources or products extracted from the seabed, and overfishing.

As regards water spills, Article 136 of the Fishing Law was amended to penalise not only malicious acts but also negligence. The new wording of Article 136 of the Fishing Law reads as follows (first and second paragraphs):

“Anyone who without authority or in contravention of its conditions or in breach of the applicable rules, brings or orders the placing of chemical, biological or physical polluting agents into the sea, rivers, lakes or any other body of water that causes damage to hydro-biological resources shall be punished with minor imprisonment from medium to maximum degree and sanctions of 100 to 10,000 Chilean *Unidad Tributaria Mensual* (UTM, an administrative currency unit) (approximately USD7,300–USD730,000).

If the above conduct is committed with recklessness or mere negligence, the penalty shall be minor imprisonment in its minimum degree and sanctions from 50 to 5,000 Chilean UTM (approximately USD3,650–USD365,000) without prejudice to the administrative penalties.”

The Corporate Criminal Liability Law

The Corporate Criminal Liability Law (Law 20,393) regulates the criminal liability of companies and other legal persons. Generally, it punishes terrorism financing, bribery, money laundering and disloyal administration (also known as base crimes). The companies are penalised if the offences are committed by their employees or representatives to the benefit or in furtherance of the direct interest of the relevant company, provided that the commission of the crime is the consequence of the company’s breach of its direction and oversight duties.

Law 21,132 extended criminal liability for the above-mentioned offences under the Fishing Law to legal entities. Accordingly, the list of base crimes under Law 20,393 now comprises those relating to water spills and damage to marine biological resources.

Under Law 20,393, to be exempted from corporate criminal liability, companies must adopt a base crime-prevention model comprising:

- the appointment of a crime-prevention officer with sufficient means and attributes for the performance of their duties;
- the establishment of a crime-prevention system; and
- the oversight and certification of the crime-prevention model.

Law 21,132 has introduced important changes which must be followed carefully. In the case of spills that cause damage to hydro-biological resources, ship-owners operating in Chile are now subject to greater contingencies – not only in terms of administrative penalties but also in connection with criminal liability. Owing to the penalisation of recklessness and mere negligence and to the inclusion of the water spill offence on the list of offences that trigger corporate criminal liability, an increase of criminal proceedings against ship-owners and/or Masters and crew is likely. In this respect, ship-owners should review their internal protocols and crime-prevention models, even though precisely how Chilean courts will consider such models has yet to be tested.

Increase of Fruit Cargo Claims

In recent years, there has been an increase of fruit cargo claims mainly from Chilean fruit exporters and/or their cargo insurers. There are various reasons for this, including but not limited to the entry of new market players (recovery agents) and some features of the Chilean system that favour cargo interests, such as the Chilean adoption of the Hamburg Rules and the different targets that can be sued.

Some of the issues that regularly arise are related to alleged temperature variations and/or damages caused by delay, as well as whether to consider sound market value. In this respect, carriers should always check whether there have been salvage recoveries, as well as their claims-handling obligations under vessel share agreements and other similar agreements (slot charters, etc).

Law and Practice

Contributed by:

John Wang, Xu Jun, Song Jia and Zhao Yuxuan
Wang Jing & Co

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Wang Jing & Co (WJC) is one of the leading shipping law firms in China, with a team comprising 60 lawyers and marine consultants and offices in Guangzhou and Shanghai (dual heads), Beijing, Tianjin, Qingdao, Xiamen, Fuzhou and Shenzhen. The firm specialises in providing professional legal services in matters concerning collisions, pollution, salvage and wreck removal, cargo claims, piracy, charterparty, marine insurance, ship sale and purchase, shipping arbitration, etc. It has represented international clients, such as P&I clubs, H&M underwriters and ship-owners, in

numerous complicated maritime issues, and is particularly adept at designing solutions, and providing efficient on-site assistance and considerate follow-up service. The team has participated in legislative discussions organised by the PRC Supreme Court and the China Maritime Safety Administration concerning mechanisms on limitation of liability for maritime claims, pollution damage compensation and the establishment of the oil pollution civil liability insurance system, with the aim of improving the maritime legal environment in China.

Authors



John Wang is the executive managing partner of WJC. John's practice spans shipping, admiralty, banking, insurance and international trading disputes in court, arbitration, and mediation proceedings. John acts for

foreign and domestic vessel owners and operators, charterers, P&I clubs, hull and machinery underwriters, marine engineering companies, traders and banks, and adopts a practical approach to each client's needs. John has also acquired extensive experience in international maritime arbitration in London, Singapore and Hong Kong.



Xu Jun is the director of the WJC Shanghai Office. He spent more than ten years in a shipping company and acquired extensive experience in shipping practices before he joined WJC. Jun has practised law for 15

years and has extensive experience in dealing with matters relating to bills of lading, charterparties, admiralty, maritime engineering, shipping finance and property/liability/credit insurance. In addition, Jun is also an excellent negotiator and has extensive experience in litigation.



Song Jia is a senior associate at the Shanghai Office of WJC. His practice areas cover maritime, insurance, ship-building and trading, dispute solution and non-litigation. He acquired extensive experience in

dealing with charterparty disputes and corporate affairs while he was working in a shipping company in Singapore and a well-known domestic law firm, before joining WJC. Mr Song has an LLM degree in maritime law from Bristol University and received his GDL and LPC diploma from the University of Law. He has conducted a considerable amount of research on legal issues involving sanctions and import/export control.



Zhao Yuxuan is a senior associate at the Guangzhou Office of WJC. His primary practice areas cover maritime, admiralty, insurance and international trade, international civil affairs and dispute resolution. Mr

Zhao mainly deals with cases concerning ships collisions, ship fires, bills of lading, charterparties and insurance.

Wang Jing & Co

Guangzhou Headquarters
Suite 1504, Bank of Guangzhou Square
No 30 Zhujiang East Road
Zhujiang New Town
Guangzhou
PRC

Tel: +86 20 8393 0333
Fax: +86 20 3808 2910
Email: info@wjnc.com
Shanghai@wjnc.com
Web: www.wjnc.com

WJC

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The following articles in the Special Maritime Procedure Law of the People's Republic of China (PRC) establish the authorities of both maritime and appellate courts:

- Article 4 – the maritime courts shall entertain actions brought by the parties in respect of maritime tort, disputes over maritime contracts and other maritime disputes as provided for by law; and
- Article 5 – in hearing and determining maritime cases, the maritime courts, the Higher People's Courts in which those maritime courts are located and the Supreme People's Court shall apply this Law.

There are 11 maritime courts in the PRC. In practice, maritime and shipping claims are generally categorised into claims of maritime tort, maritime contract, maritime lien, marine insurance, ship ownership/possessionary lien/mortgage, salvage, general average and other claims as stipulated by law.

The appellate courts for these claims are the Higher People's Courts of the provinces where the maritime courts are located. Those Higher Courts can also entertain maritime/shipping claims as courts

of first instance with an amount equal to or above CNY5 billion or which have a major impact in that area (although there is no clear standard for “major impact”). In that scenario, the Supreme People's Court will be the appellate court for those cases.

1.2 Port State Control

The PRC is a member of the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region. The Maritime Safety Administration (MSA) and its branches are the port state control authorities in the PRC. The MSA is responsible for maritime safety supervision on vessels registered outside mainland China.

Where the MSA notices serious deficiencies affecting the seaworthiness of the vessel or the crew's safety, or causing damages to the marine environment, they will detain the foreign ship, and that ship may not be permitted to leave the PRC port until the deficiencies are rectified.

In cases of marine casualties, such as grounding, pollution and wreck-removal, the MSA is responsible for effecting emergency response and developing/implementing plans according to the circumstances. The MSA's foregoing responsibilities apply to seafarers' casualties caused by marine casualties.

When possible, the MSA will also attend on board to undertake investigations of the marine casualties and issue investigation reports in which the cause

and liability of the marine casualties will be analysed and determined. The MSA will release their investigation reports to the public through their websites. The MSA's above responsibilities also apply to seafarers' casualties caused by marine casualties.

1.3 Domestic Legislation Applicable to Ship Registration

Domestic Legislation Applicable to Ship Registration

For registration of vessels other than fishing vessels, the Regulations of the PRC Governing the Registration of Ships shall apply.

For registration of fishing vessels, the Measures of PRC on the Registration of Fishing Vessels shall apply.

Competent Authority of Ship Registration

The Ministry of Transport and the MSA handle the registration of vessels other than fishing vessels.

The Ministry of Agriculture and the affiliated fishery administration handle the fishing vessels' registration.

1.4 Requirements for Ownership of Vessels

As a general rule, the vessels owned by domestic individuals and/or enterprises can be registered at the ship registration authorities. If an enterprise possessing foreign capital is registering a vessel, it is required that the domestic capital be no less than 50% of the whole.

As an exception, PRC authorities will accept registrations of international trading vessels filed by those China-invested enterprises or foreign-invested enterprises that are established in the free trade zones or Shenzhen in accordance with PRC law, and those filed by the wholly foreign-owned enterprises and wholly Hong Kong-Macao-Taiwan-owned enterprises that are established in accordance with the regime of free trade zones or Shenzhen specified by the State Council. The international trading vessels registered under this exceptional rule shall sail international routes and/or Hong Kong, Macao and Taiwan routes only.

Furthermore, from 5 May 2022, if vessels registered in Hainan free trade port intend to carry out the service

only within the Hainan free trade zone, there is no requirement for the minimum limit of domestic capital.

Domestic ownership is required for ownership registration of fishing vessels,

PRC law permits the registration of vessels that are still under construction.

1.5 Temporary Registration of Vessels

PRC law permits the temporary registration of vessels.

For vessels other than fishing vessels, temporary registration can be granted, and a temporary certificate of a ship's nationality can be obtained in the following circumstances:

- for a ship newly built and to be sold overseas, the ship-owner may apply at the place of construction;
- for a newly built ship purchased from overseas, the ship-owner may apply at the local embassy or consulate of the PRC;
- for a ship built in a place within the PRC other than its intended port of registry, the ship-owner may apply at the place of ship-building;
- for a ship built overseas, the ship-owner may apply at the local embassy or consulate of the PRC;
- for a ship bareboat-chartered overseas, the bareboat charterer may make the application;
- for a second-hand ship bought from abroad, the ship-owner may apply at the place of its domicile or principal place of business;
- for a change of port of registry due to the ship sale and purchase, the new ship-owner may apply at the new ship registration authority;
- for a change of port of registry due to the change of the ship-owner's domicile or the ship's route, the ship-owner may apply at the original ship registration authority; and
- if a ship's nationality certificate is lost or contaminated overseas, temporary registration may also be granted.

For fishing vessels, normally the temporary registration of the ship's nationality will be granted by the ship registration authority if the fishing vessel is bareboat-chartered from abroad. If the ship's nationality certi-

cate is lost or missing overseas, temporary registration may also be granted.

Dual nationality of a vessel is banned under PRC law.

1.6 Registration of Mortgages

The mortgage of a ship may be registered in the MSA branch where the port of registry is located.

The following documents are required for registering a mortgage:

- an application for mortgage registration in writing, executed by both parties;
- a ship mortgage contract and its master contract;
- a registered certificate or ship-building contract;
- where a ship is owned by joint owners, the documents proving the agreement of the ship mortgage by all joint owners or joint owners holding more than two-thirds of the shares thereof; and
- where a bareboat charter is registered, the documents proving the charterer's agreement of the mortgage.

In registering the mortgage of a ship under construction, except as provided for in the first four points above, an affidavit by the mortgagor shall be submitted, warranting that the ship is not registered for mortgage in other ship registration authorities and that there is not any law or regulation that prohibits the ship from being mortgaged.

1.7 Ship Ownership and Mortgages Registry

The ship ownership and mortgages' registry in the PRC is available to interested parties.

Apart from the owners, the following entities and persons may apply to the competent authority to view the ship registration file as interested parties.

- The obligee of a ship and its successor, recipient and legatee and their agents may each apply to the competent authority to view the ship registration file in their own name.
- The national department of administration and politics, the department of discipline inspection and supervision, the auditing department and the arbitration institution may apply to the competent

authority to view the ship registration file directly related to their work.

- Law firms may apply to the competent authority to view the ship registration file in relation to the cases they are handling that have been formally accepted by the court.

For the purpose of viewing the ship registration file, the following documents shall be submitted:

- an application;
- a certificate of identity or qualification of the ship obligee, and proof of the mortgage;
- a certificate of identity or qualification of the successor, recipient or legatee, together with the materials proving the facts of the inheritance, gifting or legacy;
- a power of attorney specifying the specific matters to be inquired about, and the identity certificate of the agent (for an agent inquiry);
- a certificate issued by the national department of administration and politics, the discipline inspection and supervision department, the auditing department and the arbitration institution together with the work certificate of the official responsible for the inquiry; and
- a letter of introduction of the law firm, proof of case acceptance, and documents proving the inquiry is related to the cases they are handling, as well as the practising licence of the lawyer making the inquiry.

From 9 September 2022, the mortgage information of Chinese registered vessels can be accessed publicly on the website of the Maritime Safety Administration.

From 6 July 2024, the mortgage information of Chinese registered vessels can also be accessed publicly on the Registration and Inquiry System established by the Credit Reference Center of the People's Bank of China.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

In China, ship loan financing is commonly structured through traditional mortgage-backed lending provided

by commercial banks and other regulated financial institutions, and is widely used for vessel construction and acquisition.

Under a typical ship loan structure, the lender advances funds directly to the shipowner as borrower, and the vessel is provided as collateral by way of a ship mortgage. Ship mortgages are recognised under Chinese law and must be duly registered with the competent MSA or other designated registry in order to be effective against third parties.

Key terms and operative provisions of ship loan facilities commonly include loan and repayment schedules, financial covenants, use-of-funds and operational undertakings, default clauses and acceleration and enforcement provisions.

Pure equity investment in vessels is not commonly regarded as a ship financing method in the Chinese context. Equity contributions are typically made for investment or capital structuring purposes, often through special purpose vehicles established to support loan financing, rather than serving as an independent source of vessel finance. As a result, vessel acquisition and construction are, in practice, overwhelmingly funded through debt-based structures.

Security Packages Other Than Mortgages

While the ship mortgage remains the core security instrument in traditional loan structures, lenders and lessors in China commonly require additional security arrangements to enhance enforceability and credit protection. Depending on the transaction structure, these may include:

- assignment of earnings or receivables, such as charter hire or freight, to secure repayment obligations;
- assignment of insurance proceeds, including hull and machinery and P&I insurance, in favour of the lender or lessor;
- parent company or related-party guarantees, including the guarantee by the actual owner or controlling person of the ship, particularly where the borrower is a single-purpose entity; and

- account control or cash management arrangements, designed to monitor and prioritise debt or lease servicing.

In practice, these elements are often combined into a comprehensive security package, reflecting a preference for asset-based and structurally reinforced financing arrangements in the Chinese ship finance market.

2.2 Ship Leasing

Ship finance leasing is another commonly adopted financing structure in China. Under a finance lease, a domestic finance leasing company acquires the vessel from the shipyard or seller and leases it to the operator under a long-term lease agreement with periodic rental payments. The legal relationship between the parties is governed primarily by the lease agreement, with the lessor retaining ownership of the vessel during the lease term. Ship finance leasing is applied to both new build and second-hand vessels.

There has been an increase in the use of ship finance leasing in China's ship finance practice. This development is partly attributable to the regulatory framework applicable to traditional bank lending, which is subject to prudential supervision by the National Financial Regulatory Administration and typically involves relatively stringent borrower qualification, credit assessment and balance-sheet requirements. By contrast, ship finance leasing offers a more flexible structuring approach, allowing transactions to be tailored through ownership arrangements, rental structures and risk allocation mechanisms, while still achieving a financing effect. As a result, ship finance leasing has become an increasingly utilised financing channel alongside conventional bank loans.

This shift is underpinned by a clear and mature legal framework. Under the PRC Civil Code, finance leasing is recognised as a distinct nominate contract, with statutory rules governing ownership, payment obligations and remedies. The Supreme People's Court's judicial interpretation on finance lease disputes further reinforces the enforceability of core commercial features of finance leasing, including the lessor's retention of title, the lessee's generally unconditional obligation to pay rent, and the lessor's right to terminate

the lease and recover the leased asset upon default. As a result, finance leasing offers a legally reliable structure that performs a financing function comparable, in practical terms, to secured lending.

In practice, ship finance leasing is commonly implemented through long-term direct lease or sale-and-leaseback arrangements, with contractual structures that emphasise ownership retention, rental certainty, comprehensive security support and asset recovery mechanisms. These features are consistently reflected in widely used industry-standard ship finance lease contracts adopted in maritime arbitration practice.

By contrast, private equity has not generally emerged as a substitute for traditional bank lending or lease-based ship finance. Equity participation in the shipping sector is more often driven by investment or capital structuring considerations and is typically deployed alongside debt or lease financing rather than as a standalone vessel financing solution.

Overall, the evolution of ship leasing in China represents a diversification of financing channels supported by statute and judicial interpretation, rather than a wholesale displacement of traditional bank lending.

The legal relationship between a lessor and lessee under a ship finance lease differs fundamentally from that between a lender and borrower under a traditional ship mortgage loan, notwithstanding their similar financing function.

Under a lender/borrower structure, the borrower retains ownership of the vessel, while the lender holds a security interest by way of a ship mortgage. The lender's protection is therefore asset-based and security-driven, and enforcement typically relies on mortgage enforcement mechanisms, including vessel arrest and judicial sale. The borrower's repayment obligations arise from the loan agreement, and the lender's remedies are primarily exercised through security realisation rather than direct recovery of possession.

By contrast, under a lessor/lessee relationship, the lessor retains legal title to the vessel throughout the lease term, with the lessee holding only contractual

rights of possession and use. The lessee's obligation to pay rent is generally treated as an independent and unconditional payment obligation under both the PRC Civil Code and judicial interpretation. Upon default, the lessor may terminate the lease and recover the vessel as owner, rather than as a secured creditor enforcing a mortgage. The lessors usually require the lessee to provide additional securities, which may be enforced in the same manner under ship loan.

These structural differences result in distinct enforcement dynamics. In finance leasing, the lessor's remedies are centred on contractual termination and asset repossession, supplemented by claims for unpaid rent and losses, whereas in mortgage lending, enforcement is focused on realisation of security interests through judicial procedures. As a result, ship finance leasing places greater emphasis on ownership retention and contractual risk allocation, while traditional lending relies more heavily on registered security and priority rules.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The following are the applicable international conventions and relevant laws that have been ratified by the PRC and will impact upon the liability of owners and interested parties in events of pollution and wreck removal:

- International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997;
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, and the Protocol of 1973;
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, and the 1996 London Protocol;
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;
- International Convention on Civil Liability for Oil Pollution Damage, 1992;

- Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000;
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001;
- Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-Induced Oil Pollution Damage; and
- Nairobi International Convention on the Removal of Wrecks.

3.2 International Conventions: Collision and Salvage

The following international conventions and relevant laws have been ratified by the PRC and will impact the liability of owners and interested parties in events of collision and salvage:

- Convention on the International Regulations for Preventing Collisions at Sea, 1972;
- International Convention for the Safety of Life at Sea, 1974;
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;
- Maritime Code of the PRC (CMC);
- Provisions of the Supreme People's Court on Some Issues about the Trial of Cases of Ship Collision Disputes;
- Provisions of the Supreme People's Court on the Trial of the Cases of Property Damage Compensation arising from Ship Collision and Allision; and
- International Convention on Salvage, 1989.

3.3 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims is not applicable in the PRC. The CMC, as a domestic legislation, applies in this regard, and its specific provisions are set out as follows.

Article 207 states:

“Except as provided otherwise in Article 208 and 209 of this Law, the person liable may limit his liability in

accordance with the provisions of this Chapter, whatever the basis of liability may be, with respect to the following maritime claims:

(1) Claims in respect of loss of life or personal injury or loss of or damage to property, including damage to harbour works, basins and waterways and aids to navigation occurring on board or in direct connection with the operation of the ship or with salvage operations, as well as consequential damages resulting therefrom;

(2) Claims in respect of loss resulting from delay in delivery in the carriage of goods by sea or from delay in the arrival of passengers or their luggage;

(3) Claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations;

(4) Claims of a person other than the person liable in respect of measures taken to avert or minimise loss for which the person liable may limit his liability in accordance with the provisions of this Chapter, and further loss caused by such measures.

All the claims set out in the preceding paragraph, in whatever way they are lodged, may be entitled to limitation of liability. However, with respect to the remuneration set out in sub-paragraph (4) for which the person liable pays as agreed upon in the contract, in relation to the obligation for payment, the person liable may not invoke the provisions on limitation of liability of this Article”.

Article 208 states:

“The provisions of this Chapter shall not be applicable to the following claims:

(1) Claims for salvage payment or contribution in general average;

(2) Claims for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage to which the PRC is a party;

(3) Claims for nuclear damage under the International Convention on Limitation of Liability for Nuclear Damage to which the PRC is a party;

(4) Claims against the ship-owners of a nuclear ship for nuclear damage;

(5) Claims by the servants of the ship-owners or salvor, if under the law governing the contract of employment, the ship-owner or salvor is not entitled to limit his liability or if he is by such law only permitted to limit his liability to an amount greater than that provided for in this Chapter”.

Articles 210 and 211 regulate the calculation of limitations of liability, which is generally identical to the limitation level regulated by the 1976 Convention on Limitation of Liability for Maritime Claims. The CMC was amended in 2025, and the change will come into force on 1 May 2026 (CMC2025). After the CMC2025 takes effect, the current limits of the ship's liability will be significantly increased, compared to the current limitation regime.

The PRC sets a relatively low standard for limitations of liability for ships with a gross tonnage ranging from 20 tons to 300 tons and those exceeding 300 tons but engaged in domestic transport services and other coastal works.

3.4 Vienna Convention on the Law of Treaties

China is a Contracting State to the Vienna Convention on the Law of Treaties, and Chinese courts have, in judicial practice, expressly relied on the Convention's interpretative rules when construing international conventions to which China is a party.

In particular, courts have referred to Articles 31 and 32 of the Vienna Convention as guiding principles when interpreting provisions of substantive international transport and liability conventions, especially where the convention text does not expressly resolve a specific issue. Chinese courts have adopted a good-faith interpretation based on the ordinary meaning of the treaty terms, read in their context and in light of the treaty's object and purpose, and have, where appropriate, taken into account supplementary means of interpretation.

This approach has been reflected in a number of judicial decisions concerning international transport conventions. For example, in cases involving the interpretation of limitation and time-bar provisions under the Montreal Convention, Chinese courts have explicitly applied the Vienna Convention's interpretative methodology to determine the legal nature and effect of treaty provisions that are not expressly characterised by the convention itself.

Similarly, in maritime cases concerning the interpretation of liability and compensation scope under international oil pollution conventions, Chinese courts have relied on the Vienna Convention's principles to clarify the meaning and limits of treaty-based compensation regimes, thereby ensuring consistency with the treaty's purpose and international uniformity.

Overall, while Chinese courts apply international conventions directly in accordance with domestic conflict-of-laws rules, the Vienna Convention on the Law of Treaties serves as an important interpretative reference, contributing to a structured and internationally aligned approach to treaty interpretation in Chinese judicial practice.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Application for the constitution of a limitation fund can be made before or during litigation proceedings, but no later than the issuance of the first-instance judgment.

The court will notify known interested parties and make an announcement to unknown interested parties via public media within seven days after the application.

Announcement of the constitution shall be produced in public media for three days consecutively; the announcing period is 30 days from the last announcement.

Notified parties can raise dissension against the constitution within seven days upon receipt of the notice; parties not notified can raise dissension against the constitution within 30 days from the last announcement date.

The court's decision shall be made within 15 days upon receipt of dissension against the constitution. The time limit to appeal against the court's decision is seven days upon receipt. The Appeal Court's decision on dissension is 15 days upon receipt.

If no dissent is received, the court will permit the constitution within 30 days from the last announcement made on public media.

The creditor's registration period against the limitation fund is 60 days, beginning from when the last announcement is made.

The ship-owner, charter, operator, salvor and insurer may apply to the maritime court to constitute a limitation fund.

Cash or a guarantee shall be made available for the fund within three days after the court's decision to allow constitution; otherwise, the application will be treated as withdrawn. A limitation fund is successfully constituted by a successful cash deposit or guarantee.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention 2006 is applicable in the PRC (except Hong Kong and Macau).

The following main domestic laws and regulations have been ratified by the PRC in regard to seafarers' rights and safety:

- the CMC;
- the Maritime Traffic Safety Law of the PRC;
- the Regulation on Seamen of the PRC;
- the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases Involving Seaman-Related Disputes;
- the Rules for the Watchkeeping of Seafarers on Seagoing Vessels of the PRC;
- the Rules for the Competency Examination and Certification of Seafarers Serving in Seagoing Ships of the PRC; and
- the Measures for the Management of Seafarers' Working and Living Conditions on Board the Ships of the PRC.

4. Cargo Claims

4.1 Bills of Lading

The laws and regulations applicable to the carriage of goods by sea and bills of lading (B/L) in the PRC are:

- the CMC; and
- the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases of Delivery of Goods Without Original Bill of Lading (Provisions of Delivery of Goods without B/L).

The PRC is not a party to the Hague Rules (except Hong Kong and Macau), the Hague-Visby Rules (except Hong Kong), the Hamburg Rules or the Rotterdam Rules.

4.2 Title to Sue on a Bill of Lading

The shipper, the lawful holder of the B/L, and the carrier have the title to sue.

The Shipper

In PRC law, "shipper" means both the contractual shipper who concludes the contract of carriage of goods by sea with the carrier and the actual shipper who delivers the goods to the carrier.

The contractual shipper has the title to sue the carrier directly under the contract of carriage of goods by sea. The B/L serves as evidence of the contract.

The actual shipper who holds the original "to-order" B/L is entitled to sue the carrier, even if their name is absent from the B/L. The Supreme Court held that the actual shipper who holds the straight B/L also has the right to sue the carrier for the delivery of the goods without the original B/L in the case (2016) Supreme Court Min Shen No 2284.

The Holder of the Bill of Lading/Consignee

The lawful holder of the B/L has the right to sue the carrier under the B/L.

The Carrier

The contractual and actual carriers have the title to sue the shipper under the contract of carriage of goods by sea and the B/L.

Assignment of Title to Sue

“Title to sue” is a legal concept in English law, while its equivalent concept in PRC law is usually described as “litigation rights”. Litigation rights are legal procedural rights and are unassignable.

In PRC law, creditor’s rights are substantive rights and are assignable, in accordance with contractual agreements and subject to certain exceptions. Although litigation rights alone cannot be assigned, they can be transferred along with and through the assignment of creditor’s rights.

4.3 Ship-Owners’ Liability and Limitation of Liability for Cargo Damages

Ship-Owner’s Liability

The ship-owner, whether it is a contractual or actual carrier, shall be liable for the loss of or damage to the goods during the period in which the carrier is in charge of the goods (with the exception stipulated in Article 51 of the Provisions of Delivery of Goods without B/L), and for the loss caused by the delay in delivery within the time expressly agreed upon, if any. In general, the ship-owners (two types of carriers) should:

- exercise due diligence to make the ship seaworthy before and at the beginning of the voyage;
- perform duty of care for cargo properly; and
- make no unreasonable deviation.

However, the actual carrier may not have the obligation to issue the B/L or deliver the cargo, subject to their charterparty with the charterers. In addition, the contractual carrier shall be responsible for the entire carriage, while the actual carrier is responsible for their segment only. They can both seek recovery from each other under Article 65 of the CMC.

Limitation of Liability for Cargo Damages

Article 56 of the CMC states:

“The liability of the carrier for the loss resulting from loss of or damage to goods shall be limited to an amount equivalent to 666.67 Units of Account per package or other shipping unit, or 2 Units of Account per kilogram of the gross weight of the goods lost or damaged, whichever is the higher, except where the

nature and value of the goods had been declared by the shipper before shipment and inserted in the bill of lading, or where a higher amount than the amount of limitation of liability set out in this Article had been agreed upon between the carrier and the shipper... Where the article of transport is not owned or furnished by the carrier, such article of transport shall be deemed to be one package or one shipping unit.”

According to Article 61, the above limitation of liability applies to both the contractual and the actual carrier.

In addition, according to Articles 204 and 207, except for the unit limitation for the carrier, the ship-owner (including the charterer and the ship operator) and the salvor could be protected by the limitation of liability for maritime claims stipulated in Article 210 of the same law.

However, the carrier or the person liable will not be entitled to the benefit of limitations of liabilities stipulated in Articles 56 and 207 if the loss, damage or delay in delivery of the goods resulted from an act or omission of the carrier or the person that was done with the intention to cause that loss, damage or delay, or recklessly and with the knowledge that such a loss, damage or delay would probably result under Articles 59 and 209.

“A person liable” in Article 209 refers to the person themselves and does not include their servant and agent. Therefore, the ship-owner is still entitled to benefit from the limitation of liability for a maritime claim if it is proved that the loss, damages or delay in delivery of goods resulted from the wilful or reckless acts of the Master, crews or agent, rather than themselves.

4.4 Misdeclaration of Cargo

The shipper shall indemnify the carrier against any loss resulting from the misdeclaration of general and dangerous cargo.

In practice, for general cargo, in order to lodge a successful claim, the carrier needs to prove that the damage was caused by the fault of the shipper or their servant or agent.

However, for dangerous goods, the court would normally apply the principle of strict liability. Per the case (2016) Supreme Court Min Shen No 1271, the Supreme Court held that, for dangerous cargo, if:

- the shipper, including the actual shipper and non-vessel operating common carrier, fails to notify or notifies the actual carrier inaccurately;
- the actual carrier has fulfilled its duty of care for the goods; and
- the loss or damage was caused by dangerous cargo that was not properly declared, the shipper shall be liable for the loss or damage resulting from the misdeclaration of dangerous cargo.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Time Bar

The time limit for bringing a claim against the carrier for damaged or lost cargo (either for breach of contract or in tort) is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier and within the limitation period or after the expiry thereof. If the person allegedly liable has brought a recourse claim against a third party, that claim has a time limit of 90 days, counting from the day on which the person claiming for the recourse settled the claim or was served with a copy of the claim documents by the court.

Extension, Suspension and Discontinuance

The time limit for actions for maritime disputes cannot be extended by agreement, but it can be suspended or discontinued pursuant to the CMC.

Regarding suspension, Article 266 states: *“Within the last six months of the limitation period if, on account of force majeure or other causes, the claims could not be made, the limitation period shall be suspended. The counting of the limitation period shall be resumed when the cause of suspension no longer exists.”*

Regarding the discontinuance, Article 267 states: *“The limitation of time shall be discontinued as a result of the claimant bringing an action or submitting the case for arbitration or the admission to fulfil obligations by the person against whom the claim was brought. However, the limitation of time shall not be discontinued*

if the claimant withdraws his action or his submission for arbitration, or if his action has been rejected by a decision of the court... The limitation period shall be counted anew from the time of discontinuance.”

After the CMC2025 takes effect, the provision of time-bar discontinuance will be amended, so that making a claim against the person liable would discontinue the time bar.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The PRC has not participated in any international conventions regarding the arrests of vessels. The domestic laws that cover vessel arrests in China are:

- the CMC;
- the Special Maritime Procedure Law; and
- the Provisions of the Supreme People’s Court on Several Issues Concerning the Application of the Law in the Arrest and Judicial Sale of Ships.

5.2 Maritime Liens

PRC law differentiates between maritime liens and maritime claims. The following maritime claims are entitled to maritime liens:

- crew wages, repatriation and social insurance costs, and other remuneration;
- personal injury and casualty (including injury and casualty of crew) that occurred during ship operation;
- ship’s tonnage dues, pilotage dues, harbour dues and other port charges;
- salvage; and
- loss of or damage to property resulting from a tortious act in ship operation.

However, claims for oil pollution damage caused by a ship carrying more than 2,000 tons of oil that has a valid certificate attesting that the ship has oil pollution liability insurance coverage or other appropriate financial security are not within the scope of the above-mentioned maritime liens.

The following maritime claims are entitled to require the arrest of a ship:

- loss of or damage to the property that occurred in ship operation;
- personal injury and casualty directly related to ship operation;
- salvage at sea;
- damage or threat of damage caused by the vessel to the environment, the coast or relevant interested parties, the measures taken for prevention, reduction and elimination of any such damage, payment for compensation of any such damage, the reasonable cost for potential or actual measures taken for restoring the environment, losses the third party suffered or will probably suffer due to that damage, and damages, fees or losses that are similar in nature to those specified in this point;
- expenses relating to the refloating, removal, reclamation or destruction of a sunken ship, shipwreck, stranded ship or abandoned ship, or to making them harmless, including expenses relating to the refloating, removal, reclamation or destruction of objects that have, or have no longer, remained on board the ship – or to making them harmless – and expenses relating to the maintenance of the abandoned ship and her crew;
- agreement in respect of the employment or chartering of a ship;
- agreement in respect of the carriage of goods or passengers;
- goods (including luggage) on board or loss or damage related thereto;
- general average;
- towage;
- pilotage;
- providing supplies or rendering services in respect of ship operation, management, maintenance or repair;
- construction, reconstruction, repair, refurbishment or equipment of a ship;
- dues or charges for ports, canals, wharves, harbours or other waterways;
- crew wages or other payments, including repatriation and social insurance premiums payable for the crew;
- expenses paid for a ship or ship-owner;

- a ship's insurance premium (including protection and indemnity calls) payable by or paid for by a ship-owner or bareboat charterer;
- a commission, brokerage or agency fee related to a vessel payable by or paid for by a ship-owner or bareboat charterer;
- disputes over the ownership or possession of a ship;
- disputes between co-owners of a ship over the employment or earnings of the ship;
- a ship mortgage or right of a similar nature; and
- disputes arising from the sale and purchase of a ship.

5.3 Liability in Personam for Owners or Demise Charterers

A ship can be arrested regardless of its owners' or demise charterers' personal liability on the merits constituting a recognised maritime lien on the ship. Even if the ship's ownership has changed, the ship can be arrested within the time limit to exercise a maritime lien.

5.4 Unpaid Bunkers

A bunker supplier is entitled to arrest a vessel for unpaid bunkers, and there is no difference regardless of whether it is a contractual or an actual supplier.

However, if the bunkers were supplied to a chartered vessel and ordered by the charterer, and not by the owner, things will be different. A vessel operated or chartered by a time charterer or voyage charterer may not be arrested.

A time charterer shall be entitled to give master instructions consistent with the stipulations of the time charter with respect to the operation of a vessel. However, a voyage charterer is not considered to have the authority to bind a vessel.

5.5 Arresting a Vessel

The following formalities are required to arrest a ship:

- a power of attorney and an identity certificate of a legal representative; and
- a Certificate of Incorporation or Good Standing of the applicant.

These documents shall be duly notarised and legalised:

- an application for arrest; and
- supporting evidence and translation into the Chinese language (if the original language is not Chinese). Originals or notarised copies of supporting evidence are required.

The court always requires the applicant to lodge a counter-security in the case of a wrongful arrest.

5.6 Arresting Bunkers and Freight

The applicant is entitled to arrest bunkers. However, it is very difficult to enforce such an arrest due to complex customs formalities, safety and storage requirements, etc.

The applicant is entitled to apply for a court order to preserve the freight for due debts.

5.7 Sister-Ship Arrest

The maritime court may arrest a sister vessel that is owned, at the time of arrest, by the ship-owner, the demise charterer, the time charterer or the voyage charterer who is liable for the maritime claim, except for claims related to the ownership or possession of the vessel.

5.8 Other Ways of Obtaining Attachment Orders

The applicant may apply for the arrest of cargo, or for property preservation against the respondent's real estate or other assets.

5.9 Releasing an Arrested Vessel

The owner or any interested party may lodge a satisfied security to release the vessel. The court only accepts security lodged in cash or a letter of undertaking (LOU) issued by a domestic bank or insurance company, or any other entity they deem appropriate. Nonetheless, the ship-owner or the interested party is at liberty to negotiate the security with the applicant. In the event that the applicant agrees to accept a club LOU or a foreign bank's guarantee, the court may release the vessel.

5.10 Procedure for the Judicial Sale of Arrested Ships

A judicial sale of an arrested ship must follow the steps set out below:

- set up an auction committee;
- appraise the ship value;
- issue the auction notice;
- display the ship;
- set the price;
- register the bidders;
- conduct the ship auction and bidding (online);
- effect the auction confirmation and delivery; and
- release the ship and announce the auction result (done by the court).

In PRC law, the private sale of an arrested ship is not allowable.

While the ship is under arrest, the ship-owner or bareboat charterer is liable for maintaining the ship until it has been sold by the court.

After being sold by auction, the payment sequence is:

- maritime claims with maritime liens;
- maritime claims secured by possessory liens;
- maritime claims secured by ship mortgages; and
- other maritime claims in relation to the judicial sale and/or sell-off of the ship.

5.11 Insolvency Laws Applied by Maritime Courts

The PRC has the Enterprise Bankruptcy Law, which provides that all bankruptcy cases shall be submitted to the Intermediate People's Court instead of the maritime court. According to the Interpretations to the Civil Procedure Law and the Interpretations to the Special Maritime Procedure Law, the Intermediate People's Court may request the maritime court to assist in the arrest and/or auction of the vessel owned by owners that are under bankruptcy proceedings. However, the enforcement of such a request or arrest is subject to communication and co-ordination between the courts.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The applicant shall indemnify the respondent for the wrongful arrest of a vessel. It is clear that the arrest is wrongful if the applicant loses in the substantive proceeding. In other scenarios, it is subject to the court's discretion.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The applicable laws and conventions are as follows:

- Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974 and its 1976 Protocol;
- the CMC; and
- the Provisions on Limitation of Liability for Carriage of Passengers by Sea between Ports of the PRC.

Time Bar

Article 258 of the CMC states:

"The time limit for bringing a claim against the carrier with regard to the carriage of passengers by sea is two years, counting respectively as follows:

(1) Claims for personal injury: counting from the day on which the passengers disembarked or should have disembarked;

(2) Claims for death of passengers that occurred during the carriage period: counting from the day on which the passenger should have disembarked; whereas those for the death of passengers that occurred after the disembarkation but resulted from an injury during the carriage period by sea, counting from the day of the death of the passenger concerned, provided that this period does not exceed three years from the time of disembarkation;

(3) Claims for loss of or damage to the luggage: counting from the day of disembarkation or the day on which the passenger should have disembarked."

Article 285 of the CMC2025 makes no substantive changes to the contents of the above Article 258.

Limitation of Liabilities for a Ship-Owner

Article 117 of the CMC states:

"Except the circumstances specified in paragraph 4 of this Article, the limitation of liability of the carrier under each carriage of passengers by sea shall be governed by the following:

(1) For death of or personal injury to the passenger: not exceeding 46,666 Units of Account per passenger;

(2) For loss of or damage to the passengers' cabin luggage: not exceeding 833 Units of Account per passenger;

(3) For loss of or damage to the passengers' vehicles including the luggage carried therein: not exceeding 3,333 Units of Account per vehicle;

(4) For loss of or damage to luggage other than that mentioned in subparagraphs (2) and (3) in this Article: not exceeding 1,200 Units of Account per passenger.

An agreement may be reached between the carrier and the passengers with respect to the deductibles applicable to the compensation for loss of or damage to the passengers' vehicles and luggage other than their vehicles...

A higher limitation of liability than that set out in subparagraph (1) above may be agreed upon between the carrier and the passenger in writing..."

In addition, according to Article 207, a ship-owner (including a charterer and a ship-operator) or a salvor could enjoy the limitation of liability for maritime claims stipulated in Article 211 of the same law.

However, Articles 118 and 209 regulate that the carrier or a person liable shall not be entitled to limit their liability based on the above provisions if it is proved that the loss resulted from their act or omission done with the intent to cause that loss or damage, or if they acted recklessly and with the knowledge that such loss would probably result.

Meanwhile “a person liable” in Article 209 refers to the carrier/owner rather than the Master, crew or agent. This means that the carrier/owner is still entitled to benefit from the limitation of liability for maritime claims if it is proved that the loss, damages or delay in delivery of goods resulted from the wilful or reckless acts of the Master or crews rather than the carrier/owner.

After the CMC2025 takes effect, the current limits of the carrier’s liability will be significantly increased.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

PRC courts rarely recognise the validity of law or jurisdiction clauses stated in the B/L due to the lack of negotiation between the consignee, the receiver, the holder of the original B/L, the cargo underwriters and the carrier about such clauses.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

PRC courts rarely recognise the validity of law and arbitration clauses incorporated into a B/L.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The PRC joined the 1958 New York Convention in 1986. Civil Procedure Law is the domestic law that governs the recognition and enforcement of foreign arbitral awards.

A foreign arbitral award needs to be notarised and legalised before being submitted to the PRC courts for recognition and enforcement.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The applicant is entitled to apply to the PRC courts for the arrest of a vessel in dispute that is subject to foreign arbitration or jurisdiction. This application shall be made before the applicant commences the arbitration/litigation proceeding. Once the arrest is granted,

the applicant shall commence the arbitration/litigation proceeding within 30 days.

7.5 Domestic Arbitration Institutes

The China Maritime Arbitration Commission (CMAC) and the China International Economic and Trade Arbitration Commission (CIETAC) specialise in maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

If the claimant commences proceedings before a PRC court in breach of foreign jurisdiction or arbitration clauses, the respondent is entitled to file a jurisdiction objection within the defence period to challenge the court’s jurisdiction. If the court sustains the objection, it will dismiss the claimant’s action. In that case, the claimant shall bear the court fee, and there will be no further remedies available to the respondent/defendant.

8. Ship-Owners’ Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners’ Companies

A PRC-incorporated ship-owner is subject to corporate income tax on the worldwide income earned by its vessels and is subject to relief for any tax paid on the same income elsewhere, subject to conventions and treaties in relation to the avoidance of duplicate taxation.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Non-performance of a shipping contract due to the effects of the pandemic or the Ukraine war may be considered by PRC courts as force majeure or, in the context of Chinese law, hardship, provided that all statutory requirements have been satisfied. The Supreme Court has recently issued a judicial interpretation on contractual matters in the Civil Code, which provided some guidance and clarifications with regard

to hardship. The test for hardship is an unforeseeable, unavoidable and insurmountable test.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

As China is a contracting state to Annex VI of the MARPOL Convention, the 2020 sulphur content limit applies to China. The MSA has issued the Implementation Scheme of Global Marine Fuel Oil Sulphur Limit by 2020 (the "Implementation Scheme"), which provides as follows.

- From 1 January 2020, vessels engaged in international voyages, when entering Chinese waters, shall use fuel oil with a sulphur content not exceeding 0.50% m/m (mass by mass).
- From 1 March 2020, vessels engaged in international voyages, when entering Chinese waters, shall not carry fuel oil with a sulphur content exceeding 0.50% m/m.
- From 1 January 2020, vessels engaged in international voyages, when operating in the inland river emission control area, shall not use fuel oil with a sulphur content exceeding 0.1% m/m.
- From 1 January 2020, vessels engaged in international voyages, when operating in the coastal emission control area of Hainan waters, shall not use any fuel oil with a sulphur content exceeding 0.1% m/m.
- Vessels of international voyages with alternative measures that comply with Article 3 of MARPOL Annex VI could be exempted from the foregoing requirements.
- From 1 January 2020, the wash-water of open-loop exhaust gas cleaning systems shall not be discharged into the waters of domestic emission control areas (DECAs).
- From 1 January 2020, where Chinese vessels on international voyages use or carry non-compliant fuel oil due to the non-availability of compliant fuel oil, and where their next ports of call are foreign ports, the vessels shall report to the maritime authorities of the registered ports immediately and notify the competent authorities of the next ports of call with a fuel oil non-availability report (FONAR).
- From 1 January 2020, where vessels with Chinese nationality on international voyages use or carry non-compliant fuel due to the non-availability

of compliant fuel, and where their next ports of call are Chinese ports, the vessels shall submit a FONAR to the maritime authorities of those ports.

- From 1 January 2020, if foreign vessels on international voyages use or carry non-compliant fuel due to the non-availability of compliant fuel, and where their next ports of call are Chinese ports, the vessels shall notify the maritime authorities of the Chinese ports with a FONAR before entering Chinese waters.
- From 1 March 2020, vessels on international voyages carrying non-compliant fuel in Chinese waters shall discharge non-compliant fuel oil or keep non-compliant fuel oil on board with a commitment letter for not using it in Chinese waters. Such vessels shall obtain the consent of the maritime authorities of the ports, according to MEPC.1/Circ.881.
- When discharging non-compliant fuel oil from vessels, reports shall be made to the local maritime authority, whilst safety and pollution prevention measures shall be implemented.
- Should there be any violation of the Implementation Scheme, maritime authorities shall act according to relevant laws, regulations and the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution, which provides, in the case of consumption of non-compliant fuel oil, for the imposition of a fine ranging from CNY10,000 to CNY100,000.

As Annex VI of the MARPOL Convention was revised in 2024, the MSA has issued the Announcement on the Implementation of the 2024 Amendments to the Annex VI of the MARPOL Convention, which provides as follows.

- Any entity supplying low-flashpoint or gaseous fuels to internationally trading vessels shall deliver to the receiving vessel a Bunker Delivery Note that fully complies with Regulation 18.5.2 of MARPOL Annex VI (2024 revised). Both the receiving vessel and the fuel supplier shall retain the Bunker Delivery Note for a minimum of three years.
- Where a Chinese internationally trading vessel is fitted with a replacement diesel engine that is not strictly identical and cannot meet the Tier III standard, the engine shall instead satisfy the Tier II standard pursuant to Regulation 13.2.2 of

MARPOL Annex VI (2024 revised). The ship survey organisation conducting the survey shall issue or endorse the relevant certificate accordingly and, within one month of completion, forward the information specified in this Announcement.

- For new vessels: Every Chinese internationally trading ship of 5,000 GT or more delivered on or after 1 August 2025 shall, from the date of delivery, collect energy-consumption data in accordance with MARPOL Annex VI (2024 revised) Appendix IX and report that data to the maritime administration pursuant to the Measures for the Administration of Ship Energy-Consumption Data and Carbon Intensity.
- For existing vessels: Every existing Chinese internationally trading vessel of 5,000 GT or more shall revise its Ship Energy Efficiency Management Plan (SEEMP) and obtain verification in accordance with the applicable provisions. From 1 January 2026 onward, such ships shall collect energy-consumption data under MARPOL Annex VI (2024 revised) Appendix IX and report the data to the maritime administration in compliance with the Measures for the Administration of Ship Energy-Consumption Data and Carbon Intensity.

9.3 Trade Sanctions

PRC law does not incorporate any international trade sanctions. However, if the UN Security Council passes any sanction resolution, the Ministry of Foreign Affairs of the PRC may officially notify relevant governmental authorities for enforcement.

In recent years, certain PRC individuals and entities have been sanctioned by some foreign countries in relation to commercial trading, and they have attempted to seek remedy by legal actions. In general terms, the PRC government does not recognise the enforceability of any unilateral trade sanctions (including those imposed in the context of the Russia-Ukraine war) imposed by any foreign country. If any such sanction applies discriminatory and restrictive measures against PRC individuals and entities resulting in interference with public interests, the PRC will consider taking corresponding countermeasures.

Furthermore, if unjustified extraterritorial foreign trade sanctions are applied against PRC individuals and

entities, they may apply to the commerce department of the State Council for exemption from compliance with a prohibition order.

In 2021, China enacted the Anti-foreign Sanctions Law, empowering the Ministry of Foreign Affairs and other relevant authorities to impose sanctions on foreign entities or individuals. In 2025, China further enacted the Provisions on Implementation of the Anti-foreign Sanctions Law, further improving countermeasures, refining some countermeasures procedures, strengthening the co-ordination among relevant departments and intensifying the implementation of measures. Some sanctions have already been imposed against entities and persons who promoted sanctions against Chinese entities, and who are involved in military sales to Taiwan.

9.4 International Conflict

PRC law provides for grounds for failing to perform a contract due to force majeure or hardship.

Article 180 of the Civil Code states:

“If civil obligations fail to be performed due to force majeure, no civil liability shall be borne. Where the laws provide otherwise, such provisions shall prevail.

Force majeure is unforeseeable, unavoidable and insurmountable objective events.”

Article 533 of the Civil Code states:

“After a contract has been concluded, if the basic conditions of the contract have undergone a significant change which is unforeseeable by the parties at the time it was concluded and which does not belong to commercial risks, and it is clearly unfair for the party concerned to continue to perform the contract, the party adversely affected may renegotiate with the other party. If negotiation fails within a reasonable period of time, the parties may request a people’s court or an arbitration agency to modify or rescind the contract.

The people’s court or arbitration agency shall, in light of the actual circumstances of the case, amend or rescind the contract under the principle of fairness.”

The determination of whether an event constitutes force majeure or hardship is contingent on the specific circumstances of each case. Reported cases have include the Ukraine War, COVID-19 pandemic, etc. However, in such cases, the courts have applied a stringent standard when assessing the application of force majeure and hardship doctrines to disputes – eg, where they arose from the Ukraine war.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

PRC judicial practice is controversial with regard to certain seafarer-related disputes. In 2020, the PRC Supreme Court promulgated Provisions on Several Issues Concerning Trial of Cases Involving Seaman-Related Disputes, which mainly focused on the following aspects.

- First, the provisions provide guidelines on identifying the nature of and resolving disputes about the various seafarer-related contracts – ie, employment contracts, service contracts and brokerage contracts (Articles 1 to 5). This part highlights that if a seafarer-related claim is irrelevant to a maritime lien, the claim shall first be referred to a labour dispute arbitration commission for arbitration according to the Labour Dispute Mediation and Arbitration Law. For other disputes over a labour service contract between a seafarer and a vessel owner, the claim shall be brought to a competent Maritime Court.

- Second, the provisions provide guidelines on the recognition, enforcement and assignment of maritime liens (Articles 6 to 10). This part highlights that a seafarer has the right to seek judicial recognition of their entitlement to a maritime lien independently of requesting a ship arrest; when a vessel owner fails to pay wages, other labour remuneration, seafarer-repatriation expenses, or social insurance expenses arising from embarkation, employment on a vessel, or disembarkation and repatriation of a seafarer as agreed; and when the seafarer assigns their corresponding maritime claim to a third party that advances all or part of the money.
- Third, the provisions provide guidance on the components and calculation of a seafarer's wages and other remunerations, specifying legal protection for seafarers' entitlement to salaries in the case of them conducting illegal activities under fraud or duress (Articles 11 to 14).

Other issues covered are outlined below.

- When a seafarer sustains damage because of labour service, if the seafarer is found to be at fault, they shall assume the corresponding liability (Article 15).
- A third party who is liable for a work-related injury substantiated by a seafarer cannot seek exemption of its civil liability on the ground that the seafarer has obtained relevant insurance benefits (Article 16).
- The provisions stipulate which laws are applicable to foreign-related disputes (Article 17).

Trends and Developments

Contributed by:

Chen Leiming, Yuan Yuan and Tingxin Yu
Kangda Law Firm

Kangda Law Firm was founded in Beijing in 1988 and is one of the earliest large-scale, full-service law firms approved by the Ministry of Justice of China. It has been honoured multiple times with titles such as “National Outstanding Law Firm” and “Beijing Outstanding Law Firm”. To date, Kangda has established 24 branch offices and employs over 2,000 practising lawyers. As a full-service law firm, Kangda not only maintains its traditional competitive edge in areas it takes pride in – such as criminal defence, civil and

commercial dispute resolution, corporate legal services, and government and administrative legal affairs – but has also consistently been a leader in the field of capital market legal services over the past two decades. Furthermore, Kangda’s practice extends to specialised areas including bankruptcy liquidation and reorganisation, intellectual property, tax law, maritime and shipping law, foreign-related legal services, labour disputes, and corporate compliance.

Authors



Chen Leiming specialises in maritime and shipping law, insurance, banking and finance, trade and related fields. With a solid legal foundation and extensive practical experience, he has provided annual legal advisory

services to dozens of companies throughout his career and has represented Chinese and international clients in hundreds of litigation and arbitration cases. Notably, several cases he handled have been recognised as typical maritime trial cases by the Supreme People’s Court of China and the Guangdong High People’s Court. He has also been honoured as a Leading Talent for Foreign-Related Lawyers in Guangdong Province.



Yuan Yuan possesses extensive foreign-related legal expertise and litigation experience. She is well-versed in the principles and practices of maritime law, insurance law, company law, contract law, real estate

law, labour law and international trade. She specialises in handling legal matters related to

maritime and shipping affairs, comprehensive property insurance and marine insurance, foreign-related civil and commercial contracts, and real estate disputes. Ms Yuan has served as legal counsel for large shipping companies, large shipyards, and large terminal operators, and has been recognised as a Leading Talent for Foreign-Related Lawyers in Guangdong Province.



Tingxin Yu is a qualified lawyer admitted in China, practicing at Beijing Kangda (Guangzhou) Law Firm. She graduated from Durham University with a Master of Laws and is proficient in both Chinese and

English. Specialising in maritime and insurance disputes, she has handled a variety of cases involving vessel collision disputes, disputes arising from contracts for the carriage of goods by sea, and insurer subrogation claims. She also provides full-spectrum legal support for cross-border vessel transactions and serves state-owned enterprises and public institutions as external legal counsel.

Kangda Law Firm

29/F, Leatop Plaza
32 Zhujiang East Road
Guangzhou
510623
China

Tel: +86 20 3739 2666
Fax: +86 20 3739 2866
Email: guangzhou@kangdalawyers.com
Web: www.kangdalawyers.com



Brief Introduction to the Amendments to the Maritime Code of the People's Republic of China

This year marks a critical milestone in the evolution of China's maritime legal framework. On 28 October 2025, the 18th Session of the Standing Committee of the 14th National People's Congress passed the newly amended Maritime Code of the People's Republic of China (the "revised Maritime Code"). Consisting of 16 chapters and 310 articles, the revised Maritime Code will officially come into effect in China on 1 May 2026.

This revision represents the first comprehensive amendment since the implementation of the current Maritime Code over 30 years ago, undertaken to adapt to new economic circumstances and legal developments. The amendments primarily focus on the following five aspects:

- unifying the legal application for domestic and international carriage of goods by sea;
- appropriately adjusting the rights and obligations of parties involved in maritime activities;
- accommodating the practical needs for electronic shipping documents;
- meeting new requirements for improving the legal system for ship pollution prevention in line with marine environmental protection; and
- refining the rules concerning the application of law in foreign-related matters.

The specific amendments are as follows.

Unification of legal application for international and domestic carriage of goods by sea

The revised Maritime Code removes paragraph 2 of Article 2 of the current Code, which stipulates that "The provisions of Chapter IV of this Code concerning contracts of carriage of goods by sea shall not apply to the maritime transport of goods between the ports of the People's Republic of China". Instead, Article 43 now states that "A contract of carriage of goods by sea includes both international contracts of carriage of goods by sea and domestic contracts of carriage of goods by sea between ports of the People's Republic of China".

Although the revised Maritime Code uniformly regulates both international and domestic carriage of goods by sea, it provides different provisions for international and domestic carriage regarding the carrier's obligation of due diligence, delay in delivery and exemptions from liability. These distinctions are stipulated in Articles 48, 51 and 52 of the revised Maritime Code, respectively.

Appropriate adjustment of the rights and obligations of parties involved in maritime activities

To address the practical needs of shipping and trade development under new circumstances, reasonably allocate responsibilities and risks, and foster clearer and more stable market expectations, the revised Maritime Code appropriately adjusts the rights and obligations of parties involved in maritime activities. The main adjustments are as follows.

Carriers

With reference to the Rotterdam Rules, Article 49 of the revised Maritime Code explicitly extends the carrier's duty of care to encompass "properly and carefully receiving, loading, handling, stowing, carrying, keeping, caring for, discharging, and delivering the goods carried". Furthermore, the definition of "actual carrier" under Article 44 (2) broadens the scope of qualifying entities. Consequently, entities such as port operators may be recognised as actual carriers under specific conditions, thereby entitling them to invoke the carrier's statutory exemptions from liability and benefit from the carrier's limitation of liability per package or unit. Additionally, Article 52 extends the applicability of the carrier's exemptions to situations involving delay in delivery.

Shippers

Article 67 clearly states that "The shipper shall deliver the goods to the carrier for carriage in accordance with the terms of the contract of carriage of goods by sea and shall warrant that the goods are fit for the intended transport".

Regarding the costs and risks arising from the non-delivery of cargo at the port of discharge stipulated in Article 93, the liable party has been shifted from the "consignee" to the "shipper". This article also clarifies that the carrier shall promptly notify the shipper, while specifying that if the consignee has already exercised rights under the contract of carriage of goods by sea, the costs and risks shall be borne by the consignee.

Article 96 of the revised Maritime Code introduces the shipper's right to modify the contract. During the carrier's period of responsibility, the shipper may notify the carrier in writing to suspend the carriage, return the goods, change the port of discharge, or deliver the goods to another consignee. However, the shipper shall compensate the carrier for any losses resulting from such modifications. Furthermore, to meet the demands of commercial practice, Article 96 also outlines exceptions where the carrier may refuse the shipper's modification requests.

Carriage of passengers by sea

According to Article 115 of the revised Maritime Code, the limits of liability for carriers in the carriage of pas-

sengers by sea concerning personal injury, death, and loss of or damage to luggage have been appropriately raised. Specifically, the limit for personal injury or death per passenger is increased from XDR46,666 to XDR175,000; the limit for cabin luggage is increased from XDR833 to XDR1,800; the limit for vehicles (including luggage carried therein) is increased from XDR3,333 per vehicle to XDR10,000; and the limit for other luggage per passenger is increased from XDR1,200 to XDR2,700. It should be noted that the parties are entitled to agree on higher liability limits by written consent pursuant to Article 115. Furthermore, this article unifies the liability limits for carriers in both domestic and international carriage of passengers by sea.

Additionally, based on Article 126, a passenger (or their claimant) may bring a claim for personal injury or death damages directly against the liability insurer or financial guarantor.

Limits of liability for maritime claims

With reference to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, the liability limits for ship-owners and salvors have been appropriately increased concerning the relevant maritime claims specified in Articles 219 and 220.

Under the provisions of Article 213 regarding the scope of persons entitled to limit liability, in addition to the original categories of "charterer" and "operator" of the ship, "ship manager" has now been included.

Institutional guarantees for the digital development of shipping

To accommodate the practical needs for the digitalisation of shipping documents, and with reference to the UNCITRAL Model Law on Electronic Transferable Records and other relevant international conventions, a new section titled "Electronic Transport Records" (Section 5) has been added to Chapter IV, "Contract of Carriage of Goods by Sea". This section addresses the legal status of electronic transport records, stating that those meeting statutory requirements have the same legal effect as transport documents. Carriers and shippers may agree to issue and use electronic transport records. Such records must satisfy the fol-

lowing conditions: they must be capable of being retained and accessible for subsequent reference; their contents must remain complete and unaltered; the issuer must be identifiable; and the method of verifying the holder's identity must be reliable. Negotiable electronic transport records must also include the information required for negotiability and the procedures for their transfer. Conversion between electronic transport records and transport documents is permitted.

The above provisions are specified in Articles 82 to 86.

Enhancement of systems for marine ecological and environmental protection

In alignment with relevant international conventions to which China is a party, a new chapter titled "Liability for Oil Pollution Damage from Ships" (Chapter XII) has been added to the revised Maritime Code. It clarifies the scope of compensation for oil pollution damage caused by ships under Article 225, and Article 226 stipulates that liability for oil pollution damage shall be borne by the ship-owner of the vessel from which the oil escaped. Article 229 establishes a compulsory liability insurance system for ship-source oil pollution damage and provides for the improvement and implementation of a ship-source oil pollution compensation fund system under existing law.

Separate sections have been specifically dedicated to regulating liability for pollution damage caused by the carriage of persistent oil by sea (Section 2) and liability for pollution damage caused by a ship's bunker oil (Section 3). Simultaneously, pursuant to Articles 37 and 40, the duties of the master in preventing and reducing marine environmental pollution are clarified. Moreover, Article 180 states that neither the salvor nor the salvaged party may contractually exempt themselves from their statutory obligations to prevent or mitigate environmental damage.

Improvement of rules on the application of law in foreign-related matters

First, Article 295 explicitly states that the provisions of Chapter IV, "Contract of Carriage of Goods by Sea", of the revised Maritime Code shall apply mandatorily to international contracts of carriage where the port of loading or the port of discharge is located in the

People's Republic of China. Second, supplementary refinements have been made to the rules governing the application of law in certain important foreign-related relationships. Examples of these improvements include the following.

- Under Articles 296 and 297, it is additionally provided that the law of the state of registration shall apply to the ownership and mortgage of ships under construction that are registered, while the law of the place of construction shall apply to those not registered.
- The law of the place where the ship is detained shall apply to a possessory lien on a ship, based on Article 299.
- In accordance with Article 300, the priority of satisfaction among maritime liens, possessory liens on the ship, and ship mortgages shall be governed by the law of the forum where the action is brought.
- Under Article 302, the parties may agree to choose the law applicable to claims for general average contribution; in the absence of such an agreement, the law of the place where the common maritime adventure terminated shall apply.
- Pursuant to Article 303, limitation of liability shall be governed by the law of the forum where the action is brought.
- Liability for oil pollution damage from ships shall be governed by the law of the place where the pollution damage occurred, as stipulated in Article 304.

Other significant revisions

Limitation period

Pursuant to Article 284, the commencement point of the one-year limitation period for claims arising from the carriage of goods by sea is determined differently depending on the party against whom the claim is made. For claims against the carrier or the actual carrier, the period shall be calculated from the date the goods were delivered or should have been delivered. However, for claims against the shipper, consignee, or holder of the transport document, the period shall be calculated from the date the obligee knew or ought to have known that its right was infringed.

Regarding claims for general average contribution, in accordance with Article 290, the one-year limitation period shall be counted from the day on which the

general average adjustment is completed, with the added provision that such claims shall in no case be brought more than six years from the date on which the common maritime adventure ended.

Furthermore, it is noteworthy that, based on Article 291, the starting point for the two-year limitation period for claims against marine insurers has been amended from “the date of the occurrence of the insured peril” to “the date on which the insured knows or ought to have known of the occurrence of the insured peril”.

As for the grounds for interruption of the limitation period, a new ground has been included in Article 294: “a demand for performance made by the claimant”.

Voyage charterparties

Provisions on voyage charterparties have been relocated from the “Contract of Carriage of Goods by Sea” chapter to Chapter VI, “Charterparties”. Moreover, Article 128 clarifies that the provisions of this chapter shall apply only when the charterparty contains no agreement to the contrary or is silent on the matter.

Contract of marine insurance (Chapter XIII)

This chapter contains the following new provisions.

- It now also applies to insurance on vessels under construction, based on Article 245.
- Rules on the refund of insurance premiums upon termination of the contract by the insurer have been included in accordance with Article 248.
- Pursuant to Article 249, the insurer has the obligation, at the time of concluding the contract, to bring to the insured’s attention and provide a clear explanation of any clauses in the standard-form insurance contract that exempt or limit its liability or are otherwise of material interest to the insured.
- Provisions related to open cover insurance contracts have also been added in Articles 257 and 259.
- More detailed legal consequences for breach of warranty by the insured have been established in Article 261.

Mutual insurance associations

Pursuant to Article 309 of the revised Maritime Code, the legal status and operational model of Protection and Indemnity Clubs (P&I Clubs) as mutual insurance associations are explicitly recognised, and they are entitled to compensate their members for losses and liabilities in accordance with their rules.

This article aims to provide an overview of the revisions in the revised Maritime Code. Our analysis of other detailed revisions is expected to be shared in the future. Notably, the implementation of the revised Maritime Code will have profound implications for the rights and obligations of all sectors within the shipping industry. Our firm will continue to share insights on the details of the revisions and emerging issues following implementation.

COLOMBIA

Law and Practice

Contributed by:

Javier Franco

Franco & Abogados Asociados



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Franco & Abogados Asociados is a boutique law firm, with its headquarters in Bogotá, Colombia. The firm specialises in maritime/ports/transportation/logistics-related issues and has ample experience in representing and/or providing advice to several local and international clients (including ship-owners, carriers, freight-forwarders, P&I clubs, fixed-premium

insurance companies and reinsurers), in both contentious and non-contentious matters around the country. The firm has developed a comprehensive legal portfolio within the ambit of the practice areas in which it operates, and always aims to provide its services in compliance with the highest standards of quality and reliability.

Author



Javier Franco is a partner at Franco & Abogados Asociados. He is a specialist in Maritime Law at Universidad Externado de Colombia. He has an LLM with distinction in International Commercial Law and

Maritime Law from Swansea University, Wales, UK. Among others, he is former President of the Colombian Maritime Law Association (ACOLDEMAR), Titulary Member of the Comité Maritime International (CMI), and a member of the Customs and Trade Facilitation Commission of the Colombian Committee of the International Chamber of Commerce (ICC Colombia). He is author of the book *Legal Aspects of Commercial Logistics and Logistics Service Contracts*. He is also Director of the Trade Facilitation and Sustainability Working Group at the Center for Ocean Policy and Economics (COPE, USA).

Franco & Abogados Asociados

Calle 75
No 13 – 51
Of. 408
Ed. Corinto
Bogotá
Colombia

Tel: +57 1 703 5633
Email: jfranco@francoabogados.com.co
Web: www.francoabogados.com.co



FRANCO & ABOGADOS ASOCIADOS

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The General Maritime Directorate (*Dirección General Marítima* – DIMAR) is the national maritime authority in Colombia, and was originally established under the name of the General Maritime and Ports Directorate (*Dirección General Marítima y Portuaria*) through Decree 2349 of 1971. The entity was subsequently reorganised through Decree 2324 of 1984 and has since maintained the basic structure provided by that regulation (which is still mainly in force).

The DIMAR is therefore the local authority that exercises port state control in practice, and executes the maritime sector policy designed by the Colombian government. As per Decree 2324 of 1984, the DIMAR is also entitled to investigate any maritime casualties occurring in Colombian waters, and has specific jurisdictional functions regarding such accidents (collisions, groundings, etc). Its powers entitle harbour masters of each respective jurisdiction in the first instance, and the Central Level in the second instance, to determine the causes of the event and the liability of the vessels/persons involved.

It should be noted that there is no proper admiralty/maritime jurisdiction in Colombia. Thus, so-called wet shipping situations (collisions, groundings, etc) are dealt with by the DIMAR, as previously described; whereas contractual claims (mainly bill-of-lading claims and/or charterparty-related claims) are to be handled, if required, by the regular civil courts.

1.2 Port State Control

Colombia is a party to the *Viña del Mar* Agreement, under which the DIMAR is to exercise port state control, following general parameters set out by the International Maritime Organization (IMO) for that purpose.

1.3 Domestic Legislation Applicable to Ship Registration

The procedure for the registration of vessels at the domestic level was recently modified with the issuance of Law 2133 of 2021, which purports to make

the country more interesting for international owners that may consider South American jurisdictions for registering ships. The new unified or “unique” national registry of vessels is kept in the country by the DIMAR. One of the most salient features of the new legislation is that a public deed will no longer be required for entering vessels under the Colombian flag.

1.4 Requirements for Ownership of Vessels

There are no specific requirements for the ownership of vessels in Colombia. Even though Article 1458 of the Colombian Commercial Code originally established that only Colombian nationals were able to own commercial vessels registered under the Colombian flag, this provision was considered to be inapplicable by the Council of State. However, Law 2133 of 2021 establishes that contracts for the construction of vessels are to be registered in the Colombian “unique” registry.

1.5 Temporary Registration of Vessels

Temporary or “provisional” registration (as it is called in Colombia) was recently modified by Law 2133 of 2021, with the aim of making the procedure much faster (three days after full documentation is provided, as described in Article 17). In accordance with Article 18, the certification of provisional registry will be valid for just six months. As per Article 10 of Law 2133 of 2021, dual registration is permitted (using the so-called provisional registration) only while procedures for cancellation of the original flag in a different state are carried out and the respective certificate of cancellation is provided.

1.6 Registration of Mortgages

The registration of mortgages on vessels is dealt with in Colombia by the DIMAR. As per Article 3 of Decision 487 of 2000 of the Andean Community of Nations, such a mortgage is to be created by means of a public deed and is to be registered in the respective ship registry in order to enable the effects contemplated in the international instrument. Article 5 of Decision 487 expressly provides details of what the public deed should contain for this purpose (the basic data of the creditor and the debtor, details about the amount of the debt that is to be guaranteed with the mortgage, etc).

Moreover, Articles 27 et seq of Law 2133 of 2021 refer to mortgages of vessels. Specifically, Article 28 of this local provision clarifies that mortgages of vessels of 500 gross tons will be dealt with in accordance with what is provided in Decision 487 of 2000, whereas the rest would be treated in accordance with the Commercial Code.

1.7 Ship Ownership and Mortgages Registry

The DIMAR could issue a (previously requested) certificate of ownership (*certificado de tradición y libertad*) of any vessel entered in the Colombian flag register, in which a mortgage that has been established on the vessel would be evidenced.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Colombia is a jurisdiction where sales of vessels are not frequent and the local bank system is thus not really familiarised with ship's loans and ship's financing (in general). In any case, although not a common domestic operation, local banks are able to provide assistance with obtaining finance for such purpose under certain circumstances (as has occurred in the past).

It is important to note that, as per Decision 487 of 2000, ship mortgages must be done by public deed and registered with the DIMAR.

2.2 Ship Leasing

Please see 2.1 Ship Loan Finance.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Colombia is a party to both the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the Oil Pollution Fund (FUND) Convention, in their 1992 amended versions. Thus, pollution events arising out of accidents involving oil tankers transporting crude oil are to be dealt with mainly in the application of these international conventions. However, the

country is also a party to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), so these parameters are usually available if an operational pollution incident occurs in Colombian waters.

With regard to wreck removal, the country has not yet ratified the Nairobi Convention and there are no domestic provisions in force that specifically address the subject.

3.2 International Conventions: Collision and Salvage

As per Article 1473 of the Colombian Commercial Code, the *armador* is the person who sends a vessel to sea at their own expense and under their own name and risk, regardless of whether or not they are the registered owner of the vessel. Furthermore, Article 1478 establishes that the *armador* is to be held responsible (from a civil perspective) for the faults incurred by the captain, pilot and the crew.

However, Article 1481 of the Colombian Commercial Code clarifies that, in most cases, the *armador* could limit their liability, whether or not they are the owner of the vessel, to the value of the vessel, her accessories and freight.

Colombia is not a party to the Salvage Convention 1989. However, Articles 1545–1554 of the Colombian Commercial Code incorporate certain provisions that follow the basic logic of the York Antwerp Rules.

3.3 Convention on Limitation of Liability for Maritime Claims

Colombia has not ratified the 1976 Convention on Limitation of Liability for Maritime Claims (the “1976 LLMC Convention”). As mentioned in 3.2 International Conventions: Collision and Salvage, the Colombian Commercial Code provides that only in certain cases could the *armador* limit their liability to the value of the ship, her accessories and freight. There is currently no further local legislation that follows the parameters of the 1976 LLMC Convention.

3.4 Vienna Convention on the Law of Treaties

The Vienna Convention was incorporated into domestic law via Law 32 of 1985. Thus, the instrument is

applicable as a tool for interpreting international treaties.

Colombia has not yet ratified the LLMC Convention. Accordingly, any such matters (specifically, limitation issues) are governed by the domestic Commercial Code. Regarding charterers' limitation – in general – it must be said that, although it could be debatable at some point, it seems at least arguable that a charterer could limit their liability under local law in certain circumstances.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Apart from those provisions contained in the CLC and FUND schemes, there are no specific provisions for the constitution of a limitation fund in Colombian law.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention 2006 is not in force in Colombia. Thus, regular parameters of the domestic Labour Law apply.

4. Cargo Claims

4.1 Bills of Lading

Colombia has not ratified any of the existing international sets of rules on bills of lading. However, the Colombian Commercial Code has incorporated certain provisions that – to a certain extent – purport to follow the general logic of the Hague/Hague-Visby Rules. Nevertheless, important differences can be found, particularly regarding the limitation of liability of the carrier.

4.2 Title to Sue on a Bill of Lading

Usually, it is understood that, if a proper bill of lading was provided, the legitimate holder of the bill of lading would be the one entitled to present any claim against the carrier.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Articles 1643 and 1644 of the Colombian Commercial Code deal with the carrier's limitation of liability, and state that the value of the cargo that has been declared to the carrier will be used as a maximum

limit of liability. If the value was not so declared by the shipper, the limit would be the price of the goods at the loading port. However, Article 1644 goes on to establish that parties could agree on a maximum limit of liability, thereby entitling parties to establish a different limitation (see the Colombian Supreme Court of Justice's decision of 8 September 2011, LJ William Namén).

The aforementioned provisions apply to the benefit of whomever is considered "the carrier", whether they are the registered ship-owner or not.

4.4 Misdeclaration of Cargo

Colombia is not a traditional maritime jurisdiction, so there is not much case law on the subject. However, it should be noted that, as per Article 1615 of the Colombian Commercial Code, the shipper should guarantee the precision of the information provided to the carrier regarding marks, numbers, quality, quantity, condition and weight of the goods. Thus, a breach of that obligation could enable the carrier to bring a claim against the shipper.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

There is no specific provision dealing with the time bar in the regulation of the contract for the maritime carriage of goods. Thus, Article 993 of the Colombian Commercial Code – namely, a provision of the general set of rules for the carriage contract – would be applicable. As per this provision, the time bar for filing a claim against the carrier would be two years, to be counted from the moment the goods have been delivered or should have been delivered to the consignee.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Colombia has not ratified any of the existing conventions on the arrest of vessels. However, Decision 487 of 2000 (namely, a regional instrument applicable in the Andean countries, including Colombia) deals specifically with "vessels' preventative embargo" (*embargo preventivo de buque*) – ie, the "arrest" of vessels, as it is known, particularly in Anglo-Saxon jurisdictions.

5.2 Maritime Liens

Decision 487 of the Andean Community also deals with maritime claims (or “credits”, as the instrument calls them) and maritime liens. Maritime claims/credits are defined in Article 1 of Decision 487, following the logic of Article 1 of the International Convention on Arrest of Ships, 1999. Thus, damages and/or losses caused by the exploitation of the ship (No 1), and death or personal injury in direct relation to the exploitation of the ship (No 2), among others, would allow the “arrest” of the ship in Colombia.

However, even though the concept of a maritime lien itself belongs to Anglo-Saxon jurisdictions, Decision 487 also deals obliquely with the concept by making reference to certain “maritime privileges” that will follow the vessel, even if there is a change of ownership or flag, except in cases of forced execution of the ship (Article 22). Claims to be found among those “maritime privileges” include:

- those pertaining to crew wages, including repatriation costs, death or personal injury compensation claims emerging directly from the exploitation of the ship;
- those arising out of salvage rewards; and
- those arising out of port and navigation channel rights.

5.3 Liability in Personam for Owners or Demise Charterers

As per Article 37 of Decision 487, the logic of the instrument is to allow the “arrest” of a vessel whenever there is a maritime credit of the kinds described in Article 1. Moreover, Article 41 of Decision 487 essentially mirrors what is contemplated in Article 3.1 of the International Convention on Arrest of Ships, 1999, regarding requirements for the arrest to be permissible.

5.4 Unpaid Bunkers

As per Article 1 of Decision 487 of 2000, a “maritime credit” (ie, a claim that could be used to “arrest” a vessel) would be a credit/claim that would have as its cause (No 12) bunkers supplied to the ship for the exploitation, management, conservation or maintenance of the vessel. Thus, it seems at least theoretically possible to arrest a vessel in Colombia as a con-

sequence of such an event. However, the provision does not clarify who is to be the owner of the bunkers and/or the party that provided/ordered that service.

5.5 Arresting a Vessel

The specific documents that should be presented are to be determined on a case-by-case basis. However, the likelihood is that a power of attorney and a certificate of incorporation (or similar), duly apostilled, will be required if the documents are coming from abroad. Other documents that could be provided to evidence the maritime claim/credit that is being alleged to promote the “arrest” should also be handed over to the court, so that the court can assess the claim properly.

Before the COVID-19 pandemic, any such supporting documents were likely to have been presented in their original form. However, due to the enactment of Decree 806/20 as part of the measures adopted by the government to deal with the pandemic in domestic courts (now converted as permanent legislation under Law 2213 of 2022), any such documents should now be provided in copy and/or sent by email to the respective court.

It is important to know that, for the “arrest” order to be granted by the domestic court, security should be provided by the arresting party, following the parameters contained in the General Procedural Code.

5.6 Arresting Bunkers and Freight

Decision 487 refers to the “arrest” of the vessel only, and not to the arrest of bunkers and/or freight. However, it is theoretically possible to request a measure of this nature at some point, not under Decision 487 of 2000 (which only refers to the arrest of a “vessel”) but under Colombian general procedural law if certain requirements are met.

In fact, Article 590 lit c of the Colombian General Procedural Code opens up the possibility of obtaining “any other measure” that the court could find it reasonable to provide in order to protect the right being litigated and to avoid its infraction, or to ensure that the effectiveness of the claimant’s petition is secured.

5.7 Sister-Ship Arrest

Decision 487 of 2000 expressly provides that sister-ship arrest is possible. For that purpose, Article 42 of this international regulation mirrors what is provided in Article 3.2 of the International Convention on Arrest of Ships, 1999.

5.8 Other Ways of Obtaining Attachment Orders

Article 72 of Decree 2324 establishes that any vessels involved in maritime accidents that are to be investigated by the DIMAR would need to provide security for any damages, fines and costs of the procedure before they are authorised to set sail by the respective harbour master. In practice, this is a different path that could be used to obtain security for maritime claims.

5.9 Releasing an Arrested Vessel

As per Article 44 of Decision 487 of 2000, any vessel that has been “arrested” (by a proper judge/court) could be freed whenever security has been provided in a satisfactory manner. Letters of undertaking (LOUs) could be accepted in arrest procedures whenever there is agreement by the parties for that purpose. If not, a bank guarantee or an insurance policy would usually be required.

5.10 Procedure for the Judicial Sale of Arrested Ships

There is no local legislation that deals specifically with the judicial sale of ships in Colombia; Decision 487 of 2000 merely provides some provisions on the subject. Article 29 of Decision 487 is more important, as it provides for a notification of the judicial sale to be effected to certain specific persons, at least 30 days in advance. However, Article 1454 of the Colombian Commercial Code points out only that the judicial sale of a ship will follow the parameters set out in the General Procedural Code, and that the sale will be announced with notices located in visible parts of the ship and in the respective harbour master’s office.

5.11 Insolvency Laws Applied by Maritime Courts

Colombia has a regulation that is analogous to Chapter 11 of the United States Bankruptcy Code, contained in Law 116 of 2006. From the perspective of this regulation, the debtor that is carrying out an insol-

veny procedure would not be able to provide warranties outside the insolvency procedure. Moreover, a court other than the one carrying out the insolvency procedure would not be in a position to order the judicial sale of the vessel.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

There are no clear cases that address this issue. However, at least theoretically, compensation could be ordered under specific circumstances, since Article 51 of Decision 487 provides that the courts of the country in which the “arrest” has been effected would be competent to decide on the liability of the creditor regarding damages caused as a consequence – in particular, but not exclusively, for the arrest being held to be illicit or unjustified, or for requesting excessive security (thereby mirroring what is provided in Article 6.2 of the International Convention on Arrest of Ships, 1999).

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Colombia has not ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and/or its protocol. Only certain specific provisions in the Colombian Commercial Code deal with the subject, in a very general way. Articles 1585–1596 provide some rules for dealing with the liability of the carrier in cases of the cancellation of the trip, or its delay or interruption due to force majeure causes.

For instance, Article 1592 establishes that, in the event of the cancellation of the trip, a claim for compensation would proceed unless the carrier is able to prove the “extraneous cause” (ie, an institution similar to force majeure), in which case the carrier would only need to give back the amount received as the price paid by the passenger. Moreover, the provision goes on to state that, if there is a justified motive for cancelling the trip, the carrier’s compensation would not be in an amount in excess of double the price paid by the passenger.

Article 1596 also provides some guidance regarding the liability of the carrier regarding loss and/or damage of luggage, thereby providing that the carrier's liability would be up to the declared value of the luggage; if there is no such declaration, it would be up to 10 grams of pure gold per kilo, unless force majeure is actually proven. However, it clarifies that the carrier would not be responsible for looting if the luggage had not been properly secured/closed.

The time bar for the submission of any action against the carrier was not provided in this set of rules but, due to a remission contained in the Code, a provision from the general contract of carriage would be applicable. Thus, as per Article 993 of the Colombian Commercial Code, the time bar will be two years from the moment the trip concludes or should have ended.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The position of the local courts regarding the recognition and enforcement of law and jurisdiction clauses in bills of lading has been somewhat ambiguous, and there is room for academic debate on the subject.

From a general perspective, it could be said that jurisdiction clauses have not usually been recognised by local courts, for local procedural law reasons. Regarding choice-of-law clauses, arguably the trend is for Colombian courts to apply local law parameters (ie, those of the Colombian Commercial Code) as opposed to parameters contained in the terms of the bill of lading.

However, as previously stated, the situation is currently evolving. Some recent case law/local doctrine suggests that, depending on the specific clauses used and/or the specific context of the claim, there could be room for recognising that such clauses should be given full validity and force under Colombian law.

The situation is somewhat different if the matter is to be taken to arbitration, since Colombian law on the subject (Law 1563 of 2012) addresses it in that spe-

cific context and expressly recognises the validity of this type of clause.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

There is no sufficiently developed case law on this specific issue that can provide full guidance for future cases. However, the courts usually give effect to the situation in which the contract incorporates – at least in part – the content of a contract by using a remission to another contract/document. In any case, the points raised in 7.1 **Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading** should be taken into account.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Colombia has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, which has full effect in Colombia. Some additional provisions on the subject are provided in Law 1563 of 2012, specifically regarding the domestic procedure for the recognition and execution of foreign arbitral awards.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Article 38 of Decision 487 basically mirrors what is contained in Article 2.3 of the International Convention on Arrest of Ships, 1999. In that regard, it is clear that a vessel could be arrested in Colombia, despite the fact that, by virtue of a jurisdiction and/or arbitration clause contained in a different contract, the maritime credit/claim should be adjudicated and/or established by a different jurisdiction, even if in the application of a different law and/or by an arbitral tribunal.

7.5 Domestic Arbitration Institutes

There is currently no domestic arbitration institute. However, some recognisable names in the field of maritime law are currently members of the different arbitration centres established by chambers of commerce across the country.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Such remedies should be assessed on a case-by-case basis. However, a lack of jurisdiction of the Colombian courts could eventually be alleged, as well as the existence of an arbitration clause, if any. In that regard, it should be noted that such situations are to be considered as “preliminary exceptions” within the Colombian traditional civil procedure. Given their nature, those exceptions are given priority by the judge in respect of the decision to be provided on the merits of the claim.

8. Ship-Owners’ Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners’ Companies

To date, Colombian tax regulations provide no general exemptions or specific tax reliefs on the income of ship-owners’ companies. Case-by-case consultation is advisable. See 9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Force majeure is a concept that is usually recognised by the courts, following the approach that civil law countries usually take regarding that legal institution. Thus, local courts usually recognise that an event must consist of at least two conditions in order to constitute a force majeure: it must be unforeseeable, and it must be unavoidable.

It is doubtful whether the COVID-19 pandemic itself could still be considered an event of “force majeure” at this point, since in most cases the situation would no longer be seen as unforeseeable.

As Colombia is a civil law country, the legal concept of “frustration” is not a familiar one. However, Colombian law has an institution that could be deemed to

share some similarities or points in common with that category of law, known as *imprevisión*. That legal remedy is contemplated in Article 868 of the Colombian Commercial Code, which establishes that one of the parties could request the revision of the contract whenever unforeseen and extraordinary circumstances occurring after the conclusion of a contract (a contract of which the execution is to be projected in time) have altered its obligations, rendering them “excessively onerous”.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

MARPOL Annex VI is not yet applicable in Colombia.

In cases where the fuel concerned is diesel, the applicable domestic regulation establishes the quality parameters for diesel fuel and its blends, including a maximum sulphur content of 10 mg/kg (ppm), mandatory as of 1 January 2025.

Accordingly, the 10 ppm sulphur limit constitutes a binding requirement under Colombian law for diesel. Non-compliance may trigger administrative enforcement measures under the applicable fuel quality control regime.

9.3 Trade Sanctions

Colombia has not yet specifically incorporated any of the international trade sanctions into domestic law nor recognised them at a domestic level, but it has co-operated with several governments (specifically the US government) regarding information exchange. Local companies and individuals have been included in certain restrictive lists whenever links are found between the company (and/or its partners, directives, board members, etc) and illegal activities (particularly money laundering).

9.4 International Conflict

There are no specific domestic provisions dealing with this situation.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

It is important to note that Colombian law on maritime subjects has usually been diffuse, and that it is very old-fashioned in various respects. In light of this, the national maritime authority, the DIMAR, has been working on preparing a Draft Maritime Code in recent years, which is now in its sixth version.

Some key features of the Draft Maritime Code in its current version are as follows:

- the Draft purports to unite the majority of regulations applicable to “maritime activities” into just one body of law;
- key “maritime law principles” are expressly contained therein;
- some provisions of the international conventions are replicated/incorporated into the text of the Draft;
- offshore activities are regulated to a certain extent, including the liability of the operator of the platform;
- limitation of liability of the ship-owner follows the parameters of the 1976 LLMC Convention (adopting the 1996 Protocol’s increased limits);
- the Draft adopts the fundamental logic of the Hague-Visby regime regarding the liability of the maritime carrier of goods; and
- basic regulations applicable to procedures in cases of maritime accidents are clarified.

Contributed by:

Kyriacos Scordis and Sofi Mylona
SCORDIS PAPAPETROU & Co LLC



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SCORDIS PAPAPETROU & Co LLC is a leading, dynamic Cyprus law firm whose roots date back to 1922. The firm and its associated entities comprise more than 30 qualified lawyers and 60 other professionals of various disciplines, working out of offices in Nicosia, Limassol, Athens and Ras Al Khaimah (UAE). In addition to handling other traditional matters, and together with its affiliates and subsidiaries, the firm offers a wide range of services, such as in-

ternational litigation, shipping, arbitration and dispute resolution, corporate and commercial, M&A, estate and tax planning, trusts, company/fund formation and administration, fiduciary and trustee services, accounting and tax advisory, and financial services. To date, the firm and its affiliated entities have acted in and advised on a multitude of multimillion-dollar corporate, shipping and commercial matters, as well as in major landmark court and arbitration cases.

Authors



Kyriacos Scordis is the managing partner of SCORDIS PAPAPETROU & Co LLC. He qualified as a barrister with Lincoln's Inn in 1994 and as an advocate in Cyprus in 1995. Kyriacos has extensive experience and

expertise in international litigation and arbitration, corporate and commercial matters (including tax). His practice includes handling claims and appearing before arbitral tribunals or courts in Cyprus and abroad, including in multibillion-dollar cases such as Racketeer Influenced and Corrupt Organizations (RICO) claims, shareholder disputes and corporate/commercial claims. He also advises on a variety of corporate matters, including cross-border sales and acquisitions of Cyprus and non-Cyprus assets, shareholder agreements, structuring of international acquisitions, trusts, escrow arrangements and tax advisory.



Sofi Mylona is the shipping partner at SCORDIS PAPAPETROU & Co LLC. She qualified as a barrister with Lincoln's Inn in 1996 and as an advocate in Cyprus in 1997. Since qualification, she has practised and

gained considerable knowledge and experience in company, shipping, corporate, commercial, international trade and banking law. She focuses her practice on advising major local and international banks, other financial institutions, ship-owners and operators in shipping finance transactions, on assisting in restructuring and work-out situations, and on handling intercreditor and subordination arrangements. Sofi also advises clients on buying or selling vessels, flagging issues, negotiating ship-building contracts and refund guarantees, charters, joint ventures and shareholders' agreements, and debt and equity arrangements.

SCORDIS PAPAPETROU & Co LLC

3 Zenonos Sozou Street
3105 Limassol
3501
PO Box 51094
Cyprus

Tel: +357 2581 8444
Fax: +357 2537 2282
Email: limassol@scordispapapetrou.com
Web: www.scordispapapetrou.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

In May 2022, the Cyprus Parliament enacted the Establishment and Operation of a Commercial Court and Admiralty Court Law of 2022 (69 (I)/2022), establishing a Commercial Court and an Admiralty Court in Cyprus (see **10.1 Other Jurisdiction-Specific Shipping and Maritime Issues**). The provisions of the law in relation to the new Admiralty Court shall enter into force on the date of publication of a notice by the Supreme Court in the Official Gazette of the Republic of Cyprus on the constitution of the Admiralty Court and its readiness to operate.

Since 1 September 2023, the new Cyprus Civil Procedure Rules of 2023 (the “New Civil Procedure Rules”) have been in effect, outlining specific rules to which the new Admiralty Court and legal professionals must adhere. However, Part 43 of the New Civil Procedure Rules, which refers exclusively to admiralty cases, shall enter into force immediately after the commencement of the new Admiralty Court pursuant to the Establishment and Operation of a Commercial Court and Admiralty Court Law of 2022 (69 (I)/2022).

Until then, the Supreme Court of Cyprus maintains jurisdiction to act as an Admiralty Court sitting as a court of first instance (original jurisdiction) and as a court of appeal (appellant jurisdiction). At first instance, the case is heard by a single judge; on appeal, the case is heard by the full bench.

By virtue of Sections 19 (a) and 29 (2)(a) of the Courts of Justice Law of 1960 (Law No 14/1960), the Admiralty Court has the same powers and jurisdiction as those of the High Court of Justice in England in its admiralty jurisdiction (as they existed immediately before the independence of Cyprus in 1960). Consequently, the English Administration of Justice Act of 1956 defines the admiralty jurisdiction of the Admiralty Court, and the Cyprus Admiralty Jurisdiction Order 1893 regulates the procedure before the Court.

The District Courts also have limited jurisdiction on maritime claims, but only on referral by the Supreme Court under certain circumstances. Judgments issued by District Courts can be appealed to the Supreme Court.

Pursuant to Section 1 (1) of the English Administration of Justice Act 1956, the Supreme Court has jurisdiction to hear and determine any claim:

- relating to the possession or ownership of a ship or to the ownership of any share therein;
- arising between the co-owners of a ship as to the possession, employment or earnings of that ship;
- in respect of a mortgage of or charge on a ship or any share therein;
- for damage done by a ship;
- for damage received by a ship;
- 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 the owners, charterers or persons 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 or in the embarkation, carriage or disembarkation of persons on, in or from the ship);
- for loss of or damage to goods carried in a ship;
- arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- in the nature of salvage;
- in the nature of towage in respect of a ship;
- in the nature of pilotage in respect of a ship;
- in respect of goods or materials supplied to a ship for her operation or maintenance;
- in respect of the construction, repair or equipment of a ship, or of dock charges or dues;
- by a Master or member of the crew of a ship for wages;
- by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship;

- arising out of an act that is or is claimed to be a general average act;
- arising out of bottomry; and
- for the forfeiture or condemnation of a ship or goods that are being or have been carried or that have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure or for droits of Admiralty.

The jurisdiction may be invoked by the following.

- An action in rem against the vessel or property in question, if it is lying within the territorial jurisdiction of the court. This territorial jurisdiction extends to the territorial waters, but in practice the arrest of a vessel or the service upon her of a writ in rem is not possible unless the vessel calls at a Cyprus port.
- An action in personam, if:
 - (a) the defendant has their residence or a place of business within Cyprus;
 - (b) the cause of action arose in Cyprus; or
 - (c) an action arising out of the same incident or series of incidents is pending or has been determined in the court.

1.2 Port State Control

In Cyprus, the system and powers of port state control are regulated by:

- the Merchant Shipping (Port State Control) Law of 2011 to 2020 (Law 95 (I)/2011) as amended for the purpose of harmonising the Law with EU Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port state control, as amended;
- the Merchant Shipping (Port State Control) Notification 2015;
- the Merchant Shipping (Port State Control-Duration of Night) Order of 2011;
- the Merchant Shipping (Port State Control-Geographical Areas of Ports and Anchorages) Order of 2017;
- the Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Law of 2004 (Law No 131 (I)/2004) as amended; and
- the Relevant Circulars of the Shipping Deputy Ministry of Cyprus, issued from time to time.

Cyprus is also a signatory to the Paris Memorandum of Understanding on Port State Control 1982 and the Mediterranean Memorandum of Understanding on Port State Control 1997.

The Shipping Deputy Ministry to the President of Cyprus (SDM) is the competent port state control authority in Cyprus. It conducts all inspections of foreign ships in Cyprus ports, verifying that crew, ship and any equipment comply with the requirements of international conventions on:

- safety;
- pollution prevention;
- operation;
- management and security;
- qualifications;
- living conditions; and
- terms of employment.

Port state control officers and officials have the authority to:

- board vessels and inspect them if necessary;
- investigate and copy materials; and
- interject and/or detain ships found to have insufficiencies following inspection or found to have any hazardous materials that may create safety, health or environmental issues.

Moreover, authorities in certain cases may not allow ships entry into Cyprus ports if the ship Masters and operators do not abide by the law and do not provide information as requested by the competent authorities; they may also impose administrative fines.

The Marine Accidents Investigation Committee (MAIC) and the SDM are the authorities responsible for the investigation of marine accidents (casualties and incidents) in the Republic of Cyprus.

In the event of an accident involving a ship flying the Cyprus flag worldwide or a ship flying a foreign flag within Cyprus territorial and internal waters, the Master, owner, manager or agent of such ship must notify the MAIC, by virtue of the Marine Accidents and Incidents Investigation Law of 2012 (Law No 94 (I)/2012, which transposed EU Directive 2009/18/EC

into Cyprus's legislation). This notification addressed to the MAIC should include details about the ship's condition, crew status and any injuries, deaths or casualties.

The Marine Accidents and Incidents Investigation Law of 2012 gives the MAIC extensive powers, including access to any relevant area or casualty site and to any evidence or witnesses. However, according to SDM Circular 17/2014, the SDM will continue to be responsible for investigating marine accidents for the following types of ships:

- ships not propelled by mechanical means, wooden ships of primitive build and pleasure yachts/crafts not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes; and
- fishing vessels with a length of less than 15 metres.

1.3 Domestic Legislation Applicable to Ship Registration

All matters relating to the registration of ships and related transactions in the Register of Cyprus Ships or in the Special Book of Parallel Registration are governed by the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law of 1963, as amended, and by the provisions of the Government Policy on the Registration of Ships under the Cyprus flag.

Applications for the registration of ships and for related transactions in the Register of Cyprus Ships or in the Special Book of Parallel Registration must be submitted to the Registrar of Cyprus Ships (the "Registrar"). The provisional registration of ships and other transactions (other than permanent and bareboat-charter registration) may also be effected abroad by a consular officer of the Republic of Cyprus upon instructions issued by the Registrar. In such cases, the transactions are recorded by the Registrar in the Register as from the date and time they were effected by the consular officer.

1.4 Requirements for Ownership of Vessels

A ship may be registered under the Cyprus flag if:

- more than 50% of the shares of the ship are owned by Cypriot citizens or by citizens of other member

states of the European Union (EU) or the European Economic Area (EEA) (who, in the instance of not being permanent residents of the Republic of Cyprus, will have to appoint an authorised representative in the Republic of Cyprus); or

- 100% of the shares of the ship are owned by one or more corporations established and operating in accordance with the laws of the Republic of Cyprus or any other EU or EEA member state that has its registered office, central administration or principal place of business within the EEA, or by corporations registered outside the EU or the EEA but controlled by Cypriot citizens or citizens of a member state.

If the corporation is not incorporated and located in Cyprus, either it must appoint an authorised representative in Cyprus or the management of the ship must be entrusted in full to a Cyprus or EU ship-management company located in Cyprus.

Applications for the registration of ships must be made through a Cypriot lawyer, and the ship must be surveyed by an approved classification society at the time of registration.

The corporation is deemed to be controlled by Cypriots or citizens of any other member states when more than 50% of its shares are owned by Cypriots or citizens of any other member states, or when the majority of the directors of the corporation are Cypriot citizens or citizens of any other member state.

An authorised representative may be a Cypriot citizen or a citizen of any other member state who is resident in Cyprus, or a partnership/corporation/branch that is established in accordance with the laws of Cyprus and has its place of business in Cyprus.

Vessels under construction are registrable in Cyprus.

Also, the *Government Policy on the Registration of Ships under the Cyprus flag* outlines additional requirements and conditions aimed at ensuring safe, secure and efficient shipping while protecting the interests of Cyprus ships and their owners, charterers, managers and operators. These requirements include the following.

- Non-eligibility for registration:
 - (a) ships banned by port state control authorities from entering ports in states party to any memorandum of understanding (MoU) on port state control (eg, Paris, Tokyo or Mediterranean MoUs, or the US Coast Guard);
 - (b) ships that have been detained on port state control grounds three or more times in the past two years by signatories to the Paris, Tokyo or Mediterranean MoUs, or the US Coast Guard; and
 - (c) ships built exclusively for inland navigation or intended for such use (eg, in rivers, lakes or canals).
- Age limits and registration conditions.
- Inspection requirements:
 - (a) the entry inspection and any additional inspections are conducted by surveyors of the SDM at the expense of the registered owner or bareboat charterer; and
 - (b) the entry inspection must occur within three months of provisional or parallel-in registration, or within one month of permanent registration.

1.5 Temporary Registration of Vessels

In Cyprus, the following three types of registration are allowed:

- provisional;
- permanent; and
- bareboat-charter registration (parallel).

Provisional registration of a ship may remain in force for six months. Thereafter, it may be renewed once, for a further three-month period.

Dual registration and flagging out are permissible in Cyprus. The basis of such types of registration is the bareboat-chartering of a ship by the ship-owner to the charterer on the condition that the respective laws of the underlying registry and of the bareboat registry explicitly permit dual registration and contain preventative covenants whereby matters relating to ownership and to mortgages over the ship shall be exclusively governed by the laws of the ship's underlying register. In addition, the bareboat charterer must undertake to maintain the same safety standards on the ship, even if the chosen bareboat register applies

safety standards that are lower than those applied by the ship's underlying register.

1.6 Registration of Mortgages

The Register of Mortgages is entrusted to the Registrar, and contains a description of:

- the vessel;
- the owner of the vessel;
- the particulars of the mortgages registered on the vessel; and
- the registered mortgagees.

A mortgage against a ship can be registered at any time after the completion of the vessel's registration under the Cyprus flag. Once created, a mortgage must be deposited with the Registrar or with a consular officer following instructions of the Registrar. Whether deposited with the Registrar or with a consular officer, the mortgage is recorded in the Register as from the date and time of its deposit, and remains an encumbrance on the ship until it is discharged by the mortgagees.

A Cyprus mortgage consists of a statutory mortgage and collateral deed of covenants (the "Mortgage"). The documentary requirements for the registration of a Mortgage on a Cyprus ship are:

- a written application by a local lawyer;
- resolutions of directors, on behalf of the ship-owners;
- a duly executed power of attorney, on behalf of the ship-owners and the mortgagee;
- the duly executed Mortgage; and
- a Certificate of Directors and Secretary (if the ship-owner is a Cyprus-registered company) or a duly executed Incumbency Certificate (if the ship-owner is a foreign entity).

1.7 Ship Ownership and Mortgages Registry

Depending on the SDM's policies and facilities at the relevant time, access to ship ownership and mortgage details may be available through the following.

- In-person visits: individuals may be able to visit the SDM in person for inspection. However, while own-

ership and mortgage information are public, certain details may be protected under privacy laws.

- Ordering a transcript of the registration of a registered vessel: a transcript of the registration of a registered vessel can be ordered by the public (upon payment of the prescribed fee) evidencing:
 - (a) the particulars of the vessel;
 - (b) the name and address of the legal owner of the vessel; and
 - (c) the details of any registered mortgage (ie, the date and time of its registration and the details of the mortgagee).

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Debt financing remains the predominant form of ship finance in Cyprus. Typical loan documentation includes core commercial and operative provisions such as:

- principal amount and interest;
- repayment and amortisation schedule;
- interest margins (for example, SOFR plus an agreed margin);
- financial covenants, including minimum value clauses (loan-to-value maintenance) and minimum liquidity requirements;
- security over the vessel, primarily in the form of a ship mortgage, together with assignments of earnings and insurances;
- insurance requirements;
- restrictions on sale, transfer or charter of the vessel;
- events of default, including non-payment, breach of covenants, cross-default and arrest of the vessel; and
- mandatory pre-payment upon sale of the vessel or total loss.

Equity financing is less frequently used and is generally seen in joint ventures, private equity investments and subordinated shareholder loans.

Equity arrangements are typically governed by shareholders' or joint venture agreements and include pro-

visions on capital commitments, governance and voting rights, exit mechanisms and profit distribution.

A Cyprus ship mortgage consists of a statutory mortgage and collateral deed of covenants. Pursuant to the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law of 1963, as amended, there are two types of statutory ship mortgages, namely:

- a mortgage to secure principal and interest, securing a fixed principal amount together with interest; and
- a mortgage to secure an account current, securing fluctuating or contingent obligations.

The collateral deed of covenants typically regulates, among other matters:

- the payment of interest and repayment of principal;
- insurance arrangements, renewals and application of insurance proceeds;
- limitations on the employment of the vessel;
- events of default triggering statutory or contractual enforcement rights; and
- powers exercisable by the mortgagee, including the power to take possession of the vessel, assume her management and sell the vessel by private sale.

The most common ship financing transactions include traditional secured ship loans, refinancing, fleet facilities and sale-and-leaseback structures.

While the ship mortgage is the core security, lenders typically require additional security, such as:

- assignment of earnings;
- assignment of insurances (including H&M, P&I and war risks);
- pledge of shares in the ship-owning special purpose vehicle;
- guarantees from parent or affiliated companies;
- pledges over bank accounts (including earnings and retention accounts); and
- general assignment agreements covering all ship-related rights.

Such security packages are standard in international ship finance and are widely utilised in transactions connected with Cyprus.

2.2 Ship Leasing

Ship leasing transactions have increased in Cyprus-related shipping structures in recent years, largely reflecting broader global ship finance trends rather than developments specific to Cyprus. Leasing and sale-and-leaseback transactions are typically undertaken with foreign lessors in conjunction with Cyprus ship-owning or management entities. Traditional bank lending remains significant, and there has not been a complete shift away from bank finance.

The increased use of leasing structures is largely attributable to changes in the global ship finance landscape. Regulatory capital requirements and internal risk constraints have led many banks to reduce direct exposure to shipping, resulting in greater reliance on alternative financing sources. Sale-and-leaseback arrangements are often used by ship-owners as a liquidity management tool, allowing capital to be released from existing assets while maintaining operational control, rather than as a replacement for all forms of bank debt. Asian leasing houses, including Chinese and Japanese lessors, have become more active participants in this market, offering financing structures that differ from traditional loan products.

The principal differences between a lessor/lessee relationship and a lender/borrower relationship relate to ownership, payment obligations and enforcement mechanisms. In a leasing structure, legal title to the vessel remains with the lessor, whereas under a loan structure the borrower retains ownership and the lender relies on security interests. Lease hire is a contractual payment obligation distinct from loan principal and interest, and enforcement is based primarily on contractual rights and ownership rather than on the enforcement of security.

In the case of a Cyprus ship mortgage over a Cyprus-flagged vessel, the mortgage is governed by Cyprus law and registered with the Registrar of Cyprus Ships under the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law. Upon default, the mortgagee may exercise its statutory power of sale or seek

a judicial sale through the courts. Judicial scrutiny typically focuses on the priority of registered mortgages, compliance with procedural requirements and the equitable treatment of competing creditors. While disputes under loan documentation may be resolved by arbitration, enforcement against the vessel itself is governed by mortgage and flag-state law.

Under a finance lease or sale-and-leaseback structure, the lessor is usually the legal owner of the vessel. Upon a lessee default, remedies commonly include termination of the lease, repossession of the vessel – often more expeditious than mortgage enforcement, depending on the jurisdiction – and claims for unpaid hire and, in some cases, early termination or loss-of-bargain damages.

Accordingly, courts do not treat lease defaults more favourably or more strictly than mortgage defaults as a matter of principle; the difference lies in the legal nature of the rights being enforced – security rights under a mortgage as opposed to ownership and contractual rights under a lease.

Sale-and-leaseback transactions are now a well-established feature of international ship finance and are used in Cyprus-related structures where commercially appropriate, particularly as part of broader asset-management or refinancing strategies.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

In the event of pollution, the Republic of Cyprus will apply international conventions, EU law and national law, including the following.

- International conventions:
 - (a) the Merchant Shipping (Ship Source Pollution) Law of 2008 (Law 45 (I)/2008), as amended;
 - (b) the International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC), and its Protocols of 1976 and 1992 and Amendments of 2000;
 - (c) the International Convention for the Protection

of the Marine Environment and the Coastal Region of the Mediterranean 1975 (the “Barcelona Convention”) and its amendments;

- (d) the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, and its Protocols of 1976 and 1992 and subsequent amendments;
 - (e) the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972 (the “London Convention”), as amended (Law No 203/1988);
 - (f) the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL), as amended by Protocol 1978 and its Amendments;
 - (g) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989 (the “Basel Convention”);
 - (h) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (BUNKER); and
 - (i) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea 1996 (HNS) (Law No 21 (III)/2004).
- EU law:
 - (a) the Waste Directive 1975/442/EEC;
 - (b) Directive 2004/35/CE on environmental liability regarding the prevention and remedying of environmental damage;
 - (c) Regulation (EU) No 1257/2013 on ship recycling; and
 - (d) Directive (EU) 2016/802, relating to a reduction in the sulphur content of certain liquid fuels.

Regarding wreck removal, the Nairobi International Convention on the Removal of Wrecks 2007 (Law No 12 (III)/2015) entered into force in Cyprus on 22 October 2015 and requires ships – both Cyprus-flagged and those calling at Cyprus ports – to attest that their insurance will cover any expenses incurred in the removal of a ship that becomes a wreck, or in the removal of a ship that poses a threat to the environment. The Wrecks Law Cap 298 regulates wrecks in Cyprus.

Regarding both wreck removal and pollution, Cyprus is a signatory and a state party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS).

3.2 International Conventions: Collision and Salvage

For collision cases, the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels and Protocol of Signature (Brussels, 23 September 1910) was extended to Cyprus on 1 February 1913 when it was still a British colony, and still remains in force today. Also, the Maritime Convention Act of 1911, derived from UK law, applies to Cyprus by virtue of Articles 19 (a) and 29 (2)(a) of the Cyprus Courts of Justice Law of 1960, as amended.

The following have also been ratified by Cyprus:

- the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision of 1952 (Law No 31 (III)/1993);
- the International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation 1952 (Law No 32 (III)/1993); and
- the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) (Law No 18/1980), as amended.

The legislation in relation to salvage is:

- the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea and Protocol of Signature (Brussels, 23 September 1910) (extended to Cyprus on 1 February 1913); and
- Part III of the Wrecks Law, Chapter 298.

3.3 Convention on Limitation of Liability for Maritime Claims

The Convention on Limitation of Liability for Maritime Claims of 1976 (the “LLMC Convention”) and its Protocol of 1996 was ratified by Cyprus, by virtue of Law 20 (III)/2005.

Furthermore, the Merchant Shipping (Ship-Owners’ Insurance for Maritime Claims) Law of 2012 (Law

No 14 (I)/2012) transposed Directive 2009/20/EC on insurance against maritime claims subject to the limitations of the LLMC Convention.

3.4 Vienna Convention on the Law of Treaties

Cyprus has ratified the Vienna Convention on the Law of Treaties, and its provisions are recognised in domestic law. Consequently, Cypriot courts and tribunals can apply the Convention's rules when interpreting treaties to which Cyprus is a party.

In practice, this means that, similar to the approach taken by the UK Supreme Court in the *MSC Flaminia* case, Cypriot authorities can rely on the Vienna Convention's interpretative framework when construing maritime treaties – or any other treaties – relevant to Cyprus.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Pursuant to Article 11 of the LLMC Convention, any person alleged to be liable may constitute a fund with the court or other competent authority in any state party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such amounts set out in Articles 6 and 7 (which set the general limits and the limit for passenger claims, respectively) as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

The ratified Law 20 (III)/2005 (see 3.3 **Convention on Limitation of Liability for Maritime Claims**) provides that a person wishing to set up a limitation fund, as provided for in Article 11 of the LLMC Convention, may set up such a fund in the Supreme Court of Cyprus, upon making an application to the Supreme Court. In the case of a person wishing to set up a limitation fund by lodging a bank guarantee with the Supreme Court of Cyprus, the Supreme Court shall decide on the characteristics and conditions that must be met by such a guarantee.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention of 2006 applies to Cyprus by virtue of the Maritime Labour Convention, 2006 (Ratification) and for Matters Connected Therewith Law 6 (III)/2012, which transposes the Convention into domestic law.

Additional domestic laws regarding seafarers' rights and safety are:

- the Merchant Shipping (Issue and Recognition of Certificates and Marine Training) Laws of 2008 to 2017 (Law 27 (I)/2008 as amended);
- the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Laws of 2000 to 2005 (Law 105 (I)/2000 as amended);
- the Merchant Shipping (Criminal and Disciplinary Liability of Seafarers, Suspension or Cancellation of Certificates) Laws of 2000 to 2004 (Law 106 (I)/2000 as amended);
- the Merchant Shipping (Medical Examination of Seafarers and Issue of Certificates) Laws of 2000 to 2014 (Law 107 (I)/2000 as amended);
- the Merchant Shipping (Registration of Seafarers and the Seafarers' Register) Laws of 2000 to 2012 (Law 108 (I)/2000 as amended);
- the Merchant Shipping (Official Logbooks, Ship's Articles and Six-Month Lists) Regulations of 2001 (PI 297/2011 as amended); and
- the Merchant Shipping (Masters and Seamen) Laws of 1963 to 2002 (Law 46/1963 as amended).

4. Cargo Claims

4.1 Bills of Lading

Cyprus has adopted the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (extended to Cyprus on 2 June 1931), by way of succession.

The UK Bills of Lading Act of 1855 also applies in Cyprus by means of Articles 19 and 29 of the Courts of Justice Law of 1960 (Law No 14/1960), and the Hague Rules are applicable in Cyprus through the Carriage of Goods by Sea Law, Chapter 263.

However, the Hamburg Rules and the Rotterdam Rules have not yet been ratified in Cyprus.

4.2 Title to Sue on a Bill of Lading

In Cyprus, the title to sue on a bill of lading typically resides with the holder of the bill itself. The holder is the party in possession of the bill of lading, which serves as evidence of the contract of carriage and ownership of the goods described in the bill. In many cases, the bill of lading may be negotiable, meaning that it can be transferred to another party, thus granting that party the right to sue.

In other words, Cyprus law recognises that where a bill of lading allows the assignment (transfer) of the underlying rights (ie, negotiable) an assignment of title gives the recipient the right to sue on a bill of lading.

It is important to note that legal principles regarding bills of lading and the assignment of rights may vary based on specific terms within the document and the context of the transaction.

Thus, where there is a right to assign, and upon assignment of all relevant rights, the holder transfers their rights under the bill to another party including the right to sue. Such an assignment should be documented by, for example, an endorsement on the bill of lading itself.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Pursuant to the LLMC Convention, a ship-owner (defined in the LLMC as the owner, charterer, manager and operator of a seagoing vessel) may limit their liability for the claims set out in Article 2 of the LLMC Convention, which includes claims for loss or damage to property.

The limitation amounts of each incidence are stated in Articles 6 and 7 of the LLMC Convention. However, a person shall not be entitled to limit their liability if it is proved that the loss resulted from their personal act or omission committed with the intent to cause such loss or committed recklessly and with the intent that such loss would probably result.

The Merchant Shipping (Ship-Owners' Insurance for Maritime Claims) Law of 2012, which transposed Directive 2009/20/EC on insurance against maritime claims, provides that an operator of a vessel (being the owner of a seagoing ship or any other person, such as the manager or the bareboat charterer, who has assumed responsibility for operating the ship from the ship-owner and who, on assuming that responsibility, has agreed to undertake all the duties, responsibilities and commitments that are imposed by that Law) shall be required to have insurance covering that ship for maritime claims subject to limitation under the LLMC Convention for an amount, for each incident, equal to the relevant maximum amount for the limitation of liability as laid down in the LLMC Convention, the existence of which is to be proved by a valid certificate carried on board the ship issued by the relevant insurance provider.

Furthermore, Section 502 of the UK Merchant Shipping Act 1894, which applies in the legal system of Cyprus pursuant to the Courts of Justice Law of 1960, provides that a ship-owner of a seagoing vessel shall not be liable to make good (to any extent whatsoever) any loss or damage occurring without their actual fault or privity where any goods, merchandise or other things whatsoever taken in or put on board their ship are lost or damaged by reason of fire on board the ship. Also, Section 503 of the Act provides that the liability of the owner of any ship for (inter alia) damage to any goods caused without actual fault or privity is limited to certain extents.

4.4 Misdeclaration of Cargo

Pursuant to the Carriage of Goods by Sea Law, Cap 263, and provided the contract of carriage is governed by the Hague Rules, the shipper shall be deemed to have guaranteed to the carrier the accuracy of the marks, number, quantity and weight, as furnished by them at the time of shipment. The shipper shall indemnify the carrier against all losses, damages and expenses arising or resulting from any inaccuracies in such particulars.

The shipper also has a common law duty to notify the carrier of any dangerous cargo. If the shipper fails to declare dangerous cargo, the carrier may also have a claim against the shipper for losses incurred as a

direct consequent of the misdeclaration – eg, for damage to the vessel.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

When the contract of carriage is governed by the Hague Rules, either by statute or by an agreement, the time limit for commencing proceedings is one year from the date of delivery of the goods or the date when the goods should have been delivered. Otherwise, the Limitation of Actionable Rights Law No 66 (I)/2012 (the “Limitation Law”) shall be followed, which is the general law prescribing time bars for all legal actions to be instigated in the Cyprus courts, including admiralty actions. Pursuant to the Limitation Law, the time bar period depends on the nature of the claim, as follows:

- in a claim of breach of contract – six years from the date on which the cause of action accrued;
- for civil wrongs (with certain exceptions including negligence and breach of statutory duty) – six years from the day of completion of the basis of the claim; and
- in a claim in negligence – three years from the time the plaintiff sustained damage or where the negligence caused fresh damage continuing from day to day, from the time the damages ceased to occur.

The period of limitation can be suspended in the following circumstances:

- where the claimant was prevented from commencing proceedings due to a moratorium or force majeure in the last six months of the applicable period of limitation; and
- where the defendant or any other person for whom the defendant is responsible prevented the claimant from instigating proceedings in the last six months of the applicable period of limitation.

The period of limitation can be reset in the following circumstances:

- where the obligor recognises in writing a right to an action against them;

- in the event of a monetary debt, if the obligor pays at least 50% of the aggregate owed sum, including any accrued interest;
- with the commencement of arbitration proceedings; and
- where the court orders that the arbitration award be annulled or ceases to have effect.

As soon as the limitation period expires, the court no longer has jurisdiction unless a party with a legitimate interest submits an application, in which case the court may extend the prescribed limitation period for up to two years on an equitable and reasonable basis.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Cyprus is not itself a party to the International Convention Relating to the Arrest of Sea-Going Ships, 1952. However, the English Administration of Justice Act of 1956 ratifies this Convention, and applies to Cyprus by virtue of its Constitution and Articles 19 and 29 of the Courts of Justice Law of 1960 (Law No 14/60).

5.2 Maritime Liens

Cyprus law recognises the following maritime liens that give rise to an action in rem against, and a right to arrest, a vessel:

- lien for damage, which is a lien for the amount of a claim arising only in tort against a vessel as a result of her negligent navigation or operation (such as a collision);
- lien for salvage;
- bottomry;
- lien of the Master, officers and crew for wages and other emoluments; and
- reimbursement to the Master of disbursements made by said Master out of their own pocket on behalf of the owners.

The Supreme Court has jurisdiction to hear and determine all the claims of Section 1 (1) of the English Administration of Justice Act 1956, which are all described as “maritime claims” and for which arrest of a vessel can be requested (see **1.1 Domestic Laws**

Establishing the Authorities of the Maritime and Shipping Courts).

Maritime liens enjoy certain advantages over certain other permitted actions in rem of Section 1 (1) of this Act, in the time of creation of the lien, in priority and in the enforceability of the security. In general, maritime liens are not extinguished by the sale and transfer of ownership of the ship.

5.3 Liability in Personam for Owners or Demise Charterers

A vessel may be arrested at any time, regardless of who its owner is, in an action in rem in respect of a claim related to:

- her possession or ownership (Section 1 (1)(a) of the English Administration of Justice Act 1956 (the “Act”));
- a claim by a co-owner as to possession, employment or earnings of that ship (Section 1 (1)(b) of the Act);
- a claim under a registered mortgage (Section 1 (1) (c) of the Act);
- a claim for her forfeiture or condemnation (Section 1 (1)(s) of the Act); or
- a claim by a maritime lien holder or chargee of that vessel.

In all other claims of Section 1 (1) of the Act, an arrest can be made in an action in rem 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 the vessel, or was in possession or control of the vessel; and
- at the time when the action is brought, the vessel is beneficially owned with respect to all the shares therein by that person.

5.4 Unpaid Bunkers

A bunker supplier can arrest a vessel in an action in rem, provided that its claim falls within the permissible in rem action under the Administration of Justice Act 1956 (in particular, Section 1.1 (m) – “any claim in respect of goods or materials supplied to a ship for her operation or maintenance”).

Although the supply of bunkers may give rise to a maritime claim, that claim is not a claim whereby a vessel may be arrested irrespective of who its owner is (see **5.3 Liability in Personam for Owners or Demise Charterers**). Therefore, an arrest for unpaid bunkers can only be made in an action in rem 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 the vessel, or was in possession or control of the vessel; and
- at the time the action is brought, the vessel is beneficially owned with respect to all the shares therein by that person.

Thus, a bunker supplier who acts as an intermediary whereby the ship-owner/demise charterer has no contractual link and therefore no in personam liability may have no right to arrest. While some physical suppliers have argued that the contractual relationship is established by the bunker receipt, this on its own is unlikely to give rise to a contractual relationship without clear wording, a course of dealing or other evidence to establish an intended contractual relationship.

In the case of a bareboat chartered vessel, the charterer usually assumes full control and management of the ship, including the responsibility for appointing crew, maintaining the ship and covering operational expenses.

5.5 Arresting a Vessel

A warrant for the arrest of a vessel can only be applied for at the time of, or at any time after, the commencement of proceedings in rem against that vessel. Such proceedings are commenced by the issuance of a writ of summons. The name, place of residence and occupation of every claimant and defendant should be included in the structure of the writ of summons, alongside a concise statement of the claim made or the relief or remedy sought.

In order to arrest a vessel, the plaintiff must file an ex parte application, which must be supported by an affidavit. The affidavit must state the nature of the claim, and the aid of the court is required, since the claim remains unsatisfied.

It has now been established that the plaintiff is required to make full and frank disclosure of all the material facts of the case that may influence the judgment of the court.

The claimant is best advised to engage the services of and be represented by a local lawyer. A power of attorney or other form of written authority may not be required by the court or the local lawyer, in the case of a foreign litigant. A retainer in writing in the form provided by the Cyprus Civil Procedure Rules is required in the case of a local plaintiff.

The documents supporting the claim may not be notarised or apostilled. However, they must be in a language that is understood by the court; otherwise, they must be officially translated into Greek. Where possible, original documentation should be provided, although the court may order an arrest even if some original documentation is not available.

The court follows the practice of requiring the arresting party to put up security for the issuance of a warrant of arrest. The amount of security ordered varies, and usually depends on the particular judge dealing with the case, the nature of the claim made in the action in which the arrest is ordered, and the extent of that claim.

5.6 Arresting Bunkers and Freight

It is not possible to arrest bunkers themselves in Cyprus. Where the bunker supplier asserts its claim on the basis of a retention of title, this does not give rise to arrest as it is not a maritime claim under Section 1 (1) of the English Administration of Justice Act 1956. However, retention of title clauses in contracts may be difficult to enforce and are unlikely to be enforced where the bunkers have already been used or have been mixed with others. Even if such a claim could be effective, it would require an injunction to detain the vessel until the bunkers were returned.

Also, it is not possible to arrest freight itself, except perhaps in the case of freight at risk, by arresting the cargo in respect of which the freight is due.

5.7 Sister-Ship Arrest

Cyprus law permits the arrest of a ship other than one in respect of which the claim arose in certain circumstances.

Specifically, Section 3 (4) of the English Administration of Justice Act 1956 allows a claimant to invoke the admiralty jurisdiction of the Supreme Court by an action in rem and to obtain a warrant of arrest in respect of certain claims, either:

- against the vessel in connection with which the claim arose, provided that the beneficial owner of that vessel at the time the action is brought is the person who is personally liable to the claimant in respect of the claim, as owner or charterer of the vessel; or
- against any other ship that is beneficially owned by that owner or charterer.

5.8 Other Ways of Obtaining Attachment Orders

Apart from a formal arrest, when it is not possible to file an admiralty action in rem against a vessel, Article 32 of the Courts of Justice Law, Law 14 of 1960, empowers the courts to make interim orders to protect assets that may be at risk of alienation or in order to preserve a particular status quo pending the final determination of an action, provided that the following conditions are all satisfied:

- a serious question arises to be tried at the hearing;
- there appears to be a “probability” that the plaintiff is entitled to relief; and
- it would be difficult or impossible to carry out complete justice at a later stage unless an order is made.

Interim measures include freezing orders with domestic or worldwide effect and “Chabra” type orders. Thus, a vessel may be effectually detained by the issuance of a freezing order in the context of the main action in the civil courts instituted against the owner.

Furthermore, Section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law (Law 45/63) provides that the Supreme Court may, on the application of any interested person and if the

Court thinks fit, make an order prohibiting any dealing with the ship or any shares therein for a specified time.

A vessel may also be detained by Cyprus competent authorities for breaches under various international maritime conventions or local laws (eg, the Merchant Shipping (Port State Control) Laws of 2011 and 2015).

5.9 Releasing an Arrested Vessel

Pursuant to the Cyprus Admiralty Jurisdiction Order of 1893, the court may, by order and upon a written application, direct the release of the arrested vessel upon such terms relating to security as it deems fit.

Therefore, the owner or interested party has to apply to the court for the release of the arrested vessel. The form of security usually requested by the court is a bank guarantee issued by a licensed financial institution in Cyprus. Unless the arresting party consents, it is unlikely that the court will accept a club Letter of Indemnity (LOI) or a foreign bank's guarantee.

5.10 Procedure for the Judicial Sale of Arrested Ships

Pursuant to Rule 74 of the Cyprus Admiralty Jurisdiction Order of 1893, the Supreme Court can appoint the Admiralty Marshal of the Court or any other person to appraise the arrested vessel or to sell that vessel, either with or without appraisal, either before judgment (*pendente lite*) or after final judgment, on the application of any party and by its order. The sale may be ordered to be by public auction (the sale procedure adopted in most cases) or by private treaty. The latter is typically allowed when it serves the best interests of all interested parties and is a more favourable outcome than a public auction – for example, in cases where a higher price can be achieved through private negotiations compared to a public auction.

The sale is advertised in the local press and in appropriate shipping publications. The proceeds from the sale of a ship are paid into the court and, upon an application by any judgment creditor, will be distributed to all judgment creditors who claimed a share of the proceeds, in order of priority.

Whenever an arrest order is issued by the Supreme Court, the arrested vessel is placed under the safe

custody and supervision of the Admiralty Marshal and/or the Deputy Admiralty Marshal(s), who are appointed pursuant to Rule 5 of the Cyprus Admiralty Jurisdiction Order of 1893 (in practice, the Court appoints the Admiralty Marshal in almost all cases). The Admiralty Marshal acts as the custodian/bailee of the arrested vessel, with the duty to ensure that the property and crew of the vessel are safe and in good condition or health at all times (and to comply with the relevant orders issued by the Court in the course of the legal proceedings from which the arrest order originates).

The ordinary order of priority of claims is as follows:

- Marshal expenses in connection with the arrest, custody and sale;
- recoverable legal costs of the arresting party (up to and including the arrest) and the party who obtained the order for the appraisal and judicial sale;
- possessory liens;
- maritime liens;
- claims of the Republic of Cyprus for fees, dues and tonnage taxes, in the case of a Cyprus-flag vessel;
- claims under registered mortgages;
- claims under foreign or unregistered mortgages;
- administrative fines imposed by the competent authorities of Cyprus; and
- other maritime claims.

5.11 Insolvency Laws Applied by Maritime Courts

The Companies Law, Cap 113, as amended (the "Law"), contains proactive self-help provisions afforded to companies, similar to US Chapter 11 protection. It is a process whereby the protection of the court is obtained to assist the survival of the company, and essentially allows a company to restructure with the approval of the court.

Upon a request being submitted to it, the court may appoint an examiner to assess the state of affairs of the company and to perform such duties in relation to the company as may be imposed by or in accordance with the provisions of the Law, if:

- the court considers that a company is, or is likely to be, unable to pay its debts;

- any resolution regarding the liquidation of the company has not been approved and published in the Official Gazette of the Republic; and
- no decree has been issued for the liquidation of the company.

The court shall issue an order only if it is satisfied that there is a reasonable prospect of the survival of the company and of all or any part of that undertaking as an active entity (going concern). The court granting an order for the appointment of an examiner places the company under court protection for a certain period of time. The examiner formulates a scheme of arrangement, which requires the approval of at least one class of creditors before it can be brought before the court for approval.

The question of whether an order on the arrest and judicial sale of a vessel, owned by owners that are under the proceedings mentioned above, can be granted has not yet been decided before the Supreme Court. However, the Law provides that the following provisions will apply for as long as a company is under the protection of the Court:

- no liquidation proceedings may be instituted against the company, nor may a resolution for liquidation be adopted in relation to that company – and any resolution thus adopted shall have no effect;
- no seizure in the hands of a third party, suretyship, seizure or execution shall take place in respect of the property or objects of the company, except with the consent of the examiner;
- in the event that any claim against the company is secured by a mortgage, lien or pledge on or affecting all or any part of the company's property, objects or income, no action may be taken for the liquidation of all or any part of this security, except with the consent of the examiner; and
- no measures may be taken to recover goods held by the company in accordance with any lease agreement, except with the consent of the examiner.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Damages for “wrongful arrest” may be awarded in favour of the owner of the arrested vessel, if the arresting party has acted in bad faith or through gross negligence (the relevant English law principles are followed).

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The main international conventions and domestic laws applicable to Cyprus for maritime passenger claims are as follows.

- The LLMC Convention, specifically its Article 2.1 (b) (and subject to certain exceptions mentioned in Articles 3 and 4), pursuant to which claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage shall be subject to limitation of liability.
- Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterways.
- The Merchant Shipping (Liability of Carriers of Passengers by Sea in the Event of Accidents) Law No 5 (I)/2014, transposing Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents into national law (although Cyprus is not a contracting member of the Athens Convention, Law No 5 (I)/2014 incorporates provisions of that Convention). This sets out limitations of liability for death, personal injury, and loss and damage to luggage and vehicles.
- The Shipwrecked Passengers Law, Chapter 297, which sets limitations for the amount recovered for expenses related to the harbouring and forwarding of shipwrecked passengers.

See **4.5 Time Bar for Filing Claims for Damaged or Lost Cargo** regarding the time bar for filing court claims in Cyprus for bringing a claim in breach of contract and in negligence.

Claims for indemnities for personal injury of a passenger can be recognised as maritime claims.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Cyprus courts will generally recognise and enforce a jurisdiction clause stated in a bill of lading. However, they may still consider whether there are adequate grounds for displacing the prima facie presumption of insisting on the parties honouring their bargain. This presumption may be rebutted for “good and sufficient reasons”.

In relation to jurisdiction clauses, the Cyprus courts will take the following factors into consideration:

- the country in which the evidence on the matters in dispute is situated or readily available;
- the relevant benefits of each alternative jurisdiction in terms of facilitating a better trial at less cost;
- to what extent the foreign law applies to the matters in dispute and, if this is the case, to what extent it is substantially different from Cyprus law;
- the country to which each of the parties is linked and how close this connection is;
- whether the defendant sincerely wishes the issue in question to be tried somewhere else or whether they are just seeking a procedural advantage; and
- to what extent the plaintiffs will be prejudiced in the case of filing proceedings abroad.

As a general rule, an express choice of law by the contracting parties will be recognised and upheld by the Cyprus courts. On 20 April 2006, Cyprus ratified the Rome Convention by Law 15 (III) of 2006, and Regulation (EC) No 593/2008 (“Rome I”) has applied since 17 December 2009. In accordance with Article 5 of Rome I, in the absence of an express or implied choice of law, the proper law shall be the law of the country of habitual residence of the carrier, provided that the place of receipt, the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery (as agreed by the parties) is situated shall apply.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

General words in a bill of lading incorporating into it all the terms and conditions of another document (such as a charterparty) may not be sufficient to incorporate an arbitration clause contained in that document into the bill of lading such as to make its provisions applicable to disputes arising under the bill of lading.

However, if a bill of lading contains specific words that attempt to incorporate an arbitration clause of, for example, a charterparty, the Cyprus courts may recognise and enforce the arbitration clause if the provisions in the charterparty are worded in such a manner as to make sense in the context of the bill of lading, and if they do not conflict with any express term contained in the bill of lading.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Cyprus has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Law No 84/1979) (the “New York Convention”).

Upon its accession to the New York Convention on 29 December 1980, Cyprus made a specific reservation of reciprocity:

“The Republic of Cyprus will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another Contracting State; furthermore, it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law.”

Domestic arbitration proceedings in Cyprus are governed by the Arbitration Law of 1944, Chapter 4, and international arbitration proceedings are governed by the International Arbitration in Commercial Matters Law 101/1987, which is almost identical to the UNCITRAL Model Law.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Although a foreign jurisdiction clause does not deprive the Cyprus courts of their jurisdiction, strong reasons

must be presented as to why such a clause should be disregarded. The existence of an arbitration or a foreign jurisdiction clause must in any case be expressly disclosed when applying *ex parte* for the arrest; such information is considered to be relevant for establishing the *in rem* jurisdiction of the Admiralty Court, so it is necessary for the Court to reach the right conclusion regarding the arrest. Non-disclosure of such a clause may result in the discharge of the order and the release of the vessel.

7.5 Domestic Arbitration Institutes

There is no domestic arbitration institute in Cyprus specialising in maritime claims.

The most prominent arbitration institutions in Cyprus are:

- the Cyprus Arbitration and Mediation Centre;
- the Cyprus Branch of the Chartered Institute of Arbitrators; and
- the Cyprus Eurasia Dispute Resolution and Arbitration Centre.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Proceedings that have commenced – notwithstanding the foreign jurisdiction clause or arbitration clause – can be challenged by the defendant by an application for stay.

Where an application for stay has been filed, a Cyprus court has discretion to decide whether to grant a stay. In practice, however, a stay of proceedings will be granted by the court unless a strong cause for not doing so is shown; the burden of proving such a cause lies with the party requesting the stay. When exercising its discretion, the court should take into account all the circumstances of the case.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Generally, the Cyprus corporate tax system comprises the following key characteristics.

- Corporate tax rate of 15% for trading operations.
- Exemption from tax in almost all inbound dividend payments.
- Exemption from:
 - (a) taxation of profits derived by foreign permanent establishments; and
 - (b) withholding tax on payment of interest, dividends and royalties.
- No capital gains tax.
- An extensive double-tax treaty network.

Cyprus offers:

- complete tax exemption of all profits and dividends at all levels of distribution arising from qualifying shipping operations;
- no stamp duty on any document; and
- no capital gains tax payable on the sale and transfer of a ship or shares in a shipping company.

Furthermore, the Cyprus Parliament enacted the Merchant Shipping (Fees and Taxing Provisions) Law of 2010 (which applied retroactively from 1 January 2010 for ten years); by a decision of the European Commission, this tonnage tax law has been extended for a further ten years with the enactment of the Merchant Shipping (Fees and Taxing Provisions) (as amended) Law of 2020, which applies from 1 January 2020 to 31 December 2029. The latter Law is fully compatible with the requirements of the EU *acquis* on State Aid to Maritime Transport.

The tonnage tax system (TTS) is based on the payment by qualified persons of tonnage tax on the basis of the net tonnage of ships, and provides full exemption from all income taxes that would normally be imposed under the Cyprus income and defence tax laws.

Pursuant to the Merchant Shipping (Fees and Taxing Provisions) (as amended) Law of 2020, the TTS is available to qualifying ship-owners, charterers (bareboat, demise, time and voyage) and ship managers (providing technical and/or crewing services) who respectively own, charter or manage a qualifying ship engaged in a qualifying shipping activity and in activities ancillary to maritime transport.

The tax exemption for qualifying ship-owners covers:

- profits from the use of a qualifying vessel;
- profits from the disposal of a qualifying vessel and/or a share and/or interest in it;
- profits from the disposal of shares in a ship-owning company;
- dividends paid out of the aforementioned profits at all levels of distribution; and
- interest income relating to the financing/maintenance/use of a qualifying vessel and the working capital, excluding interest on capital used for investments.

If a qualifying owner earns income from a qualifying shipping activity and at the same time earns income from a non-qualifying shipping activity, the income that is not subject to tonnage tax is subject to corporation tax at the normal rate of 15%. If mixed income is earned (tonnage tax and corporation tax), separate books must be kept.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Force Majeure

Force majeure typically refers to an unforeseeable and unavoidable event that prevents one party from performing their contractual obligations. Cyprus law recognises the defence of force majeure as a contractual defence, provided a relevant provision is explicitly included in the relevant contractual arrangement.

Force majeure applies as follows in the context of shipping contracts under Cyprus law.

Clause in the contract

The contract should explicitly state the types of events that qualify as force majeure. If events such as late delivery, non-arrival of a chartered vessel, or slow loading/discharging are covered, the party invoking force majeure must demonstrate that the event was beyond their control.

Unforeseeable events

The event must be unforeseeable at the time the contract was made. If the reason for the delay or non-performance was known to the party beforehand, it may not qualify as force majeure.

Inability to perform

The event must directly prevent or hinder the performance of contractual obligations. For example, if a natural disaster blocks a port, delaying vessel arrival, this could be a valid force majeure event.

Notification

Parties invoking force majeure often must notify the other party promptly and provide evidence of the occurrence of the event

Frustration

Frustration refers to situations where, due to an unexpected event, the contractual performance becomes impossible or radically different from what the parties originally agreed upon, even though it might not be due to the fault of either party.

Frustration applies as follows in the context of shipping contracts under Cyprus law.

Impossibility of performance

Performance must become impossible due to unforeseen events. For example, if a chartered vessel cannot arrive at the port due to a government-imposed blockade or an accident that leaves the vessel permanently incapable of performing, this could be considered frustration.

Radical change in circumstances

This occurs if the event leads to a change so significant that it alters the fundamental nature of the contract. For example, if a vessel is delayed for an unreasonably long time, making it impossible for the parties to fulfil their agreement within the intended timeframe, frustration may be argued.

No fault of the parties

This occurs when the event makes performance fundamentally different or impossible, without fault by the parties involved.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

The enforcement of the IMO 2020 is delegated to national governments via Annex VI of the MARPOL agreement of 1973, as amended by Protocol 1978 (MARPOL 73/78). Cyprus has already ratified MARPOL 73/78 and all related legislation.

Since 1 January 2020, ships sailing in waters under the jurisdiction of the Republic of Cyprus must use fuels of which the maximum sulphur content does not exceed 0.5% by mass. Directive (EU) 2016/802 sets stricter limits for the maximum sulphur content of marine fuels within the port areas of the EU, according to which the maximum sulphur content of marine fuels entering such ports should not exceed 0.10% by mass.

The authorities responsible for the enforcement of sulphur-content limitations are the SDM and the Ministry of Energy, Commerce and Industry. The relevant inspections are carried out according to the Paris MoU on Port State Control and the Merchant Shipping (Port State Control) Law of 2011 (Law 95 (I)/2011) as amended, which is the harmonisation Law with Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port state control, as amended.

No known proceedings/sanctions have taken place in Cyprus owing to a violation of the sulphur limitation, except for administrative fines imposed by the relevant authorities.

9.3 Trade Sanctions

As a member of the United Nations (UN) and the EU, Cyprus is required to implement restrictive measures (the EU refers to sanctions as “restrictive measures”) adopted by the Council of the EU within the framework of the Common Foreign and Security Policy, as well as international sanctions adopted by the United Nations Security Council (UNSC) under Chapter VII of the UN Charter.

Cyprus gives effect to the resolutions and decisions of the UNSC on sanctions, as well as the regulations and decisions of the Council of the EU on restrictive measures, through its domestic Law of 2016 (58 (I)/2016),

which provides for the Implementation of the Provisions of the Resolutions or Decisions of the United Nations Security Council and the Decisions and Regulations of the Council of the European Union.

In line with the above, Cyprus EU has strengthened its enforcement framework.

- In July 2025, Cyprus enacted the Criminalisation of Violation of Union Restrictive Measures Law (Law 149 (I)/2025), which codifies breaches of EU sanctions as criminal offences with significant penalties for individuals and legal entities.
- Also in 2025, Cyprus established a National Sanctions Implementation Unit (NSIU) to co-ordinate sanctions enforcement, monitor compliance, issue licences/exemptions where appropriate, and liaise with EU and international counterparts.
- Cypriot authorities work closely with EU bodies and law enforcement networks (including Eurojust, Europol and the European Public Prosecutor’s Office) in administering and enforcing sanctions, including criminal prosecutions and asset freezes. To date, no widely publicised domestic legal proceedings have been reported against Cypriot entities solely for sanctions violations.

Under the new sanctions enforcement framework, the NSIU is authorised to review and issue sanctions related licences, exemptions or authorisations where permitted by EU or UN regimes. This includes potentially allowing otherwise prohibited activities where a legal basis exists (eg, humanitarian exemptions or specific licences).

As a result, financial institutions, shipping companies and other Cyprus-linked businesses are required to maintain enhanced sanctions compliance programmes, including due diligence and reporting systems. These measures aim to ensure effective application of sanctions while allowing legally permitted activities.

9.4 International Conflict

Ongoing international conflicts, including the war in Ukraine and other regional tensions, can indeed have significant legal and commercial implications for Cyprus law shipping and carriage contracts. These

implications involve issues of frustration of contracts, war risk insurance coverage, late or non-delivery of goods, and deterioration of goods due to late delivery. Examples of what amounts to frustration of contract under Cyprus law have been discussed previously (see 9.1 **Force Majeure and Frustration**), and international conflict is a typical example of when such a situation may arise (eg, due to blockades to the Suez Canal or attacks on shipping in the Red Sea).

Insurance contracts are particularly affected by international conflicts such as the war in Ukraine or Houthi attacks on vessels, as war risk insurance policies often contain express provisions that deal with damage, loss or delay caused by acts of war. As such, they may carve out the relevant risk or, at an additional cost, cover (or exclude, as the case may be) operating in war zones or high-risk areas, as well as corresponding risks such as:

- attacks on vessels, hijacking or piracy;
- damage caused by military actions (eg, air strikes, naval attacks); and
- delays, loss of or damage (eg, in the case of perishable goods) to cargo in transit through affected regions.

In addition, delays or failure to deliver goods on time due to international conflicts, such as blocked trade routes or attacks on vessels, can lead to disputes over *late or non-delivery*. In cases where a shipping contract specifies delivery times, any *delay in delivery* (whether caused by conflict or other factors) may constitute a breach of contract, unless the delay is excused by force majeure or frustration and the contract contains relevant provisions.

Irrespective of the right of a shipper or consignee to *claim damages* for the late delivery of goods, which could include financial losses, lost market opportunities, or any inconvenience caused by the delay, under Cyprus law, the innocent party (typically the shipper/consignee) has a duty to *mitigate* their losses. Thus, even if the delay is due to a conflict, the innocent party must take reasonable steps to reduce their losses.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Cyprus has enacted a reform of some aspects of its tax system, with key measures effective from 1 January 2026. The changes aim to update the tax framework, adjust the distribution of the tax burden, and align Cyprus's rules with international standards.

Key changes affecting businesses, including shipping-related entities, include the following.

- **Corporate income tax:** the standard corporate tax rate will increase from 12.5% to 15%. This is accompanied by reductions to dividend-related taxation and associated measures (see the SDC reform below).
- **Special Defence Contribution (SDC) reform:** the SDC on actual dividend distributions to Cyprus tax residents will be reduced from 17% to 5%, and deemed distribution rules will be abolished, enhancing tax efficiency for holding and owner-managed structures common in shipping, as well as levelling the playing field for businesses active within Cyprus.
- **Abolition of stamp duty:** stamp duty will be completely removed, lowering transactional costs for commercial and financing documents – a benefit for shipping companies engaged in frequent contracts and financing arrangements.
- **Other corporate relief:** additional measures, such as extended loss carry-forward periods and simplified compliance obligations, are expected to improve corporate planning and cash flow management.

Although the tonnage tax regime remains unchanged, the broader fiscal reforms are likely to have several effects on the shipping sector, particularly in terms of transaction costs, cash flow, and overall tax efficiency.

Trends and Developments

Contributed by:

Adam Montanios and Nicolas Montanios
Montanios & Montanios

Montanios & Montanios is one of the oldest law firms in Cyprus, with an international practice. For more than seven decades, it has acted on behalf of a wide spectrum of local (Cypriot and expatriate) and overseas clients, both corporate and private. The firm has been involved in multiple local and international shipping, corporate, financing and commercial transactions, and has also represented international and local clients in litigation cases before the Cypriot courts. It has gained recognition as one of Cyprus's

leading shipping and admiralty law firms, practising all matters and cases relating to merchant shipping, maritime transport and ship finance in both wet and dry cases at the Admiralty Court. The legal team has grown to include 22 people, covering all aspects of corporate work and commercial transactions. The firm prides itself on focusing on a defined set of practice areas and providing consistently high-calibre service.

Authors



Adam Montanios joined Montanios & Montanios LLC in 1979 before becoming a partner in 1986, and is now the firm's managing partner. He specialises in all aspects of maritime law, finance, and corporate and

commercial matters. He has represented and advised ship-owners, ship managers, ship charterers, lessors and lessees, local and international banks, and financial institutions on a range of non-contentious matters. He also acts for local and international corporate clients in connection with joint ventures, M&A, company restructurings and multiparty business transactions. He graduated from the Greek Gymnasium of Famagusta, and was awarded an LLB Honours degree from Hull University. He is President of the Maritime Law Committee of the Cyprus Bar Association and the legal adviser to the Cyprus Union of Shipowners.



Nicolas Montanios read law at the University of Westminster, London, and was awarded an LLB Honours degree in 2012. He completed the Legal Practice Course at the University of Law in London. He

joined Montanios & Montanios LLC in 2013 as a trainee advocate, and was admitted to the Cyprus Bar in 2014. In 2025, he became a partner in the firm. His main areas of practice are shipping, finance, and corporate and commercial work. Nicolas acts for international and local banks in ship finance transactions, and for ship-owners, charterers and ship managers in non-contentious aspects of shipping (including ship and yacht sale, purchase and registration matters). He has also been involved in a range of commercial matters including M&A, corporate restructurings and corporate finance transactions.

Montanios & Montanios LLC

Diagoras House
16 Panteli Katelari Street
CY-1097 Nicosia
Cyprus

Tel: +357 22660766
Fax: +357 22678777
Email: montanios@montanioslaw.com.cy
Web: www.montanioslaw.com.cy



MONTANIOS & MONTANIOS LLC

ADVOCATES AND LEGAL CONSULTANTS

General

Cyprus is a full member of the European Union (EU), and has been at the forefront of international shipping for over six decades. Today, Cyprus:

- has the third largest merchant fleet in Europe and the 11th largest globally; and
- is the largest third-party ship management centre in Europe, and is among the top three worldwide.

The Cyprus flag is a high-quality sovereign flag, which is included in the “White List” of both the Paris and Tokyo Memorandums of Understanding.

The Cyprus Ship Registry has grown steadily over the last two years, recording a 21% increase in gross tonnage since September 2023.

In addition, and most importantly, Cyprus has developed into an international maritime centre with a constantly growing shipping cluster, hosting more than 250 shipping-related companies – including ship-owners, charterers, managers and providers of numerous related shipping services, and employing more than 5,000 people onshore and 55,000 seafarers aboard Cyprus-flagged ships.

The Shipping cluster’s contribution to Cyprus’s GDP now exceeds 7%.

Legal System

Cyprus is a business-friendly common law jurisdiction, and most of Cypriot law has been modelled on English law.

The registration of ships under the Cyprus flag is governed by the Merchant Shipping (Registration of Ships Sales and Mortgages) Law of 1963, as amended, which was based on the similarly named English law.

Matters relating to seafarers on board Cyprus-flagged vessels are governed by the Merchant Shipping (Master and Seamen) Law of 1963, as amended, and all matters relating to working conditions by the Maritime Labour Convention 2006 (Ratification) and for Matters Connected Therewith Law of 2012, as amended.

The third major merchant shipping statute is the Merchant Shipping (Fees and Taxing Provisions) Law of 2010, as amended, which deals with all financial matters, including the Cyprus tonnage tax system (explained below) which has been re-approved by the EU.

Finally, EU Regulations relating to shipping apply to Cyprus-flagged vessels, and Cyprus has adopted most international shipping conventions.

Ship Registration

Pursuant to Cyprus merchant shipping law, there are two types of ship registration in Cyprus:

- ownership registration (provisional and permanent); and
- bareboat charter (parallel) registration.

Such registrations are effected by the Cypriot Registrar of Ships at the Shipping Deputy Ministry.

When a vessel is not in a Cypriot port at the time of her registration, it is also possible for provisional (ownership) registration to be effected through a Cypriot maritime or consular office abroad (by specific authority of the Registrar of Ships). However, permanent registration and parallel registration can only take place at the Registrar's office in Limassol, Cyprus.

A ship may be registered with the Register of Cyprus Ships if:

- more than 50% of the shares in the ship are owned by a Cypriot citizen or a citizen of any other EU/EEA state; or
- 100% of the shares in the ship are owned by a Cypriot or EU/EEA company, or by a third-country company controlled by Cypriot or EU citizens (on certain special conditions).

Furthermore, a vessel may be registered in parallel under the Cyprus flag, provided that she is bareboat chartered by a person or entity qualified to own a Cyprus-flagged vessel, as per the above-mentioned requirements.

Most types of vessels of up to 20 years of age are registrable under the Cyprus flag, while older vessels can only be registered under certain conditions or additional requirements.

Related details are contained in the Government Policy on the Registration of Ships, the current version of which is available on the website of the Shipping Deputy Ministry.

Vessel Mortgaging

A Cyprus-flagged vessel may be mortgaged as security for a loan to the vessel's owning company or for the obligations of a third party.

The instrument creating such mortgage must take one of two statutory forms: that of securing "principal sum with interest" or an "account current" (the latter being used in the vast majority of cases).

A collateral deed of covenants dealing with all matters relating to the mortgage must be attached to such mortgage instrument. The mortgage instrument must

be signed by the ship-owner/mortgagor and the deed of covenants by both the mortgagor and the mortgagee.

A Cypriot statutory mortgage must be filed for registration in the Register of Cyprus Ships (either directly at the Shipping Deputy Ministry or through a Cypriot maritime or consular office abroad – on the instructions of the Shipping Deputy Ministry), and its priority is determined in accordance with the date and time of such registration.

If the owner/mortgagor is a Cyprus registered company, such mortgage must also be registered at the Companies Registry as a charge against such owning company.

Shipping Deputy Ministry to the President

The Cypriot government established the Shipping Deputy Ministry in 2018, to expand the functions and capacity of the former Department of Merchant Shipping, which was one of many departments of the Ministry of Transport, Communications and Works. The establishment of a dedicated and autonomous Deputy Ministry focusing entirely on the Cypriot maritime industry has been a great success and signalled the government's dedication to the shipping cluster, which accounts for 7% of the country's GDP. The Shipping Deputy Ministry has further enhanced its already excellent level of offered services, and now offers a 24/7 service from maritime specialists in seven maritime offices around the globe.

The Shipping Deputy Ministry has also recently introduced its new vision and philosophy for Cypriot shipping. The current Deputy Minister, Mrs Marina Hadjimanolis, along with her predecessors Mrs Natasa Pilides and Mr Vassilios Demetriades, have worked tirelessly and extremely efficiently in developing a distinct and leading identity for the newly formed Shipping Deputy Ministry.

The overarching aim of the Shipping Deputy Ministry is to maintain and develop Cyprus as a significant and influential actor, spearheading positive change in global shipping. Additionally, it strives to promote Cyprus as an attractive international maritime centre, focusing on sustainable growth and excellence.

The Shipping Deputy Ministry has implemented its national strategy towards a green and digital future, titled “Sea Change 2030”. This strategy introduces a new philosophy to the way Cyprus approaches shipping, and consists of a programme of 35 sustainable actions with a strict timeframe for their implementation. Its primary objectives include:

- bolstering the resilience of Cyprus’s shipping sector in times of crisis;
- enhancing its competitiveness; and
- positioning it as a prominent player in the global maritime arena.

This programme is widely recognised by the local shipping cluster as quite realistic in its implementation – evidenced by the fact that, at the time of writing, most of the proposed actions have already been implemented.

Prolongation of the Tonnage Tax System

The Cyprus Tonnage Tax System (TTS) was originally approved by the European Commission in 2010 for an initial ten-year period, as compatible with the requirements of the EU *acquis* and in line with the guidelines on state aid to maritime transport.

Prior to the expiry of this initial period, the Shipping Deputy Ministry – in co-operation with other government departments and the private shipping industry – achieved a smooth and successful prolongation of the Cyprus TTS for another ten years (up to December 2029).

According to the scheme, it is possible for the following to be taxed (under certain conditions particular to each category) under the TTS and to therefore be subject to an annual tax (referred to as tonnage tax) in lieu of income or corporate tax.

- qualifying owners of Cyprus-flagged vessels;
- qualifying owners of foreign-flagged ships;
- charterers; and
- ship managers.

This is calculated based on the net tonnage of the qualifying ships that such persons (physical or legal) own, charter or manage.

The following physical or legal persons are eligible for the Cyprus TTS.

- An owner of a Cyprus-flagged ship who owns a qualifying ship engaged in a qualifying shipping activity (and who automatically falls within the TTS’s scope).
- An owner of a foreign ship who owns a qualifying ship engaged in a qualifying shipping activity, and who:
 - (a) is a tax resident of Cyprus;
 - (b) has opted to be taxed under the TTS; and
 - (c) complies with the “community-flagged share” requirement.
- A charterer who charters a qualifying ship engaged in a qualifying shipping activity under bareboat, demise, time or voyage charter, and who:
 - (a) is a tax resident of Cyprus;
 - (b) has opted to be taxed under the TTS; and
 - (c) complies with the “minimal share of the fleet in ownership – percentage of chartered-in ships” and the “community-flagged share” requirements.
- A ship manager who provides ship management services (crewing and/or technical) to a qualifying ship, and who:
 - (a) is a tax resident of Cyprus;
 - (b) has opted to be taxed under the TTS;
 - (c) maintains a fully fledged office in Cyprus employing sufficient (in number and qualifications) personnel, at least 51% of whom are EU/EEA citizens; and
 - (d) complies with/satisfies the “community-flagged share” requirement as well as a number of additional requirements.

Abolition of Vessel Registration Fees and Mortgage Fees/Simplification and Streamlining of Fees

The Shipping Deputy Ministry has abolished government fees for the registration of a vessel under the Cyprus flag, as well as fees for the registration at the Register of Cyprus Ships of a mortgage as an encumbrance on a Cyprus-flagged vessel.

In another attempt to simplify matters relating to the services provided by the Shipping Deputy Ministry, all fees and dues relating to ocean-going commercial

Cyprus-flagged vessels are being streamlined and simplified.

Abolition of Stamp Duty

As of 1 January 2026, the Stamp Duty Law, which affected a number of shipping transactions, has been abolished.

Technical Standards

The Shipping Deputy Ministry has established technical requirements for certain categories of vessels below 500 gross tons (GT) with respect to their registration in the Register of Cyprus Ships and their operation under the Cyprus flag. The purpose of such technical standards is to specify certain technical requirements for such vessels (including yachts and mega-yachts) in areas not covered up to that date by national, EU or international legislation.

In particular, these standards are applicable to the following categories of vessels:

- Category A – cargo ships of more than 24 metres in load line length and below 500 GT;
- Category B – motor or sailing vessels used for pleasure and engaged in trade, of more than 24 metres in load line length and below 500 GT, carrying up to 12 passengers;
- Category C – motor or sailing vessels used for pleasure and not engaged in trade, of more than 24 metres in load line length and below 500 GT, carrying up to 12 passengers; and
- Category D – vessels used for pleasure and engaged in trade, carrying from 13 passengers up to 36 passengers.

Green Incentives

The Shipping Deputy Ministry has set up a range of green incentives with the aim of rewarding vessels demonstrating effective emissions reductions. Introducing such incentives simultaneously encourages and rewards ship-owners who opt for lower emissions or who use alternative drives.

As from fiscal year 2021, annual tonnage tax is reduced by up to 30% for each vessel that successfully demonstrates proactive measures for lowering its environmental impact, ensuring that ship-owners

are rewarded for sustainable shipping efforts. This is achieved by comparing what emissions reductions are required of a vessel with what it actually achieved.

However, any vessel detained for any reason during a port state control inspection and which violates any regulation of the European Commission related to environmental protection will not be eligible for the incentive.

The Shipping Deputy Ministry believes that incentives such as this will encourage greater environmental sustainability across the global industry, while also enhancing Europe's competitive maritime advantage in new green technologies. This creates opportunities for jobs and growth, providing a first-mover advantage to the EU shipping industry.

In relation to such initiatives, the Shipping Deputy Ministry:

- became a signatory to the “Declaration on Zero-Emissions Shipping by 2050” and to the “Green Shipping Challenge” initiatives launched at COP27; and
- has organised a virtual debate on the European Commission's proposed Emissions Trading System for shipping, as well as a live SWOT analysis hybrid event on the potential of low- and zero-emission fuels for shipping, in association with the University of Houston.

Digitalisation Programme

The Shipping Deputy Ministry is currently undertaking a wide-ranging digitalisation project expected to increase both its efficiency and the range of services available through its online portals.

A public tender for the digital transformation of the Shipping Deputy Ministry has been awarded, and the project is co-financed by the EU. It aims to transform the business processes/workflows of the Shipping Deputy Ministry and to maximise its operational efficiency based on three key principles:

- the establishment of the “one-stop shipping centre”;
- seamless process integration; and

- operational excellence.

The programme is already partly in operation, and it is expected that by mid-2026 all the services of the Shipping Deputy Ministry will be provided digitally in a streamlined and paperless environment.

Furthermore, a mobile phone application (CYSHIP) will soon be available, with various digital services being accessible to its users directly from their mobile phones.

One-Stop Shipping Centre

The Shipping Deputy Ministry also launched an internal service to cater to most requirements of the Cypriot shipping cluster. The central aim of this initiative is to centralise the provision of a number of government services associated with the shipping industry, and to enable the Shipping Deputy Ministry to deal with shipping-related transactions, which were previously managed by different government departments or ministries.

The first matter recently incorporated into this project relates to the immigration procedure needs of the overseas personnel of shipping companies based in Cyprus. Following special arrangements between the Shipping Deputy Ministry and the Ministry of Interior, all applications for work permits or for registration of members of shipping companies can be submitted through (and obtained from) a newly formed office at the Shipping Deputy Ministry.

The next pivotal step in the development of the “one-stop shipping centre” is its expansion into handling matters relating to the incorporation and administration of shipping limited liability companies (SLLCs) under the recently enacted law relating to the establishment and operation of such companies (see below).

The ultimate aim is for other matters relating to the needs of shipping companies based in Cyprus (eg, tax office registration and social insurances matters) to eventually be consolidated and handled directly through the Shipping Deputy Ministry.

SLLCs

Following the efforts of the Shipping Deputy Ministry and the private shipping industry in Cyprus, a new law regulating the creation of the SLLC was enacted. This legal entity will only be used for the ownership and operation of a vessel registered under the Cyprus flag. The incorporation of the SLLC and all its administration will be done solely by the Shipping Deputy Ministry, as part of its one-stop shipping centre programme.

Following the engagement of new personnel by the Shipping Deputy Ministry, the completion of the digitalisation programme for the SLLC and the publication of the notifications supplementing the new law, it is expected that the new SLLCs will be operational by mid-2026.

Advisory Committees to the Shipping Deputy Minister

The Shipping Deputy Ministry has also established two high-level committees to assist the Deputy Minister in the development of Cyprus shipping.

The first, the Advisory Committee on Competitiveness and Quality Enhancement of the Cyprus Flag, consists of eight members, all of which are ship-owners who fly the Cyprus flag and have all been elected by fellow ship-owners.

The second, the Advisory Committee on Competitiveness of the Cyprus Maritime Cluster, consists of ship-owners and leading shipping executives based in Cyprus, and was elected by the community of Cyprus-based shipping companies.

The Shipping Deputy Ministry is confident that the wealth of knowledge and experience brought to the Committees by such members will undoubtedly contribute to the growth and excellence of the Cyprus Maritime Sector.

Proposed amendment of the Cyprus Merchant Shipping (Registration of Ships, Sales and Mortgages) Law

The Shipping Deputy Ministry is working on a number of amendments to the Cyprus Merchant Shipping (Registration of Ships, Sales and Mortgages) Law

relating to issues that will increase the competitiveness of the flag and assist in a number of matters.

The related bill is currently being drafted and is expected to be brought before parliament by mid-2026.

Other Shipping Deputy Ministry Developments

The Shipping Deputy Ministry, in an effort to simplify its procedures for vessel registrations under the Cyprus flag and the procedure for a Cyprus-flagged vessel's change of name, has recently abolished the need for the filing of a Carving and Marking Note signed by a surveyor of a recognised Classification Society.

Pillar Two Legislation

Cyprus recently transposed Council Directive (EU) 2022/2023 into local legislation relating to a global minimum level of taxation at 15% on multinational enterprises and large domestic groups with annual consolidated revenues exceeding EUR750 million.

The Pillar Two legislation includes an exclusion for shipping income, covering profits earned from the transportation of passengers or cargo in international traffic.

This is an important exemption for maritime groups using the Cyprus flag, since the Cyprus TTS results in an effective rate of tax which is lower than the minimum tax rate of 15% under such legislation.

International Maritime Organization (IMO) Council

Cyprus has recently been re-elected to the IMO Council, placing 7th in the 2025 elections (compared with 12th in 2023).

DENMARK



Law and Practice

Contributed by:

Johannes Grove Nielsen, Camilla Søgaard Hudson, Lars Rosenberg Overby
and Malthe Hersom Kløft

Bech-Bruun

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Bech-Bruun is a market-oriented law firm offering a wide range of specialist advisory services to large sections of the Danish corporate and public sectors, as well as to global enterprises. Consisting of around 600 experienced and highly specialised employees, of whom 57 are partners, Bech-Bruun is one of Denmark's leading full-service law firms. Bech-Bruun's shipping and logistics group, comprising about ten

individuals, advises on all legal aspects of shipping, transport and logistics. It co-operates with leading international transport lawyers and maintains an extensive international network to service its clients. Bech-Bruun is involved in the majority of shipping deals in Denmark, and is particularly known for maritime insolvency and issues related to the bunker industry.

Authors



Johannes Grove Nielsen is a partner and department head of Bech-Bruun's litigation and shipping group, and former co-chair of the Maritime and Transport Committee of the IBA. He advises on all aspects of maritime,

transport and offshore law, and is an experienced litigator admitted to the Danish Supreme Court. He is part of Bech-Bruun's cross-border insolvency shipping team, and has particular experience with US Chapter 11 and Chapter 15 proceedings. Johannes has led Bech-Bruun's OW bunker cases and handled many derivative lawsuits. He holds an MBA in Shipping & Logistics from Copenhagen Business School.



Camilla Søgaard Hudson is a partner in Bech-Bruun's shipping and litigation group. She specialises in all aspects of maritime, transport, offshore and insurance law. Camilla handles cases on the carriage of

goods, charterparties and bunker disputes (among others), rendering legal advice to Danish and non-Danish business clients including insurance companies, P&I clubs, ship-owners and cargo interests. She is part of Bech-Bruun's ESG team, advising on compliance and disputes regarding green shipping. Camilla is the former vice-president of the Transport Law Commission of the International Association of Young Lawyers (AIJA), and is often a speaker at national and international shipping conferences. She holds an LLM in Maritime Law from the National University of Singapore.



Lars Rosenberg Overby is a senior associate in Bech-Bruun's shipping and litigation group. Lars was involved in drafting the standard contract Windtime, which is used in the offshore wind industry, and he has

advised on the charter of ships for several years. He is also chairperson of the Danish Maritime Law Association and active in the Polar Shipping Committee in Comité Maritime International. Lars has a background in P&I/defence insurance. Further, he is a juris doctor, completing a degree at the Institute of Maritime Law, University of Oslo. Lars has written several books and articles on maritime law topics and has been an external lecturer in maritime law at the University of Copenhagen.



Malthe Hersom Kløft is an associate in Bech-Bruun's shipping and litigation group. He provides legal support across a broad range of maritime, transport, offshore and insurance matters, assisting domestic

and international clients with complex issues relating to shipping operations and dispute resolution. As part of Bech-Bruun's shipping ESG team, Malthe is actively involved in advising on regulatory compliance. He regularly contributes to academic discourse on ESG in the maritime sector through publications and presentations. Additionally, Malthe serves on the board of Young CMI Denmark, the Danish association for young maritime lawyers.

Bech-Bruun

Gdanskgade 18
2150 Nordhavn
Copenhagen
Denmark

Tel: +45 7227 3377
Email: jgn@bechbruun.com
Web: www.bechbruun.com

Bech·Bruun

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Danish Maritime Authority is a part of the Danish Ministry of Industry, Business and Financial Affairs, and is a government agency of Denmark that regulates maritime affairs.

Maritime and shipping-related disputes are in the first instance heard by the Danish Maritime and Commercial Court. The authority of the Danish Maritime and Commercial Court is set out in the Danish Administration of Justice Act, which provides the Maritime and Commercial Court with authority over disputes concerning international trade relations as well as over disputes concerning transport in a broad sense, including sea, land, air and rail.

The most common types of maritime and shipping-related claims brought before the Danish Maritime and Commercial Court are claims concerning carriage of goods, charterparties and bunker disputes.

1.2 Port State Control

The Danish Maritime Authority operates as the port state control agency under the Danish Ministry of Industry, Business and Financial Affairs. The Danish Maritime Authority is the inspecting body for all vessels flying the Danish flag.

The Danish Maritime Authority has authorised several classification societies (“recognised organisations”) to perform various approval and certification tasks on board Danish ships. All vessels must be designed, constructed and maintained as per the standards of these classification societies.

There are no requirements for regular filings of any kind in Denmark. Ship-owners must ensure the validity of certificates and reapply for new certificates in the case of expiry thereof.

Denmark strives to have regulation that ensures a competitive environment of a certain level for all ship-owners – both national and international – while ensuring that the shipping industry continues to become cleaner and safer. This is achieved through Denmark’s membership of the International Maritime Organization (IMO).

The Danish Maritime Authority may detain a ship if the ship’s continued sailing constitutes a danger owing to faults or deficiencies in the hull, machinery, safety equipment, location of ballast and cargo or manning, or for other reasons associated with danger to the safety of occupants or danger of pollution.

In the event of a grounding in Danish territorial waters or within the Danish exclusive economic zone, the master of the vessel must report the grounding to the Danish Maritime Authority. The registered owner of a vessel flying the Danish flag has a duty to ensure that the wreck is removed.

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With regard to pollution, the Danish Maritime Authority co-operates with the Danish Environmental Protection Agency. Thus, the Danish Maritime Authority performs port state control of adherence to regulations concerning sulphur emission. The Danish Maritime Authority's findings are reported to the Danish Environmental Protection Agency for consideration. The Danish Environmental Protection Agency will also decide whether to report a breach to the Danish police for further investigation and possible criminal charges.

The Master of the ship must report occupational accidents and cases of poisoning to the Danish Maritime Authority that have occurred on board the ship if:

- the accident or poisoning has resulted in incapacity for work for one day or more beyond the day of injury; or
- the injured person has been unable to perform their usual work for one day or more beyond the day of injury.

1.3 Domestic Legislation Applicable to Ship Registration

The Danish ship registers are handled by the Danish Maritime Authority, and Chapters 2 and 2 (d) of the Danish Merchant Shipping Act contain the Danish rules on ship registration.

In Denmark, there are three different ship registries:

- a national registry for Danish-owned tonnage (the Register of Shipping; *Dansk Almindeligt Skibsregister*, or DAS);
- a national registry for specific Danish-owned commercial ships (*Fartøjsfortegnelsen* FTJ); and
- an international registry for ships engaged in foreign trade (the Danish International Register of Shipping; DIS).

Danish vessels with a gross tonnage of 20 GT or higher are obliged to register in the DAS or the DIS. Danish vessels with a tonnage of between 5 GT and 20 GT have a right to register in the DAS, but cannot be registered in the DIS. Furthermore, warships, fishing vessels, boulder fishing vessels and recreational crafts cannot be registered in the DIS. A ship registered in

the DIS that is engaged in regular services between Danish ports may not carry passengers.

Certain Danish commercial ships (including passenger ships, cargo ships, fishing vessels and barges) with a GT between 5 and 20 GT, and which have not been registered in the DAS, must be registered in the FTJ. Certain barges, lighters, dredgers, floating cranes and similar crafts used for commercial purposes must also be registered in the FTJ.

A vessel registered in the DAS, DIS or FTJ flies the Danish flag. Newbuilds can be registered in the DAS if the build is at a stage where it can be sufficiently identified, and if it is estimated to be at least 5 GT in size.

1.4 Requirements for Ownership of Vessels

For a ship to be registered in the DIS or the DAS, it is a requirement that economic activity in Denmark be carried out in one of three ways:

- the ship's technical or commercial operations are handled from Denmark;
- the unit responsible for the operation of the ship meets the requirements to be covered by the Danish tonnage tax regime; or
- the shipping company, organisation or person who holds or has applied for the ship's compliance document in accordance with the Code of Compliance ("document of compliance") is established in Denmark.

Furthermore, it is a requirement that the ship-owner appoints a Danish entity – either a natural or legal person – who can be contacted for inspection purposes and who can be sued on behalf of the ship-owner. For foreign ship-owners, the appointed managing owner must either be a citizen or a legal person from a country within the EU or European Economic Area (EEA). Managing ship-owners from outside the EU or EEA are not eligible.

Both conditions must be fulfilled for the ship to remain registered in Denmark. The Danish Maritime Authority carries out random checks to determine whether ships are registered with a non-Danish owner, and whether the ship and owner meet the registration conditions, on an ongoing basis.

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Pursuant to the Danish Merchant Shipping Act, a special section of the ship register has been established under the DAS register. This section is called the ship-building register. Ships that are under construction in Denmark can be registered in the register. The precondition is that the ship can be reliably identified and that its tonnage is estimated to be at least 5 GT. There is no obligation to register, and no requirements regarding the nationality of the owner. A request for registration can be made by the owner, which must be confirmed by the ship-builder. The detailed rules on registration in the ship-building register, registration of rights and deletion from the register are essentially the same as for the actual ship registers.

Foreign-registered vessels can be bareboat-registered in the DIS, and Danish vessels can be bareboat-registered under certain foreign flags.

1.5 Temporary Registration of Vessels

The Merchant Shipping Act provides for the possibility for foreign ships to be registered temporarily in the Danish ship registers under certain circumstances, and for Danish ships to be correspondingly registered in foreign registers. The basic condition is that the ship be bareboat-chartered, and it is thus the charterer who requests the flag change. The purpose of these rules is to enable the parties to the charterparty to have the nationality of the ship changed temporarily, should there be any benefits associated with it.

The registration can take place in both the DIS and the DAS, and the ship can be admitted for a period of up to five years. However, this period may be extended by up to one year at a time, at the written request of the charterer.

1.6 Registration of Mortgages

The Danish Maritime Authority is the authority responsible for the registration of mortgages.

Ship mortgages must be registered in the DAS or the DIS. The registration must be done by using the standard forms provided by the Danish Maritime Authority. The owner of the vessel must send the original mortgage deed to the DIS or the DAS. The pages of the deed must be numbered consecutively and signed by the issuer of the mortgage. A passport or similar

proof of identity is often required. The ship-owner can submit documents in both Danish and English.

1.7 Ship Ownership and Mortgages Registry

The Danish Maritime Authority offers public access to preliminary information about vessels, such as ownership and mortgages, registered in the DIS or the DAS. The information is not an official copy of the registers, but rather a special database to which the public has access, and the information may therefore differ from the official registers. The database is updated approximately once a day.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

A typical ship loan financing in Denmark involves both debt and equity elements. Debt financing is usually provided based on a percentage of the ship's value, secured by a first-priority Danish ship mortgage. In the firm's experience, ship mortgages constitute the most prevalent form of security for debt financing in Denmark. See also **1.6 Registration of Mortgages** regarding the registration of ship mortgages.

The specialised ship financing institute *Danmarks Skibskredit A/S* is the only institute located in Denmark that is allowed to provide financing to the shipping industry using covered bonds. While some banks also offer ship financing, the number of Danish banks involved in ship financing has been in decline in recent years, although such financing is still used by smaller shipping companies.

Key terms for loan agreements include the loan amount, interest rate, loan to value, repayment schedule, security and financial covenants, with prepayment and default provisions governed by Danish law. Other forms of security include assignment of insurance payouts, earnings, interests, charterparties, guarantees and pledges over the shares in the special-purpose vehicle that owns the ship.

Equity financing usually focuses on ownership structure, capital contributions and profit sharing, typically regulated by a shareholders' agreement.

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Recent years have seen a growing emphasis on sustainability in ship financing, with Danish lenders increasingly offering green loans and requiring ship-owners to comply with stricter environmental standards.

2.2 Ship Leasing

Denmark is experiencing an increase in the size of the ship leasing market, driven by demand for environmentally conscious vessels and a wider focus on sustainable shipping practices.

Private equity investors play a role in the Danish ship financing market. Sale and leaseback transactions are common, and in the firm's experience, Chinese leasing houses are also becoming more prevalent in the market.

The key differences between a lessor/lessee relationship and a lender/borrower relationship are that under a lessor/lessee arrangement, a charterparty is usually entered into, providing the key terms with respect to the lessee's rights to use the ship, and with the lessor being the ship owner. Such terms are usually not required under a lender/borrower relationship, as the borrower will usually be the ship owner.

In Denmark, enforcement of ship mortgages and lease defaults is handled by the Bailiff's Courts within the City Courts. There is no differences in the treatment or enforcement.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Denmark is a party to the following international conventions on pollution:

- the 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships;

- the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments;
- the 2003 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the "Supplementary Fund");
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage;
- the 2001 International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS);
- the 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances ("OPRC-HNS Protocol");
- the 1997 Protocol to amend the International Convention on Prevention of Pollution of Ships;
- the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- the 1992 Convention on the Protection of the Marine Environment of the Baltic Sea Area;
- the 1992 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage;
- the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage;
- the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC);
- the 1972 International Convention on Prevention of Pollution of Ships;
- the 1978 Protocol relating to the International Convention on Prevention of Pollution of Ships;
- the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC) (and the 1996 London Protocol); and
- the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

Regarding wreck removal, Denmark is a party to the 2007 Nairobi International Convention on Removal of Wrecks.

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3.2 International Conventions: Collision and Salvage

Denmark is a party to the 2010 International Convention for Unification of Certain Rules of Law with respect to Collision between Vessels. This convention is implemented under Chapter 8 of the Danish Merchant Shipping Act.

As for salvage, Denmark is a party to the 1989 International Convention on Salvage and has incorporated the convention in Chapter 16 of the Danish Merchant Shipping Act. Denmark has also incorporated the 1974 York-Antwerp Rules in Chapter 17 of the Danish Merchant Shipping Act.

3.3 Convention on Limitation of Liability for Maritime Claims

Denmark is a party to the 1976 Convention on Limitation of Liability for Maritime Claims and its Protocol of 1996. The convention has been implemented in Chapter 9 of the Danish Merchant Shipping Act.

3.4 Vienna Convention on the Law of Treaties

The 1969 Vienna Convention on the Law of Treaties is applicable in Denmark. Danish courts and authorities consistently apply the principles of the Vienna Convention when interpreting international treaties, including the 1976 Convention on Limitation of Liability for Maritime Claims. Thus, the Vienna Convention is generally regarded as binding upon Denmark under international law and is relied upon as an interpretative framework under Danish law.

Denmark has entered a reservation stating that, with respect to states that have made a reservation regarding Article 66, Denmark does not consider itself bound by those provisions of Chapter V for which the Article 66 dispute settlement procedure will not apply due to the other state's reservation.

3.5 Procedure and Requirements for Establishing a Limitation Fund

The Danish Merchant Shipping Act (Sections 177 to 180 and Chapter 12) sets out the procedural rules for establishing a limitation fund.

According to these rules, a limitation fund may be constituted with the Danish Maritime and Commercial Court if:

- arrest is applied for;
- an action is brought; or
- other legal proceedings are instituted in Denmark with respect to claims that, according to their nature, may be limited.

The fund is set up by paying the limitation amount to the court, or by providing security for the amount at the same time as an order is issued. The court will set a notification deadline once the fund has been established. Claims that have not been notified in time can be notified until the court sets down the question of distribution for judgment.

The fund shall be deemed as constituted for all the persons who may invoke limitation of liability, and to cover all the claims for which the limitation of liability applies. The fund shall only be available for payment of claims in respect of which limitation of liability may be invoked, including interest.

The court shall, by court order, stipulate the size of the fund amount, as well as whether any security offered can be approved. The court order may stipulate that security shall also be provided for an additional amount to cover the costs of administering the fund (including costs awarded by the courts), as well as to cover any interest claims.

The limitation fund is calculated with reference to the size of the vessel and the nature of the claims.

The right to global limitation of liability exists, regardless of the basis of liability in respect of claims arising from:

- personal injury or damage to property occurring on board or in direct connection with the operation of the ship or with salvage operations;
- loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- loss resulting from the infringement of rights other than contractual rights occurring in direct con-

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- nection with the operation of the ship or salvage operations;
- the raising, removal, destruction or rendering harmless of a ship that is sunk, wrecked, stranded or abandoned, including anything that is or has been on board that ship;
- the removal, destruction or rendering harmless of the cargo of the ship; and
- measures taken to avert or mitigate loss that is, or would be, subject to limitation of liability, as well as loss caused by such measures.

The right to global limitation of liability does not apply to:

- claims for reward for salvage or contribution in general average;
- claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage; and
- claims arising from nuclear damage caused by a nuclear-powered ship.

For claims resulting from the ship's own passengers dying or being injured, the liability limit is 400,000 SDR (Special Drawing Rights) multiplied by the number of passengers the ship is permitted to carry under its certificate.

For other claims in the event of death or personal injury, the liability limit is 3.02 million SDR for ships with a tonnage of 2,000 tons or less. For a ship with a larger tonnage, the liability limit is increased as follows:

- for each ton from 2,001 to 30,000 tons, an increase of 1,208 SDR;
- for each ton from 30,001 to 70,000 tons, an increase of 906 SDR; and
- for each ton over 70,000 tons, an increase of 604 SDR.

The limit of liability for claims relating to the location, marking and removal of a wreck is 2 million SDR for non-passenger ships operating exclusively on regular scheduled services. For such vessels with a tonnage of more than 1,000, the liability limit is increased as follows:

- for each ton from 1,001 to 2,000, by 2,000 SDR;
- for each ton from 2,001 to 10,000, by 5,000 SDR; and
- for every ton over 10,001, by 1,000 SDR.

The liability limit for all other claims, as well as for any uncovered portion of claims relating to the ship's own passengers' death or personal injury, is 1.51 million SDR for ships with a tonnage of 2,000 tons or less. For a ship with a larger tonnage, the liability limit is increased as follows:

- for each ton from 2,001 to 30,000 tons, by 604 SDR;
- for each ton from 30,001 to 70,000 tons, by 453 SDR; and
- for each ton over 70,000 tons, by 302 SDR.

3.6 Seafarers' Safety and Owners' Liability

Denmark is a signatory state to the 2006 Maritime Labour Convention.

With regard to working environments on Danish territory – ie, on Danish land and in Danish waters – the Working Environment Act applies. The Working Environment Act applies to Danish and foreign ships with regard to the loading and unloading of ships, and to shipyard work on board ships and work that is equivalent thereto. The Working Environment Act is administered by the Danish Working Environment Authority.

The Safety at Sea Act and the Seafarers' Employment Conditions Act apply to Danish ships, including outside Danish territories. Specific Executive Orders have been adopted under these acts, such as the Executive Order on Working Environments in Ships and the Executive Order on Seafarers' Rest Periods. These regulations are considered maritime law and administered by the Danish Maritime Authority.

4. Cargo Claims

4.1 Bills of Lading

Denmark is a party to the 1968 Hague-Visby Rules and has incorporated the Rules into the Danish Merchant Shipping Act.

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In addition, Denmark has adopted the Rotterdam Rules and parts of the 1978 Hamburg Rules, even though Denmark is not a party to the latter.

4.2 Title to Sue on a Bill of Lading

Under Danish law, the rightful holder of a bill of lading has title to sue on the bill of lading. Rights under a bill of lading, including title to sue, are transferred when the bill of lading is validly transferred. To what extent a bill of lading can be transferred depends on its wording. It can be issued to a specific person, to order or to a bearer:

- if it is issued to a specific person, it cannot be transferred, and only that person has the right to sue;
- if it is issued to order, any person who by a consecutive series of transfers can prove that they are the rightful owner has title to sue on the bill of lading; and
- if it is issued to the bearer, any person who has the bill of lading in their possession has the rights.

However, it must be noted that the carrier is responsible for the goods while the goods are in the custody of the carrier, and anyone able to prove a legal interest related to the goods is, under Danish law, permitted to sue the carrier, irrespective of whether the plaintiff is the holder of a bill of lading.

The bill of lading is decisive for the legal relationship between the issuer of the bill of lading and the person who, with the bill of lading in hand, demands delivery of the cargo. Moreover, under Danish law, a cargo interest may sue a carrier for damage due to loss or damage of cargo under the general rules on non-contractual liability.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

A carrier (whether the performing carrier or contractual carrier) is responsible for the goods while the goods are in the custody of the carrier in the port of loading, during transport and in the port of discharge.

The carrier is liable for losses arising out of damage to or loss of goods, as well as for delay, while those goods are in the custody of the carrier, unless the car-

rier substantiates that fault or neglect by the carrier or someone for whom the carrier is liable did not cause the loss or damage.

The carrier is not liable for loss or damages caused by fault or neglect in the navigation or the management of the ship. Similarly, the carrier is not liable for loss or damages caused by fire, unless caused by the actual fault or privity of the carrier. The carrier is also exempted from liability for damage done to live animals during transportation. Notwithstanding this, the carrier is liable for loss due to unseaworthiness caused by want of due diligence on the part of the carrier to make the ship seaworthy.

The contracting carrier, as well as the performing carrier and anyone for whom the carrier is liable, may limit the liability arising out of the carriage of goods by sea. Thus, the liability shall not exceed 667 SDR for each package, other shipping unit or 2 SDR per kilogram of gross weight of the goods lost, damaged or delayed (whichever is the higher).

A carrier may not limit liability arising out of the carriage of goods by sea if it is proved that the loss resulted from an act or omission of the person done with the intent to cause that loss, or done recklessly and with knowledge that such a loss would probably result.

4.4 Misdeclaration of Cargo

According to the Danish Merchant Shipping Act, dangerous goods must be marked or labelled as dangerous in a suitable manner. The shipper must inform the carrier, and the sub-carrier to whom the goods are delivered, in good time of the dangerous character of the goods and, if necessary, state the precautions to be taken.

In the event that the shipper is otherwise aware that the goods are of such a character that their carriage could cause danger or serious nuisance to persons, the vessel or other cargo, the shipper must also provide information about this. If the goods are to be treated with special care, the shipper must inform the carrier accordingly in good time and state the measures that may be necessary.

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Where the shipper hands over dangerous goods to the carrier or a sub-carrier without informing them of the dangerous character of the goods and, if necessary, of the precautions to be taken, and if the recipient of the goods does not otherwise have knowledge of the dangerous character, the shipper is liable towards the carrier and any sub-carrier for costs and any other loss resulting from the carriage of such goods. The carrier or sub-carrier may unload, render innocuous or destroy the goods, as the circumstances may require, without any obligation to pay compensation.

In a Supreme Court case from 1999, the Danish Supreme Court found that batteries, as well as battery waste, should be regarded as dangerous goods. Prior to loading, the carrier noticed a liquid running out of the cargo of waste batteries. The shipper informed the carrier that the liquid could be neutralised. In reliance on this information, the carrier loaded and transported the dangerous cargo of battery waste. During transport, the liquid from the battery waste caused significant damages to the ship. The Supreme Court held that the shipper was liable for the damages caused to the ship by the batteries.

Moreover, in a decision from the Danish Maritime and Commercial Court of 7 April 2014, it was established that the carrier must substantiate the cause of the damage. In that case, the shipper and recipient of scrap metal that contained flammable liquids were not considered liable to the ship-owner. During loading, a cargo of scrap metal caught fire on board the ship and caused significant damage. The cause of the fire could not, however, be determined with certainty, and on this basis the Maritime and Commercial Court did not hold the shipper liable for damages.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar for filing a claim for damaged or lost cargo is one year, starting from the day of delivery or the day the goods should have been delivered, as per Section 501 of the Danish Merchant Shipping Act. For recourse claims related to damages or lost cargo, the time bar is one year from the time where the claim was paid or legal proceedings concerning the claim commenced.

The time bar is suspended by the initiation of legal proceedings. The time limit can be extended after the damage or loss occurred by agreement between the parties. Any agreement between the parties extending a time bar prior to the occurrence of a loss or damage is invalid.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Denmark is a party to the 1952 Arrest Convention, which has been implemented into Chapter 4 of the Danish Merchant Shipping Act. In addition, the Danish Administration of Justice Act, which contains general rules on arrest, applies alongside the Danish Merchant Shipping Act.

5.2 Maritime Liens

Denmark is a party to the 1967 Lien Convention, which has been implemented into Chapter 3 of the Danish Merchant Shipping Act. Also, as stated previously, the Danish Administration of Justice Act, containing general rules on arrest, applies alongside the Danish Merchant Shipping Act.

The Danish Merchant Shipping Act contains an exhaustive list of claims, which may be used as a basis for maritime liens. For example, a maritime lien may be granted based on claims for compensation for personal injury arising in direct connection with the operation of the ship. Liabilities resulting from contracts for chartering a vessel cannot serve as a basis for a maritime lien.

5.3 Liability in Personam for Owners or Demise Charterers

Denmark has implemented the 1952 Arrest Convention with a reservation, according to which making an arrest in Denmark presupposes that the claim can be levied against the ship-owner.

The general rule is that only the particular ship in respect of which the maritime claim arose may be arrested. However, sister ships owned by the ship-owner of the ship in respect of which the maritime claim arose may also be arrested, provided that the claim is not a dispute on property rights to a ship or

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a dispute between co-owners of a ship on property rights, possession, the use or revenues of the ship or mortgages on the original ship.

Arrest in associated ships is not possible. According to Danish law, arrest can thus only take place without the owner being personally liable for the claim if the claim is also secured by a maritime lien. This applies regardless of the creditor being domiciled in a country that has implemented the Convention without a corresponding reservation.

5.4 Unpaid Bunkers

According to the Danish Merchant Shipping Act, an arrest requires that the owner of the ship can be held personally liable, unless the claim is secured by a maritime lien. Consequently, if bunkers were supplied to a chartered vessel, and if the bunkers were ordered by the charterer and not by the owner, the claim cannot form the basis of an arrest, as the ship's owner is not liable and as bunker suppliers are not afforded a maritime lien under Danish law. If, however, the owner is liable towards the bunker supplier, the bunker supplier may apply for an arrest of the vessel.

A supplier may, irrespective of the foregoing, apply for an arrest pursuant to the Danish Administration of Justice Act, as previously mentioned.

The charterer will not have authority to bind the vessel by ordering necessities, unless an authority to do so has been granted to the charterer subject to general principles of Danish contract law.

5.5 Arresting a Vessel

The application must contain an indication of the specific circumstances that, in the creditor's opinion, may prevent them from obtaining coverage of their claim. The documents that the creditor wishes to rely on must also be attached (copies are sufficient). If these requirements are not met, the bailiff's court may dismiss the case.

A power of attorney is not required to be submitted with the request for arrest. The arrest application must be drafted in Danish. Any supporting documentation is usually accepted in English, but the opponent or

the court may occasionally require a translation into Danish.

The arresting party will usually have to provide security for the damages and inconvenience that the arrest may cause the arrestee. The enforcement court specifies a sufficient amount, which will normally not exceed an amount corresponding to five days' loss of hire.

Both parties may appeal the enforcement court's decision regarding the amount of security to the Danish High Court, which will review the decision. The Danish High Court's decision is final and cannot be appealed.

There are no rules regarding the form in which the arresting party has to provide security. Often, enforcement courts demand a bank guarantee, but there is no statutory authority to such a demand. The court will usually also accept a letter of guarantee from a protection and indemnity (P&I) club.

5.6 Arresting Bunkers and Freight

Bunkers and freight may be subject to arrest in accordance with the Danish Administration of Justice Act.

In reality, there are several challenges concerning bunker arrest. For example, as previously mentioned, it is a requirement that the execution of the claim be levied against the owner. This means that arrest can only be carried out with regard to a debtor's own assets, and not to assets owned by anyone else; as bunker tanks are normally not emptied completely, it may be a challenge to determine which part of the bunker is owned by a specific debtor.

5.7 Sister-Ship Arrest

For certain maritime claims, it is possible to make an arrest of a sister ship. This requires the sister ship to have been owned by the same legal entity that owns or owned the vessel with which the maritime claim is concerned at the time the maritime claim arose.

5.8 Other Ways of Obtaining Attachment Orders

According to the Danish Merchant Shipping Act, apart from ship arrest, a ship-builder or a ship-repairer can exercise their right of retention over a ship to secure a claim in respect of the ship-building or repair.

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Further, and as previously mentioned, arrest can be carried out as a security for non-maritime monetary claims in accordance with the Danish Administration of Justice Act if:

- execution is not possible;
- the possibility of payment will otherwise be significantly reduced; and
- the claimant accepts that the vessel will not be detained.

Moreover, the Danish Administration of Justice Act allows for obtaining attachments (levy execution) once a judgment or award has been obtained, a settlement entered into or a mortgage signed. Once levied, execution gives the execution creditor the right to apply for a forced sale. To levy execution on a vessel, the following is required:

- an enforceable judgment or court order;
- a settlement that expressly states that it is enforceable;
- an instrument of debt expressly stating enforceability; or
- a mortgage.

Thus, this form of attachment can be used to secure payment of a right already established through a judgment, settlement agreement, debt instrument or mortgage.

The Brussels Regulation (recast) No 1215/2012 on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters is in force in Denmark through Denmark's bilateral agreement with the EU. In accordance with the Regulation, judgments from within the EU are recognised and enforceable without any special proceedings. As Denmark is bound by the Lugano Convention, judgments rendered by a court within the European Free Trade Association (EFTA) are similarly recognised and enforceable in Denmark.

The Brussels Regulation also allows for provisional measures, including arrest. This means that a Danish court should allow arrest of a vessel situated outside Danish waters in accordance with the Danish Administration of Justice Act.

5.9 Releasing an Arrested Vessel

An arrest shall be lifted if security is provided that is deemed by the enforcement court to be sufficient to cover the claimant's claim, including:

- interest due and estimated future interest; and
- likely costs of the arrest procedure, the arrest action and the action regarding the claim.

Usually, an amount corresponding to the total claim plus 30–40% is regarded as sufficient.

A club letter of indemnity (LOI) is usually accepted and, similarly, a bank guarantee issued by an EU bank should be acceptable in Danish courts.

There is no formalised procedure, and a petition to release the ship can simply be submitted to the court by email.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial sales of arrested vessels are regulated by the general rules on judicial sales of goods, which are laid down in the Danish Administration of Justice Act, Chapters 49–50.

Arrest is only an interim remedy designed to secure the payment of debt where execution is not immediately available. A judicial sale of a vessel requires that execution first be levied on the vessel. Execution cannot be levied on the basis of a statutory maritime lien, but requires (for example) a judgment, an enforceable settlement or a mortgage.

Once execution is levied on the arrested vessel, usually on the basis of a judgment regarding the merits of the claim, the person with the claim can apply for judicial sale with the enforcement court.

The enforcement court will closely monitor a forced sale of a vessel, and it is not possible to conduct a private sale. The judicial sale of a vessel will be announced in the Official Danish Gazette and other relevant places after specific orders from the bailiff's court. The announcement must be made at least six weeks before the sale, and at least twice. If the vessel

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is registered in the DAS or the DIS, the judicial sale will be registered therein.

Usually, the owner of the vessel will not be deprived of the right of disposal entirely, and will therefore still be responsible for the maintenance of the vessel. In addition, the owner is not allowed to dispose of the vessel in a way that could impair the arrestor's right.

Maritime liens on a ship take priority over other maritime claims and must be paid in the order in which they are listed; and those mentioned under the same number shall rank equally.

However, rewards for salvage, removal of wrecks, and contribution in general average shall rank above other maritime liens that arose earlier; and, as regards the relationship between rewards for salvage, removal of wrecks and contribution in general average, the youngest rights shall rank before the oldest.

Maritime liens on a ship are not extinguished if the property rights to the ship are transferred to another party, or if the registration of the ship is changed.

Claims secured by registered mortgages and all other claims have priority after maritime liens in the order in which they have been established.

A vessel may be subject to several mortgages, and there is no general rule requiring consent from higher-recorded mortgagees. It is not uncommon for negative pledge agreements to be agreed to and registered.

5.11 Insolvency Laws Applied by Maritime Courts

Rules on reorganisation analogous to Chapter 11 of the US Bankruptcy Code are set out in Chapter 1 (a) of the Danish Bankruptcy Act. According to this act, arrest cannot be made during reorganisation proceedings. The rules imply that the debtor's creditors are barred from seeking satisfaction in the debtor's assets through individual prosecution when a reconstruction treatment has been initiated.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Under Danish law, a person who has obtained an arrest on the basis of a claim that turns out not to exist must pay the debtor compensation for loss and tort. The same applies when the arrest lapses or is revoked due to subsequent circumstances if it must be assumed that the claim did not exist.

The liability is strict if the claim for which an arrest has been made turns out not to exist. If the arrest is otherwise found wrongful, the creditor is liable for loss and tort on a fault-based basis.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The regulations on carriers' liability for passengers and insurance obligations, as well as passengers' possibilities of being compensated and passenger rights, are stipulated in five sets of regulations:

- the 1974 Athens Convention on the carriage of passengers and their luggage by sea, as amended by the Protocol of 2002;
- EU Regulation No 392/2009;
- EU Regulation No 1177/2010;
- Executive Order No 9 of 10 January 2013 on certificates for confirming insurance or other guarantee for covering the liability to pay compensation in connection with accidents during the carriage of passengers by sea, as amended by Executive Order No 47 of 21 January 2014 and Executive Order No 1525 of 11 December 2015; and
- Chapter 15 of the Danish Merchant Shipping Act on the carriage of passengers and their luggage.

According to the Danish Merchant Shipping Act Section 501, the period of limitation regarding delay of carriage of passengers or passengers' goods is two years after the day the passenger or the baggage was discharged.

The limitations on liabilities are as follows.

- Loss caused by delay can be limited to 4,150 SDR.

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- Loss caused by delay of luggage is:
 - (a) 1,800 SDR for hand luggage;
 - (b) 10,000 SDR per vehicle; and
 - (c) 2,700 SDR per passenger for other luggage.

Liabilities cannot be limited if the loss is caused with intent or gross negligence.

Claims for indemnities for personal injury of a passenger may serve as a basis for a maritime lien.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Generally, Danish courts recognise and enforce law and jurisdiction clauses stated in bills of lading.

Any prior agreement that restricts the plaintiff's right to have disputes regarding carriage of goods decided by civil legal proceedings shall be void to the extent that it restricts the plaintiff's right, at their option, to institute an action with a court at one of the following places:

- the principal place of business or, in the absence thereof, the habitual residence of the defendant;
- the place where the contract was made, provided that the defendant has there a place of business, a branch or an agency through which the contract was made;
- the port of loading agreed in the contract of carriage; or
- the agreed or actual port of discharge, pursuant to the contract of carriage.

However, this does not prevent a party from instituting an action with a court at the place stated in the contract of carriage, nor does it prevent the parties from agreeing on how a dispute is to be settled once it has arisen.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

If a bill of lading has been completed pursuant to a chartering agreement, and that chartering agreement contains an arbitration clause, unless the bill of lad-

ing expressly states that such a clause is binding on the holder of the bill of lading, the carrier may not invoke the provisions against a holder of a bill of lading who has acquired it in good faith. Thus, an arbitration clause mentioned in the charterparty is only binding on the holder of a bill of lading if the bill of lading expressly refers to the clause.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Denmark is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The general rule is that foreign arbitral awards are recognised and can be enforced in Denmark, except for in a few statutory cases, such as if the arbitral award is clearly incompatible with Danish law or if the award is void.

The Danish Arbitration Act is based on the 1985 UNCITRAL Model Law and the 1958 New York Convention.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Under Danish law, arrest can be obtained if the requirements set out in 5. **Maritime Liens and Ship Arrests** are met. The jurisdiction and applicable law of the underlying material claim is irrelevant, and a Danish court will thus order the arrest of a vessel even if the relevant claim is subject to foreign arbitration or jurisdiction, due to an arbitration or jurisdiction clause in the relevant contract.

7.5 Domestic Arbitration Institutes

Denmark has a domestic arbitral institution: the Danish Institute of Arbitration. It does not specialise in maritime arbitration, but maritime disputes are occasionally arbitrated with the Danish Institute of Arbitration. In addition, maritime disputes can be arbitrated with the Nordic Offshore & Maritime Arbitration Association, facilitating international maritime and offshore arbitration in the Nordic countries.

Denmark also has a well-established Mediation Institute, and maritime disputes can be mediated with the assistance of the Mediation Institute if the parties so agree prior to or once a dispute arises. During court cases, the courts also normally offer court mediation.

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The procedure applicable to maritime arbitration and mediation depends on the parties' agreement and on whether the rules of an arbitration or mediation institute have been specified by the parties.

In addition to these procedures, the Danish Maritime and Commercial Court uses expert judges with maritime expertise. Thus, all maritime cases heard before the Maritime and Commercial Court are heard by a panel of three judges: one legal judge and two lay judges with relevant maritime expertise.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

The ordinary courts may refer a case to arbitration if, on the basis of a request from one of the parties, the court finds that the case has been commenced incorrectly and is in breach of an arbitration clause. However, this presupposes that the court does not declare the clause invalid or assess that the subject matter cannot be admitted to arbitration.

In the event that arbitration proceedings have already been instituted, the courts alone may decide whether the subject is suitable for arbitration. In that case, the pending arbitration proceedings may proceed, irrespective of whether the proceedings are pending before the ordinary courts. If it turns out that the case is not suitable for arbitration, the arbitral tribunal will dismiss the case.

According to the Danish Arbitration Act, Section 16, a party's objection to the validity of an arbitration clause must be submitted no later than the submission of the defence.

If proceedings are commenced in breach of a foreign jurisdiction clause, the remedy depends on the nationality of the jurisdiction clause in question. If the breached jurisdiction clause specifies jurisdiction within the EU, and if the Brussels I Regulation is applicable, a Danish court must decline jurisdiction if the court designated in the jurisdiction clause has already declared that it has jurisdiction; otherwise, a Danish court must stay proceedings until the designated court declares whether it has jurisdiction.

If proceedings are commenced in breach of a foreign jurisdiction clause designating a court outside an EU member state, a Danish court may choose to hear the matter if jurisdiction can also be established in Denmark.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Danish ship-owners are able to choose to be subject to the Danish tonnage tax scheme as an alternative to payment of regular corporate tax. Under the Danish tonnage tax scheme, ship-owners' income is fixed on the basis of the net tonnage at their disposal. Ship-owners pay tonnage tax irrespective of actual income, profit and loss.

The participation of ship-owners in the tonnage tax scheme is voluntary, but the choice of opting in or out is binding for a period of ten years.

Special vessels such as supply, construction, offshore and ice-breaking vessels are also eligible for the tonnage tax scheme.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

For a non-performing party to invoke force majeure, the party must prove that:

- performance of the contract is impossible; and
- the exclusion is due to unforeseen events of extraordinary character.

Force majeure under Danish law is slightly different from the English term "frustration".

The decisive time factor of whether an event is unforeseen is the signing of the contract. If the shipping contract was signed before the event of extraordinary character, such event would be considered unforeseen, and the party could potentially be able to invoke

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force majeure for any non-performance resulting from the effects of the event if it rendered the performance impossible.

This does not mean that force majeure cannot be invoked for any non-performance of a contract agreed on after such an event has occurred. Unforeseen situations can occur after an event has already occurred due to developments in the situation – eg, if a national conflict at the place of delivery suddenly makes it impossible to deliver the goods amidst an already ongoing conflict.

It should be noted that the wording of a force majeure clause may influence the foregoing, as its wording would take precedence over the Danish legal principles regarding force majeure mentioned previously.

If an event has resulted in the performance of the contract being more burdensome for the performing party, this does not relieve the performing party from his or her obligations under the contract.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Denmark has implemented the IMO 2020 limitation on the sulphur content of fuel oil on board ships in EU waters. This was implemented in a statutory order that came into force on 1 January 2020.

According to the statutory order, vessels sailing in SOx-control emission areas are not allowed to use bunker fuel with a sulphur content of more than 0.10%. The same limit of sulphur content also applies for ships calling at a port outside a SOx-control emission area within the EU. These limitations in sulphur content have been effective since 2015 as a result of Directive 2012/33/EU. Danish waters are within a SOx-control area, and the sulphur limit is therefore 0.1%.

The Danish Ministry of Environment is responsible for enforcing the rules concerning sulphur. The Ministry of Environment is responsible for the regulation of ships' sulphur emissions, while the Danish Maritime Authority assists with the practical control of ships flying the Danish flag and of foreign ships in Danish ports. One of the enforcement actions is the use of so-called

sniffers, which is a technology installed on bridges, helicopters and drones that relies on the exhaust gases from ships. A sniffer can measure the amount of sulphur in a ship's bunker oil without an actual sample from the bunker oil.

In addition, the Danish Maritime Authority takes part in international negotiations and co-operation on the implementation and enforcement of the regulations.

From 2015 to 2020, a total of 36 shipping companies were reported to the police owing to suspicion of violating the sulphur limitations. In 17 of these cases, the shipping companies have agreed to be fined summarily.

The firm has conducted and won the only (as far as is known) trial in Denmark concerning violation of the limitation of sulphur content in bunker fuel. The firm's client was the defendant, a major shipping company, which was facing a fine of more than DKK200,000 and the possibility of the company's name being published as an offender. This has authority in Danish law when the fine exceeds DKK200,000 and when the prosecution believes a shipping company has violated the sulphur limit.

The client claimed to be innocent from the beginning and that the Danish Environmental Protection Agency had wrongfully sampled sulphur tests from the lubrication oil instead of the bunker fuel filter. The firm managed to prove that the test had indeed been taken from the lubrication oil, thus raising reasonable doubt about the origin of the tests, and the court acquitted the client.

9.3 Trade Sanctions

Trade sanctions are adopted by the UN and the EU. A trade sanction can be adopted in two possible ways:

- by the EU implementing independent sanctions that are directly applicable to any individual or business within the EU; or
- by the EU implementing a sanction agreed on within the UN Security Council.

Such sanctions are put into effect through a Council Regulation. The restrictions are therefore not incor-

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porated into Danish law but are directly applicable within the EU.

In 2014, the EU adopted trade restrictions against Syria; however, a Danish bunker group was negligently participating in trading jet fuel with two Russian companies, which were importing the jet fuel to Syria. It was an aggravating circumstance that the jet fuel was used in Russian fighters, which were in turn used by President Assad to bomb Syria. The companies were fined DKK30 million and DKK4 million, respectively, and one of the managers was sentenced to a four-month suspended prison sentence.

The sanctions were based on Regulation No 36/2012 Article 7a(1)(a), where it is prohibited to “...transfer or export, directly or indirectly, jet fuel and fuel additives... to any person, entity or body in Syria, or for use in Syria”.

The Danish Ministry of Foreign Affairs’ website lists all the current trade sanctions Denmark is obliged to enforce. The list is updated whenever a new sanction enters into force. While US trade sanctions, for instance, are not incorporated into Danish domestic law, they still have a large indirect impact on Danish companies.

The ongoing situation in Ukraine has led the EU to adopt a substantial number of restrictive measures in view of Russia’s destabilising actions in Ukraine. Sanctions have also been adopted against Belarus and Iran for their involvement in the conflict. As described in the foregoing, these sanctions directly apply to individuals and businesses in Denmark.

Several of the adopted EU sanctions contain exemptions to the trade prohibitions. Depending on the exemption, it may be a requirement to obtain authorisation from the relevant national authority to refer a trade under an exemption.

9.4 International Conflict

Outside the increase in trade sanctions described in 9.3 Trade Sanctions, there have been no legal implications for maritime law or trade in Denmark of international conflicts, such as the ongoing war in Ukraine or the Red Sea Crisis.

The implications for maritime trade of the Ukrainian war appear to have somewhat stabilised in 2024, albeit taking into consideration that the war is still ongoing and is creating a volatile environment for maritime logistics providers operating near the Ukrainian territory. The circumstances in Ukraine are also creating volatility in the market for war risk insurance products.

The Red Sea Crisis continues to affect maritime trade, as many lines consider the trade route unviable and are avoiding the Suez Canal altogether. However, it appears that some stakeholders are being optimistic with regard to the future use of the Suez Canal, as many considers the risk of attacks to have been lowered significantly.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The Brussels I Regulation, which regulates jurisdiction, is supplemented by the Danish Merchant Shipping Act, which contains jurisdictional rules applicable to carriage of goods by sea. These rules take precedence over the general rules provided in the Brussels I Regulation.

The Danish Merchant Shipping Act provides that a jurisdiction clause cannot limit a plaintiff’s right to commence proceedings:

- at the place where the defendant is domiciled;
- at the place where the agreement was entered into, if the defendant has a branch or place of business or the like there;
- at the place where the goods were loaded; or
- at the place where the goods were or should have been discharged.

This means that the plaintiff can always commence proceedings in those jurisdictions even if an exclusive jurisdiction clause states differently.

As these places of jurisdiction are not identical to those laid out in the Brussels I Regulation, the Danish Merchant Shipping Act provides that the Brussels I

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Regulation takes precedence. As a result, the place of jurisdiction provided in Section 310 (1) will no longer apply.

Subsequent to Brexit, the jurisdiction of a dispute concerning carriage of goods by sea between a party domiciled in Denmark and one domiciled in the UK will be regulated solely by the Danish Merchant Shipping Act if proceedings are initiated in Denmark.

The effects are (inter alia) that, due to Brexit, a plaintiff may choose to initiate proceedings in one of the jurisdictions provided by the Danish Merchant Shipping Act, irrespective of an exclusive jurisdiction clause.

This means that, within the field of maritime litigation, and especially with regard to disputes arising out of the carriage of goods by sea to or from Denmark, Brexit has increased the number of places in which proceedings may be initiated, irrespective of an exclusive jurisdiction clause agreed upon between the parties. When taking into consideration that one of the world's largest carriers is in fact Danish, this may actually entail changes in the current statistics and the UK's dominant market position concerning the provision of maritime services globally.

Trends and Developments

Contributed by:

Johannes Grove Nielsen, Camilla Sogaard Hudson, Lars Rosenberg Overby and Malthe Hersom Kløft
Bech-Bruun

Bech-Bruun is a market-oriented law firm offering a wide range of specialist advisory services to large sections of the Danish corporate and public sectors, as well as to global enterprises. Consisting of around 600 experienced and highly specialised employees, of whom 57 are partners, Bech-Bruun is one of Denmark's leading full-service law firms. Bech-Bruun's shipping and logistics group, comprising about ten

individuals, advises on all legal aspects of shipping, transport and logistics. It co-operates with leading international transport lawyers and maintains an extensive international network to service its clients. Bech-Bruun is involved in the majority of shipping deals in Denmark, and is particularly known for maritime insolvency and issues related to the bunker industry.

Authors



Johannes Grove Nielsen is a partner and department head of Bech-Bruun's litigation and shipping group, and former co-chair of the Maritime and Transport Committee of the IBA.

He advises on all aspects of maritime,

transport and offshore law, and is an experienced litigator admitted to the Danish Supreme Court. He is part of Bech-Bruun's cross-border insolvency shipping team, and has particular experience with US Chapter 11 and Chapter 15 proceedings.

Johannes has led Bech-Bruun's OW bunker cases and handled many derivative lawsuits. He holds an MBA in Shipping & Logistics from Copenhagen Business School.



Camilla Sogaard Hudson is a partner in Bech-Bruun's shipping and litigation group. She specialises in all aspects of maritime, transport, offshore and insurance law. Camilla handles cases on the carriage of

goods, charterparties and bunker disputes (among others), rendering legal advice to Danish and non-Danish business clients including insurance companies, P&I clubs, ship-owners and cargo interests. She is part of Bech-Bruun's ESG team, advising on compliance and disputes regarding green shipping. Camilla is the former vice-president of the Transport Law Commission of the International Association of Young Lawyers (AIJA), and is often a speaker at national and international

shipping conferences. She holds an LLM in Maritime Law from the National University of Singapore.



Lars Rosenberg Overby is a senior associate in Bech-Bruun's shipping and litigation group. Lars was involved in drafting the standard contract Windtime, which is used in the offshore wind industry, and he has

advised on the charter of ships for several years. He is also chairperson of the Danish Maritime Law Association and active in the Polar Shipping Committee in Comité Maritime International. Lars has a background in P&I/defence insurance. Further, he is a juris doctor, completing a degree at the Institute of Maritime Law, University of Oslo. Lars has written several books and articles on maritime law topics and has been an external lecturer in maritime law at the University of Copenhagen.



Malthe Hersom Kløft is an associate in Bech-Bruun's shipping and litigation group. He provides legal support across a broad range of maritime, transport, offshore and insurance matters, assisting domestic

and international clients with complex issues relating to shipping operations and dispute resolution. As part of Bech-Bruun's shipping ESG team, Malthe is actively involved in advising on regulatory compliance. He regularly contributes to academic discourse on ESG in the maritime sector through

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publications and presentations. Additionally, Malthe serves on the board of Young CMI Denmark, the Danish association for young maritime lawyers.

Bech-Bruun

Gdanskgade 18
2150 Nordhavn
Copenhagen
Denmark

Tel: +45 25 26 33 77
Email: jgn@bechbruun.com
Web: www.bechbruun.com

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As 2025 has come to a close, it is an opportune time to reflect on the key legal trends and developments that have impacted the Danish shipping sector over the past year. This article highlights some of the most significant and interesting legal issues and developments in Danish shipping law in 2025.

One of the most prominent topics this year has been the renewed focus on the Russian “shadow fleet”, sparked by reports linking its operations to recent drone incidents in Europe. These developments have intensified discussions about the extent to which states can intervene in the safe passage of such vessels through their jurisdictions.

Additionally, the Danish Maritime and Commercial Court has decided on several shipping-related matters in the past year. Among these, the court rendered a decision in a matter relating to ship-owners’ right to limit liability under the global limitation rules. Further, several decisions have been rendered relating to cargo damage resulting from temperature deviations.

Continued Innocent Passage for the Russian Shadow Fleet in Danish Territorial Waters?

In September 2025, sightings of unauthorised drones over Copenhagen Airport led to the closure of the airspace over the airport for several hours. In the following days, drone activity was discovered over other Danish critical infrastructure, as well as in other Euro-

pean countries. Some of the drone activities were suspected to stem from the Russian shadow fleet vessel the Boracay, sanctioned by the European Union and the United Kingdom. The vessel was later detained upon its voyage through French coastal waters.

Unauthorised drone activities are one of several threats against critical European infrastructure in 2025 linked to, or which have been suspected to be linked to, the Russian shadow fleet.

The Russian shadow fleet is characterised as vessels operating under shell ownerships, which obfuscates which entity controls the vessels and the true intent of their operations. Their aim has, so far, been to evade sanctions by moving sanctioned and dangerous cargo, namely Russian oil. This is usually done during high-risk operations; for example through the use of old or outdated vessels without proper – or with questionable – insurance. It appears that the fleet is also engaged in hybrid warfare activities, with the latest threat being unauthorised drone activities.

So far, discussions regarding the innocent passage of Russian shadow fleet vessels through Danish territorial waters have mainly focused on the environmental and economic risks associated with their passage. However, recent incidents have led to widespread debate at the national and international levels, in particular with regard to whether shadow fleet vessels

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can continue to travel under the pretence of innocent passage when such vessels appears to be engaged in hybrid warfare activities.

The principle of innocent passage is codified under international maritime law under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Under UNCLOS, ships of all states enjoy the right of innocent passage through the territorial seas of other states, provided such passage is not prejudicial to the peace, good order or security of the coastal state. As such, a state may not impair the innocent passage of ships and may only intervene if such passage is not considered innocent. A passage is not considered innocent if, inter alia, a ship poses any threat to the sovereignty and territorial integrity of the coastal state or commits any act of propaganda aimed at affecting the defence or security of the coastal state.

Consequently, if a link is established between a shadow fleet vessel and drone-related activities that undermine the security of a coastal state, the state may lawfully take measures to interdict, investigate or even deny passage to such vessels within their territorial waters. In the case of the *Boracay*, the French coastal authorities enforced this right upon the vessel's passage through French coastal waters, as the vessel did not provide sufficient proof of its nationality and did not comply with the orders of the French coastal authorities.

Denmark has yet to impose its right to intervene in the journey of the Russian shadow vessels claiming innocent passage through Danish territorial waters. However, it appears that there is increasing national and international political pressure on the Danish government to enforce this right in light of the recent threats that the fleet has posed to, inter alia, critical European infrastructure.

Global Limitation of Liability in Relation to Damage to a Sea Cable (Danish Maritime and Commercial Court's Decision of 4 July 2025)

In July 2025, the Danish Maritime and Commercial court rendered a decision regarding ship-owners' right to limit liability under the global limitation rules.

Factual circumstances

In February 2022, the anchor of the tanker vessel *M/T SAMUS SWAN* (the "vessel"), ultimately owned by UNI-TANKERS (the "owners"), came loose and was dragged behind the Vessel during bad weather, resulting in the anchor colliding with a sea cable owned by Energinet Eltransmission A/S (the "claimant"). The sea cable provided electricity to the Danish island Bornholm, and thus the collision led to a power outage on the island.

The loose anchor had been found to be mainly a result of bad weather and high seas, causing the lashing of the anchor to fail – and thus resulting in the vessel dropping the anchor and its anchor chain. Upon the anchor coming loose, the vessel suffered from propulsion issues.

Prior to its collision with the sea cable, the vessel had encountered numerous issues with its manoeuvrability. A court-appointed expert also found that there had been historical issues with the anchor, and with safety management on the vessel.

In November 2022, the owners filed a request to create a global limitation fund with the Danish Maritime and Commercial Court, which was subsequently opened in December 2022. In February 2023, the limitation amount was set to 2,921,657.29 SDR (equivalent to DKK27,254,095.70 based on the exchange rate on creation of the fund).

The claimant disputed the owners' right to limit its liability. It was not disputed between the parties that the vessel's anchor had damaged the sea cable, or that owners were consequently liable.

The claimants argued that the owners had caused the damage to the sea cable through gross negligence, and with an understanding that the damage was likely to occur. In this respect, the claimants argued that several circumstances should lead to the forfeiture of the owners' right to limit its liability, including, inter alia, that:

- the actions of the technical management and the crew of the vessel should be associated with the owners' own actions;

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- the technical management and crew of the ship should have initiated a procedure to discover the reason for the vessel's propulsion issues upon dropping anchor; and
- the owners had not ensured that there was a proper safety management system onboard the vessel.

It should be noted that several other claimants were also involved and had filed claims in the fund, but these had not disputed the owners' right to limit its liability.

The Danish Maritime and Commercial Court's decision

The Danish Maritime and Commercial Court found that the ship-owner was entitled to limit its liability under the rules of global limitation.

In reaching this decision, the court firstly underlined that a deviation from the provisions regarding limitation of ship-owners' liability requires a claimant to substantiate that the person who has caused the loss or damage must, at a minimum, have done so with gross negligence and with an understanding that the relevant damage was likely to occur.

Further, due to the origin of the regulation of ship-owners' liability, the court is bound by the principles of international conventions in their interpretation thereof.

As the claimants had not substantiated that the owners had acted with gross negligence, and with an understanding that the damage was likely to occur, the owners were not prevented from claiming limitation of liability.

The Danish Maritime and Commercial Court was seated by a legal judge and two expert judges, who partly disagreed on the reasoning for reaching this conclusion. The judges agreed that the captain and the ship's crew were guided by the belief that there must have been something wrong with the machinery due to the history of the ship's engine. Therefore, they developed a kind of "tunnel vision", and this was the reason for the failure to consider other possible reasons for the ship's lack of propulsion.

However, the expert judges found that the captain's response to the vessel's lack of propulsion following the incident could not be considered grossly negligent. Such reasoning was not accepted by the legal judge, who found that the captain had acted in breach of good seamanship. Thus, the legal judge found that the captain had acted grossly negligently, but that the actions of the captain could not be associated with the owners.

While the decision of the Danish Maritime and Commercial court in this case does not invoke new legal standards, it cements some of the fundamental principles when dealing with ship-owners' liability and the right to limit liability. The court's decision sets in stone that a ship-owner's right to limit its liability under the global limitation rules cannot at the outset be deviated from, unless the ship-owner has caused the damage through gross negligence and with an understanding that the damage was likely to occur.

The court also underlined that the actions of the crew and captain do not correlate with the actions of the ship-owner. Thus, it is not sufficient to break the limitation of liability to substantiate wrongdoing on the part of the crew and captain. Consequently, any claimant seeking damages from a ship-owner and claiming limitation of liability under the global limitation rules is under a heavy burden of proof, should they wish to object to the ship-owner's right to limit its liability.

Burden of Proof in Respect of Carriers' Liability for Cargo Damage Due to Temperature Deviations

In 2025, the Maritime and Commercial court ruled in relation to four cases revolving around cargo damage resulting from temperature deviations. While a thorough analysis of all the judgments would not be appropriate for this article, important points when dealing with temperature deviation cargo claims follow.

Legal grounds in respect of liability for cargo damage claims

As with other cargo damage claims, a carrier is subject to Sections 274 and 275 of the Danish Merchant Shipping Act, which inter alia implements Article 3 of the Hague-Visby Rules, under which the carrier is liable for damage to the cargo while under the care of

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the carrier – unless the carrier is able to prove that the damage was not caused, in whole or in part, by any fault or negligence on the part of the carrier.

Thus, as a first step, the claimant must prove that the damage occurred while under the custody of the carrier. If the claimant is successful in this respect, the carrier is presumed liable for the damage. To escape liability, the carrier must in turn substantiate that the damage was not caused, in whole or in part, by any fault or negligence on the part of the carrier.

The bill of lading normally serves as an important document in cargo claims, easing the burden of proof. However, the bill of lading will often not contain evidence as to the temperature of the cargo prior to loading. Thus, the claimant is frequently required to document that a temperature deviation occurred while the cargo was under the care of the carrier, often through reference to temperature logs, and that the temperature deviation did not occur prior to loading and/or after unloading of the goods.

Central points from the decisions rendered by the Danish Maritime and Commercial Court

The above principles were applied by the Danish Maritime and Commercial Court in their decision of 18 August 2025 in a matter involving the transport of frozen fish from Iceland to France. The booking notes included text stipulating that the fish was dry, fresh and frozen at a temperature of -24 degrees Celsius. The recipient refused delivery of the fish, as the temperature was significantly higher than that indicated in the booking note.

The court found that the claimant had not lifted its burden of proof in respect of the temperature deviation having occurred while under the care of the carrier. The court noted that the claimant had not sufficiently proven that the frozen fish had been laden at -24 degrees Celsius, and deemed that the temperatures contained in the submitted temperature logs could not explain the increased temperature of the fish upon delivery. Consequently, the carrier was found not liable.

Another notable decision was rendered by the Danish Maritime and Commercial Court on 4 September

2025. The matter involved boxes of contrast medium, to be used for patient x-rays, which were to be transported from Shanghai to Los Angeles. The boxes of contrast medium were found to be at a total loss upon delivery, as they had been subjected to lower temperatures than permissible for safe use of the medium.

The waybill indicated that the contrast medium had to be transported at 21 degrees Celsius. The boxes of contrast medium were loaded in a container with two temperature loggers. It appeared from the logs of the temperature loggers that the temperature within the container used for transport had been maintained at between 0 and -6 degrees Celsius for long periods during transport. As the medium had been subject to temperatures outside the instructed temperature range for storage, the contrast medium was rendered unsafe for use.

On the basis of the temperature excursions indicated by the temperature logs, the court found that the claimant had substantiated that the damage to the transported contrast medium must have occurred while under the care of the carrier. While the exact reason for the temperature excursions could not be determined, the carrier had not provided sufficient documentation showing that the temperature deviations had not been caused by their fault or negligence. Consequently, the carrier was found to be liable.

This decision illustrates the difficulties that arise in connection with the burden of proof with regard to cargo damage resulting from temperature deviations. Thus, any requirements with regard to the transport of such cargo should be sufficiently described in the transport documents.

Further, the shipper should take appropriate measures to document the temperature of the cargo during loading – for example through the use of planted temperature loggers. Temperature readings taken after transport often do not provide sufficient evidence of whether the temperature deviation occurred during transport. The shipper will usually not be required to prove the cause of the temperature deviation.

In such situations, the carrier will often have difficulties invoking liability exceptions, which at the outset would

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only apply if the carrier successfully demonstrates that the temperature deviation resulted either from a fire or from a fault or neglect in relation to the navigation or management of the ship committed by the Master, crew, pilot or any other person performing work in the service of the ship. In the firm's view, temperature deviations seldom result from such circumstances.

HONG KONG SAR, CHINA

Law and Practice

Contributed by:

Christopher Andrew Potts

Crump & Co

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Crump & Co (formerly William A Crump & Son, founded in London in 1864) is a long-established Hong Kong-based maritime and commercial law firm, founded in 1981, with over 80 years of combined partner experience. The firm focuses on shipping and trade-related dispute resolution in the Far East and internationally. It acts for a broad client base, including ship and boat owners, charterers, salvors, cargo interests, P&I clubs, insurers, agents, crew, passengers and other claimants, with extensive

experience in contentious matters, negotiation and settlement. The firm has long been recognised by legal directories and peers as a leading Hong Kong maritime practice. Its lawyers include former seafarers and pilots, bringing strong technical insight into shipping and aviation, supported by a global network of correspondents and experts. Crumps was an early founder of the Admiralty Solicitors Group and continues to uphold its standards.

Author



Christopher Andrew Potts has 50 years' experience focusing on all aspects of maritime, aviation, transport and insurance law, including collision; fire/explosion; total loss; salvage; P&I; charterparty; carriage of goods by air, sea and road; product liability; commodities; letters of credit; personal injury; insolvency; and pleasure craft, including numerous headline cases.

Crump & Co

1103 Jubilee Centre
18 Fenwick Street
Wan Chai
Hong Kong

Tel: +852 2537 7000
Fax: +852 2804 6615
Email: Crumps@crumpslaw.com
Web: www.crump-co.com.hk



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Main Domestic Laws

Hong Kong's maritime and shipping jurisdiction is principally exercised by the High Court, sitting as the Admiralty Court. The foundational legal framework for maritime jurisdiction in 2026 includes:

- High Court Ordinance (Chapter 4) Section 12 defines maritime claims and empowers the High Court to hear actions in rem and in personam, including the arrest of vessels;
- the Rules of the High Court (Chapter 4A), particularly Order 75, govern the admiralty proceedings, such as warrants of arrest and preliminary acts in collision cases;
- Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Chapter 434) implements international conventions (Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the 1996 Protocol (LLMC 1976/1999)) that allow ship-owners and salvors to limit their financial liability;
- Carriage of Goods by Sea Ordinance (Chapter 462) enacts the Hague-Visby Rules into local law, governing cargo claims;
- District Court Ordinance (Chapter 336) grants limited in personam (against the person) jurisdiction for maritime claims within specific monetary limits; and
- other ordinances, including the Merchant Shipping (Collision Damage Liability and Salvage) Ordinance (Chapter 508) and the Bunker Oil Pollution (Liability and Compensation) Ordinance (Chapter 605).

Common Maritime Claims

High Court

The High Court has unlimited jurisdiction and hears the vast majority of maritime disputes in practice, including:

- proprietary claims regarding possession, ownership or mortgages of a ship;

- damage and collision claims for damage done or received by a ship;
- cargo claims arising from the carriage of goods, loss of cargo or breach of bills of lading;
- ship arrest and judicial sale to secure maritime claims;
- salvage, general average and towage claims;
- wages and disbursements claims; and
- limitation of liability and pollution claims.

District Court

The District Court can hear maritime claims only in personam (not against the ship itself), provided the claim value falls within its jurisdiction limits.

Arbitration

Many shipping disputes – especially charterparty and bill of lading claims – are resolved by arbitration in Hong Kong under the Arbitration Ordinance (Chapter 609). Bodies such as the Hong Kong Maritime Arbitration Group (HKMAG) promote, but do not adjudicate, maritime arbitration.

1.2 Port State Control

Port State Control and Marine Casualty Powers

Hong Kong applies port state control (PSC) in accordance with the Tokyo Memorandum of Understanding (the "Tokyo MOU"). The competent authority is the Marine Department (MD), which enforces international maritime standards adopted by the International Maritime Organization (IMO).

The MD's PSC powers derive from the Shipping and Port Control Ordinance (Chapter 313) and a range of Merchant Shipping Ordinances that implement major IMO conventions, including:

- the International Convention for the Safety of Life at Sea (SOLAS);
- the International Convention for the Prevention of Pollution from Ships (MARPOL);
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW); and
- the Maritime Labour Convention (MLC).

PSC officers may board foreign vessels in Hong Kong waters to inspect certificates, equipment and crew

conditions. Where “clear grounds” exist, the MD may conduct detailed inspections, detain substandard ships and initiate prosecutions. Failure to comply with detention orders or statutory requirements may result in fines and imprisonment.

Marine Casualties and Incidents

Marine accidents and casualties are investigated by the Marine Accident Investigation Section (MAIS) of the MD, in accordance with domestic legislation and the IMO Casualty Investigation Code. Mandatory reporting applies to collisions, groundings, pollution incidents, loss of life, serious injury and dangerous occurrences involving foreign vessels in Hong Kong waters, local vessels and Hong Kong-registered ships worldwide (primarily under Chapter 313 and the Merchant Shipping (Safety) Ordinance (Chapter 369)).

The Director of Marine may conduct a preliminary inquiry, and in serious cases the chief executive may order a marine court, which has powers including suspension or cancellation of seafarers’ certificates.

Pollution, Grounding and Wreck Removal

Under MARPOL-related legislation, pollution incidents must be reported promptly, and enforcement action may follow. Where a vessel is grounded or constitutes a hazard to navigation, the Director of Marine may direct removal, take possession of, or remove or destroy a wreck, with costs recoverable from the owner as a civil debt.

1.3 Domestic Legislation Applicable to Ship Registration

The Merchant Shipping (Registration) Ordinance (Chapter 415) establishes the complete system for registering ships, setting out the eligibility criteria, the registration process and the legal effects of registration.

The Merchant Shipping (Registration) Regulations support the aforementioned ordinance by providing the necessary procedural specifics for applications, surveys and documentation. Registration is influenced by broader maritime laws, such as the Merchant Shipping (Safety) Ordinance (Chapter 369), as a vessel must meet prescribed safety standards before it can be registered.

The Hong Kong Shipping Register, administered by the MD, is responsible for administering the domestic registration of vessels. The Director of Marine serves as the statutory Registrar of Ships, holding the ultimate authority over decisions on registration, the issuance of certificates and the maintenance of the official register. Daily operational responsibilities are carried out by the dedicated Shipping Registry division within the MD.

1.4 Requirements for Ownership of Vessels

Vessels registered in Hong Kong are required to be owned primarily by qualified persons, namely:

- Hong Kong identity card (HKID) holders who are ordinarily resident;
- Hong Kong-incorporated companies; and
- non-Hong Kong companies registered in Hong Kong.

Foreign individuals or companies can own vessels registered in Hong Kong, but they must either register as a non-Hong Kong company with the Companies Registry or ensure that a majority interest is owned by one or more qualified persons.

Under Demise Charter registration, vessels owned by foreign owners can be registered in Hong Kong for the duration of the demise charter only if the demise charterer is a qualified person.

A representative person must be appointed for each Hong Kong-registered ship. The person must be either a qualified person and the owner or part-owner of the ship, or a Hong Kong-incorporated company engaging in the business of ship management/agency.

There is no specific provision regarding the registration of a vessel under construction. However, since documents like a builder’s certificate are required for registration, which will not normally be released unless construction is finished, it is practically impossible to meet the registration requirements.

1.5 Temporary Registration of Vessels Temporary/Provisional Registration

Provisional registration is available in Hong Kong under the Merchant Shipping (Registration) Ordinance.

nance (Chapter 415). This is not a prerequisite for full registration, but a substantive registration for a limited duration, primarily to facilitate the process when original documentation is not immediately available; instead, photocopies or scanned copies of the title documents can be produced at the time of registration. A certificate of provisional registry is valid for one month, and can be extended for up to one more month under justifiable special circumstances.

For local or foreign vessels operating in Hong Kong for a definite, short period, the MD also issues temporary licences for specific operations without requiring full registration (Chapters 548 and 313).

Dual Registration

Hong Kong does not permit dual registration. A ship will cease to be registrable in Hong Kong if it is, or subsequently becomes, registered in any other place outside Hong Kong.

A demise/bareboat charterer can register a ship in Hong Kong but must declare it will not be registered elsewhere while under Hong Kong registration, with this registration being valid for the charter's duration.

1.6 Registration of Mortgages

The Registrar of Shipping within the Hong Kong Shipping Registry, operated by the MD, maintains the registration of mortgages. Mortgages are recorded on the ship's entry in the Shipping Register. If the mortgage is created by a Hong Kong-incorporated company, it must also be filed with the Companies Registry within one month of its creation.

Registration of a mortgage must be in the form "RS/M1 MD 641", in A3 size. When a ship is provisionally registered, the mortgagee is also required to produce a "Confirmation by Mortgagee" to the Registrar.

A ship mortgage must be executed under the corporate seal of the owning company, in accordance with its constitution. If the mortgage is signed by an attorney in fact, the power of attorney must be produced (original or certified copy), witnessed by a named witness and notarised if executed outside Hong Kong.

If a company does not have a common seal, it must provide a "Declaration of No Seal" made by a director or secretary. This declaration must be sworn in Hong Kong before the Registrar, a justice of the peace, a notary public, a commissioner for oaths or a solicitor; if made overseas, it must be sworn before a notary public. The Registry accepts various forms of corporate seals, including a simple seal marked "(Corporate Seal)" or a legal opinion – or notary statement – confirming that the company is not legally required to have a seal and that the signatory has proper authority to execute the document.

1.7 Ship Ownership and Mortgages Registry

Hong Kong allows public access to ownership and mortgage information recorded on the Hong Kong Shipping Register as it is a public record for transparency on legal ownership and charges.

The Transcript of Register contains the ship's current and past records including the status of mortgages as entered in the register.

Anyone may request an official Transcript of Register, either certified or uncertified, by completing request forms available on the MD's website when applying to the Registrar of Shipping and paying the required fee.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Debt Financing

Hong Kong ship finance is predominantly debt driven, typically provided by banks through bilateral or syndicated loans. A typical ship loan or facility outlines the terms of the loan, interest, repayment schedules, and the rights and obligations of both the borrower and the lender. It includes key operative provisions such as:

- representations and warranties, covering ownership of the vessel, validity of security, financial condition, assets and corporate status;
- conditions precedent to drawdown, including delivery of security and insurance documents;
- covenants, requiring compliance with insurance, maintenance and reporting obligations and restricting disposals or changes of ownership;

- events of default, such as non-payment, breach of covenant or insolvency, which allow the lender to accelerate the loan; and
- mandatory prepayment events, including total loss of the vessel or certain changes in ownership, which oblige the borrower to repay the loan immediately, even without a breach.

Equity Financing

While less common for large-scale ship acquisition compared to bank loans due to demanding listing requirements and complex procedures, shipping companies may raise equity through joint ventures, private placements or specialised maritime investment funds. In practice, equity is usually alongside bank debt rather than as a standalone funding source.

Ship Mortgages

The ship mortgage is the primary form of security for lenders. Mortgages over Hong Kong-registered ships are governed by the Merchant Shipping (Registration) Ordinance (Chapter 415) and must be executed in the prescribed statutory form (Form RS/M1). The form can be drafted to secure a wide range of complex financial arrangements such as syndicated loans, multi-currency facilities and hedging obligations.

The mortgage must be registered against the vessel at the Hong Kong Shipping Registry and, if the mortgagee is a company, at the Companies Registry in Hong Kong within one month of creation. Upon default, the mortgagee can take possession of the ship, or sell it either through a private sale or judicial auction via the Admiralty Court to discharge the debt. These remedies are grounded in both the statutory mortgage framework and the contractual terms incorporated into the loan and security documents.

Common Transactions and Other Security Packages (Ancillary Security)

Common transactions include newbuilding and second-hand vessel financing through bilateral and syndicated bank loans. Ship leasing arrangements, particularly finance leases and sale and leaseback, are also prevalent, often used by banks as an alternative to a direct loan for tax or structural reasons.

Beyond the statutory ship mortgage, lenders typically require a comprehensive security package to mitigate risk. This typically includes:

- assignment of vessel insurances and insurance proceeds, such as hull and machinery, P&I and war risks;
- assignment of earnings, freights and charter hire;
- assignment of rights under key contracts such as ship-building contracts, charterparties and management agreements;
- corporate or personal guarantees;
- charges over bank accounts;
- mortgages over shares in the ship-owning special purpose vehicle; and
- floating charges or debentures over other assets of the borrower.

2.2 Ship Leasing

Ship leasing in Hong Kong is increasing, driven by Hong Kong's tax incentives. The global ship finance landscape has shifted away from traditional European bank lending towards leasing, with Chinese lessors becoming dominant players. This shifts focus from lender/borrower loans to lessor/lessee leases for capital efficiency and asset management, while sale leasebacks offer liquidity and legal frameworks handle defaults differently, favouring lease asset repossession over traditional mortgage enforcement.

There has been a significant shift away from traditional banks towards Chinese leasing houses, Japanese leasing companies, private equity and alternative credit funds. Banks have reduced exposure, creating funding gaps, while leasing offers better funding diversification.

Lessor/Lessee Versus Lender/Borrower

Regarding the lessor/lessee (lease), the lessor owns the asset (ship) and grants use to the lessee for a fee (hire). This is an asset-based financing structure, often with higher loan-to-asset ratios, mitigating obsolescence risk for the lessee (especially with operating leases). Regarding the lender/borrower (loan), the borrower owns the ship and grants a mortgage as security. The lender provides debt, secured by the vessel (mortgage), but does not own the asset.

Differences in Enforcement

Regarding the lease, the focus is on repossessing the leased asset (the ship) under lease terms, which is often faster than mortgage enforcement – and is often governed by English law and arbitration (eg, the LMAA). A mortgage involves court-ordered foreclosure and sale, which is a more complex process – especially with international jurisdictions. This is governed by the Merchant Shipping (Registration) Ordinance (Chapter 415).

In essence, Hong Kong's pro-leasing policies and global market shifts are making leasing a dominant force, challenging traditional bank lending by offering unique capital and risk management benefits, especially for Chinese owners.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The liability of owners and interested parties for marine pollution and wreck removal is governed by a combination of domestic legislation, which gives local effect to several key international conventions.

Several international conventions concerning marine pollution liability are implemented in Hong Kong through local ordinances. These include:

- MARPOL 73/78 (enacted via the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Chapter 413));
- the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992 and the Fund Convention 1992 (implemented by the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Chapter 414)); and
- the Bunker Pollution Convention 2001 (given effect by the Bunker Oil Pollution (Liability and Compensation) Ordinance (Chapter 605)).

Hong Kong has not adopted the Nairobi Wreck Removal Convention 2007, although its registered ships must obtain the required insurance when operating in countries that are party to it. Wreck removal

liability is instead addressed by local law, with the Shipping and Port Control Ordinance (Chapter 313) allowing the Director of Marine to order wreck removal.

3.2 International Conventions: Collision and Salvage

Liability for marine collisions and salvage is mainly governed by the Merchant Shipping (Collision Damage Liability and Salvage) Ordinance (Chapter 508), which puts international conventions into effect. The overall framework for limiting liability is set out in the Merchant Shipping (Limitation of Shipowner's Liability) Ordinance (Chapter 434).

Collision

The 1910 Collision Convention (via Chapter 508) divides property damage liability based on fault. Liability for loss of life or personal injury is joint and several. The International Regulations for Preventing Collisions at Sea 1972, which help determine fault, are enforced by the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Chapter 369N).

The LLMC 1976/1996 is implemented through Chapter 434. This allows ship-owners to limit liability for collision claims and related maritime claims based on the vessel's tonnage, subject to statutory conditions.

Salvage

The 1989 Salvage Convention is implemented through Chapter 508. It governs the rights to salvage reward, criteria for determining salvage remuneration, special compensation for environmental protection and duties of salvors and owners. Contract terms can modify the convention, except for certain mandatory duties.

3.3 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims was incorporated by the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Chapter 434). Amendments to this Ordinance were made to give effect to the increased limits of liability, as set out in the 1996 Protocol and the subsequent 2012 amendments, in 2015 and 2017, respectively.

3.4 Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties (1969) (VCLT) only applies as a relevant interpretive aid when construing international treaty-derived regimes, instead of as a treaty. The VCLT is listed in the Hong Kong Department of Justice's official list of treaties as one of the multilateral agreements in force and applicable to Hong Kong. Although Hong Kong cannot independently accede as a separate treaty party, since China acceded to the VCLT in 1997, China's treaties can apply to the Hong Kong Special Administrative Region (HKSAR) after consulting the Hong Kong government under Article 153 of the Basic Law.

3.5 Procedure and Requirements for Establishing a Limitation Fund

The Merchant Shipping Ordinance (Chapter 434) governs the process of establishment of a limitation fund. The right to constitute a fund is available to ship-owners, charterers, managers, operators and salvors. The fund's value is based on the ship's limitation tonnage (or cargo tonnage for specific claims), plus interest.

The party claiming entitlement to limit starts a limitation action, often by issuing a writ in the court of first instance against potential claimants. The court issues a limitation decree, staying other proceedings and setting a deadline for claims. Payment into court (constituting the fund) is required, acting as the deposit to cover potential liabilities up to the limit. Competing claimants must file their claims within the set period against the fund.

3.6 Seafarers' Safety and Owners' Liability Applicable Domestic Legislation

The requirements of the MLC, 2006, were implemented in Hong Kong in 2018. The primary legislation that incorporates the requirements of the MLC into local law is the Merchant Shipping (Seafarers) Ordinance (Chapter 478) and its associated subsidiary legislation. The requirements include:

- those regarding seafarers' working and living conditions, such as minimum age, employment agreements, hours of rest, accommodation, food and catering, and repatriation;
- ensuring seafarers hold valid medical fitness certificates; and

- ensuring general health and safety protection and accident prevention on board ships, in compliance with relevant accommodation standards.

4. Cargo Claims

4.1 Bills of Lading

Applicable conventions and laws in Hong Kong include:

- Carriage of Goods by Sea Ordinance (Chapter 462) – this ordinance incorporates the Hague-Visby Rules into Hong Kong law, governing carrier liabilities and immunities for goods shipped from Hong Kong or under bills of lading; and
- Bills of Lading and Analogous Shipping Documents Ordinance (Chapter 440) – this statute governs the transfer of rights and title to sue on bills of lading.

The Rotterdam Rules have not been ratified or implemented in Hong Kong.

4.2 Title to Sue on a Bill of Lading

The lawful holder of a bill of lading has the title to sue the carrier, as established by the Bills of Lading and Analogous Shipping Documents Ordinance (Chapter 440). Hong Kong recognises the transfer of this right through assignment, allowing a party to transfer their right to sue to another. However, the assignee steps into the assignor's shoes, meaning any limitations (like time bars) remain.

A lawful holder includes the consignee named in the bill of lading, any endorsee to whom the bill has been transferred, and any person who becomes the lawful holder through possession and endorsement.

Assignment of Title to Sue

Hong Kong recognises that sea waybills and ship's delivery orders confer contractual rights to the person entitled to delivery under Chapter 440. When rights are assigned, the assignee (new holder) can sue in their own name, but they cannot be in a better position than the original holder (assignor).

Hong Kong does not recognise a mere bare contractual assignment of rights under a bill of lading as

sufficient to confer statutory title to sue against the carrier. Such assignments may be effective between parties for contractual purposes but cannot override the statutory mechanism.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

In Hong Kong, ship-owners' liability for cargo damage is governed by the Carriage of Goods by Sea Ordinance (Chapter 462), which incorporates the Hague-Visby Rules. Limitation of liability is governed by the Merchant Shipping (Limitation of Shipowners' Liability) Ordinance (Chapter 434), which implements the LLMC 1976/1996 Protocol.

Under the Hague-Visby Rules, the carrier must provide a seaworthy vessel and properly man, equip and fit holds for cargo. Defences include fire (unless due to owner's fault), perils of the sea, saving life or property, inherent vice and shipper's fault. Liability is limited to approximately 670 Special Drawing Rights (SDR)/package or 2 SDR/kg, unless the cargo's declared value exceeds this limit.

The LLMC allows ship-owners and other entitled parties (charterers, managers, operators) to limit liability based on ship tonnage, creating a limitation fund in the court of first instance. To access the fund, security must be deposited or guaranteed.

Under Chapter 462, the contractual carrier is always subject to the Hague-Visby Rules, while the liability depends on whether the bill of lading or contract extends the carrier obligations to the performing party if the ship-owner is not the contractual carrier. A contractual carrier may attempt to claim LLMC tonnage limits by establishing that they qualify as a "ship-owner" under Chapter 434, while cargo claimants may attempt to "break" the package limit by proving fault.

4.4 Misdeclaration of Cargo

A carrier can sue a shipper for misdeclaration of cargo if the shipper's inaccurate description causes loss, damage or expense, as this duty is imposed under Chapter 462, incorporating the Hague-Visby Rules. Under Article III, Rule 5 of those Rules, the shipper guarantees the accuracy of cargo particulars and

must indemnify the carrier for losses arising from inaccuracies.

There is very little reported Hong Kong case law specifically on misdeclaration claims.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Claims for loss of or damage to cargo against a carrier are generally governed by the Hague-Visby Rules, as applied by the Carriage of Goods by Sea Ordinance (Chapter 462).

A one-year time bar applies to all claims arising under the contract of carriage, running from the date of delivery of the goods or the date when they should have been delivered. The one-year period may be extended only by express agreement, and such agreement must be made after the cause of action has arisen. Courts cannot extend the time bar unilaterally. If no extension is agreed, the claim is extinguished.

If the Hague-Visby Rules do not apply (eg, in certain scenarios not involving a bill of lading or specific types of carriage), limitation is governed by the Limitation Ordinance (Chapter 347). The general time limit is six years from the date the cause of action accrued (eg, the date of breach of contract or the date on which damage occurred in tort).

Claims by carriers against shippers (such as indemnity or misdeclaration claims) are not subject to the Hague-Visby one-year bar falling within the six-year limitation regime.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

International Convention

Hong Kong implements the 1952 Arrest Convention via its legislation, extending the UK's application to Hong Kong.

Domestic Laws

High Court Ordinance (Chapter 4) Section 12A–12E lists specific maritime claims (eg, ownership, charter-party, salvage, crew wages, ship supplies, damage)

that bring a ship under the court's admiralty jurisdiction and govern how the court exercises its jurisdiction, allowing action in rem against the vessel in question – or a sister ship for certain claims.

Rules of the High Court (Chapter 4A) govern the procedural aspects, such as lodging writs, affidavits and warrants for arrest.

5.2 Maritime Liens

Maritime Liens in Hong Kong

Hong Kong recognises traditional maritime liens under common law, typically for:

- damage caused by a ship;
- salvage;
- seamen's wages;
- master's wages and disbursements; and
- bottomry (a form of ship/cargo pledge for loans).

Maritime lien for crew injury indemnities?

Crew injury claims generally give rise to maritime claims but not maritime liens. A vessel can be arrested for the claim, but the claim is not fixed to the ship like wages or salvage.

Maritime Liens Versus Maritime Claims

Maritime lien is a proprietary right in rem (against the ship itself) that attaches automatically to the vessel and travels with the ship, surviving change of ownership and ranking ahead of mortgages and most other claims.

Maritime claim is a statutory category of claim that does not attach automatically. Defined under the High Court Ordinance (Chapter 4), it includes a wide range of contractual and statutory claims, allowing action against that specific ship or another of the defendant's ships, but often defeated by a sale to a new owner. Arrest depends on statutory conditions being satisfied. Liabilities like unpaid charter hire (eg, time or voyage charter) will create maritime claims that allow for ship arrest.

Arrestable Maritime Claims

A vessel may be arrested for maritime liens, and for statutory maritime claims, under Sections 12A–12B of the High Court Ordinance (Chapter 4).

Maritime liens (eg, damage done by a ship, salvage, seamen's wages, master's wages and disbursements) attach automatically to the vessel and are enforceable in rem without further ownership conditions.

In addition, a vessel may be arrested for statutory maritime claims, even though these do not constitute maritime liens. These include claims relating to:

- possession or ownership of a ship;
- mortgages or charges over a ship;
- cargo, freight or hire (including loss of or damage to cargo);
- charterparty disputes;
- questions between co-owners as to the possession, employment or earnings of the ship; and
- towage, pilotage, bunkers, port charges and crew claims.

Arrest may be against the offending ship or a sister ship, subject to statutory ownership requirements.

Time Bars and Validity

Maritime liens

These arise immediately when the cause of action occurs and have no fixed time bar. They must be enforced whilst the ship remains a ship to retain priority, and may be lost or extinguished when:

- there is full payment of the underlying debt;
- there is a judicial sale of the vessel;
- the underlying claim becomes time-barred;
- waiver, destruction or abandonment occurs; or
- in case of laches (unreasonable delay), there is a failure to act diligently to enforce the lien, causing prejudice to the other party.

Maritime claims

The right to arrest for statutory claims (like charter hire) requires action within time limits or risks losing priority; this is governed by applicable statutory or contractual limitation periods (one year under the Hague-Visby Rules for cargo claims, six years for charterparty claims, etc). The right to enforce a maritime lien through waiver (relying on owner's credit and contract terms), laches (unreasonable delay causing prejudice), sale/destruction of the ship or payment will be lost/expired, though specific time limits (often one

year for liens; longer for wages) vary by jurisdiction and claim type, with prompt action being vital to avoid extinguishment.

5.3 Liability in Personam for Owners or Demise Charterers

Maritime Liens

The right to arrest for a maritime lien (eg, crew wages, salvage, collision damage) travels with the ship and is enforceable in rem alone. A vessel may be arrested even if the current owner has no personal liability. Neither the owner nor the demise charterer needs to be personally liable in an action in personam at the time of arrest.

Non-Lien Maritime Claims

For all other maritime claims under Section 12A of the High Court Ordinance (Chapter 4) (eg, charter-party disputes, cargo claims, necessities, towage, pilotage), arrest depends on satisfying the statutory in rem requirements. The claimant must show that the person liable in personam was, when the cause of action arose, the owner, charterer, or in possession or control of the ship, and is, when proceedings are commenced, the beneficial owner (as to all shares) or demise charterer of the ship to be arrested, including in the case of a sister-ship arrest.

5.4 Unpaid Bunkers

Under Section 12A-B of the High Court Ordinance (Chapter 4), a bunker supplier may arrest a vessel for unpaid bunkers, subject to satisfaction of the statutory in rem requirements.

Contractual suppliers (ie, the party that contracted with the owner or charterer) will usually have standing to arrest, subject to the statutory ownership/control requirements.

An actual or physical supplier who has no contract with the owner/demise charterer (eg, supplied through an intermediary trader) cannot arrest the vessel unless it can show the owner/demise charterer is personally liable, since Hong Kong does not recognise a maritime lien for necessities.

Where bunkers are ordered by a time or voyage charterer, arrest of the vessel is usually not available,

because a time or voyage charterer is not the beneficial owner or demise charterer at the time proceedings are commenced. Therefore, a time charterer does not have authority to create a lien or bind the vessel itself merely by ordering necessities. Arrest may nevertheless be possible if the charterer later becomes the beneficial owner of the vessel or a sister ship, or where the charter is a demise (bareboat) charter.

5.5 Arresting a Vessel

Governed by Order 75 of the Rules of the High Court (Chapter 4A), the following documents must be filed with the court to obtain a warrant of arrest:

- a writ of summons for an action in rem identifying the vessel;
- a praecipe for the service of a writ and for the warrant of arrest;
- a warrant of arrest;
- an affidavit or affirmation setting out the nature of the claim, confirmation that the claim falls within Section 12A–12B of High Court Ordinance and the vessel is within Hong Kong jurisdiction, the ship's details, the basis for the right to arrest, address ownership/control and full disclosure of all material facts; and
- an undertaking by the claimant's solicitors to the bailiff to cover all costs and expenses incurred during the arrest, custody and release of the vessel.

Additionally, a search of the caveat book for any existing caveats against arrest must be conducted before the warrant is issued.

Document Specifics

Power of attorney is not mandatory. Original documents, or the notarised or apostilled certification of these documents, are not required for arrest. Scanned or certified copies are routinely accepted. Documents require translation only if they are not in English or Chinese. If they are in a foreign language, a translation should be provided, and it does not need to be sworn/notarised at the arrest stage.

Security Deposit

The arresting party is not required to provide a security deposit or any form of counter-security to the court itself as a condition of arrest. However, an undertaking

to the bailiff is required to pay the costs and expenses for the arrest, custody and preservation of the vessel. The bailiff will normally require an initial deposit on account of these expenses after the arrest.

5.6 Arresting Bunkers and Freight

Freight may be arrested, as freight is recognised as arrestable property under admiralty jurisdiction where it is payable to the person liable in personam and is identifiable within the jurisdiction. By contrast, although arresting bunkers is not theoretically impossible, bunkers are not expressly recognised as independently arrestable property in Hong Kong; therefore, bunker-only arrest is generally impractical. Bunkers may only be caught incidentally upon arrest of the vessel itself, and only while they form part of the ship.

In practice, claimants typically arrest the vessel as primary security or seek alternative remedies such as injunctions, while Hong Kong law provides a clear mechanism for arresting freight directly in appropriate cases.

5.7 Sister-Ship Arrest

A claimant may arrest a sister-ship only if:

- the claim is a maritime claim; and
- the same person who was liable in personam for the claim (i) was the beneficial owner (as to all shares) or demise charterer of the offending ship when the cause of action arose, and (ii) is the beneficial owner (as to all shares) or demise charterer of the sister-ship at the time the writ in rem is issued.

Important Considerations

Only one vessel can be arrested per claim, even though multiple ships can be named in the in rem writ. The claimant must prove identical beneficial ownership of both vessels. Hong Kong does not allow arrest of an “associated ship”. Time charterers and voyage charterers do not qualify.

5.8 Other Ways of Obtaining Attachment Orders

Besides ship arrests, Hong Kong courts offer other possibilities of obtaining attachment orders to obtain security.

Mareva (Freezing) Injunctions

These restrain a defendant from removing or dissipating assets, in order to preserve assets pending judgment or arbitration. They can cover assets domestic or worldwide (eg, bank accounts, receivables, shares, properties).

Plaintiff must show and provide:

- a good arguable case and full disclosure;
- a real risk of dissipation or removal of assets; and
- almost invariably, an undertaking to compensate the defendant if the injunction is wrongly granted.

Attachment/Garnishee Proceedings

These allow a claimant to attach debts owed to the defendant by third parties (eg, freight or charter hire), most commonly post-judgment, thereby creating security.

Interim Injunctions Over Specific Property

The court may restrain dealings with identifiable property (such as cargo, bunkers, or sale proceeds) located within Hong Kong to preserve it pending determination of the dispute.

Security in Arbitration

Arbitral tribunals can order security for a claim, including requiring security for unliquidated claims. A party involved in maritime arbitration can apply to the court for an order to arrest a vessel to obtain security for their claim. This ensures that if the claimant wins the arbitration, there will be assets available to satisfy the award.

Security for Costs

This refers to a procedural order requiring a claimant to provide security for the defendant’s legal costs where there is a risk of non-recovery, rather than security for the substantive claim.

5.9 Releasing an Arrested Vessel

P&I club letters of undertaking (LOUs) are commonly accepted by the court as security for releasing an arrested vessel, but acceptance is subject to the claimant's consent. While the court facilitates release, it will not compel acceptance if the claimant objects as the LOU remains a private agreement instead of a direct court bond.

If the claimant does not accept the P&I LOU, the defendant can offer alternative security, such as depositing funds directly with the court, obtaining the claimant's agreement on alternative security or applying to set aside an improper arrest. Security must usually cover the claim, interest and estimated costs.

Foreign bank guarantees are also acceptable if unconditional, irrevocable, payable on demand, issued by a reputable bank and enforceable in Hong Kong.

5.10 Procedure for the Judicial Sale of Arrested Ships

The judicial sale process in Hong Kong generally involves the following steps.

- After a vessel is arrested in rem, any interested party (often the arresting party or mortgagee) may apply to the High Court for an order for the vessel's appraisal and sale. This is often done if circumstances warrant – eg, the ship is a “wasting asset”, with its value diminishing due to ongoing maintenance costs.
- Once the court grants the order, the claimant must file a praecipe for a commission of appraisal and sale. The court's bailiff determines the appraised value, and executes the selling by public auction or inviting sealed bids (private tender).
- The gross proceeds from the sale are paid into court and held in a deposit account pending the resolution of all claims and the determination of their priority.
- The court determines the order of priority for all claims against the proceeds. Once priorities are agreed upon or determined by the court, the funds are paid out to the relevant parties. The buyer will be granted a clean title, free from all prior claims, liens and encumbrances.

Private Sale

A private sale is only permitted if it is conducted under the authority and supervision of the court, and when it is clearly in the best interest of all claimants, with a credible offer that likely exceeds auction value.

Liability for Maintenance

The arresting party is liable for funding the expenses of maintaining the vessel from the moment of arrest until its sale by the court. The arresting party's solicitors must provide an undertaking to the court's bailiff to cover all such costs (eg security, port charges, insurance, crew, bunkers). These expenses are given the highest priority and are reimbursed first from the proceeds of the judicial sale.

Priority Ranking of Claims

Hong Kong follows traditional English Admiralty priorities:

- bailiff's costs for arrest, preservation and sale of the vessel (including a 1% commission on the gross sale proceeds);
- recoverable legal costs of the arresting party up to and including the arrest;
- maritime liens;
- mortgages;
- statutory liens; and
- unsecured claims (non-maritime debts).

Priority of the Mortgage

Maritime liens outrank mortgages. This means that claims for crew wages, salvage and collision damage will be satisfied from the sale proceeds before a registered mortgagee. The mortgage claim instead outranks most non-lien maritime claims.

5.11 Insolvency Laws Applied by Maritime Courts

Hong Kong has no statutory corporate rescue regime equivalent to Chapter 11 of the US Bankruptcy Code. Its corporate insolvency framework primarily comprises schemes of arrangement and provisional liquidation.

A scheme of arrangement is a court-supervised compromise between a company and its creditors, and requires approval by a specific majority of creditors.

It does not automatically impose a stay on proceedings, meaning a dissenting creditor can still pursue winding-up action unless all major creditors agree to an informal standstill. Provisional liquidation is primarily a protective mechanism and, although sometimes used to facilitate restructuring discussions, does not amount to a debtor-in-possession rescue regime.

The Hong Kong maritime court may order the arrest and judicial sale of a vessel owned by owners that are under Chapter 11 proceedings in the USA. Admiralty proceedings are brought in rem against the vessel itself, and a foreign insolvency stay does not automatically bind Hong Kong courts. While Hong Kong courts may recognise and assist foreign insolvency proceedings at common law, such recognition is discretionary and does not necessarily preclude vessel arrest or sale unless a specific stay is granted by the Hong Kong court.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Damages for wrongful arrest are awarded only if the arresting party acted maliciously, in bad faith or with gross negligence, or shows a deliberate abuse of process.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The 1974 Athens Convention governs carrier liability for passenger injury, death and luggage, and the LLMC 1976/1996, which provides a mechanism for ship-owners to limit their overall liability based on a ship's tonnage, is incorporated into Hong Kong law through the Merchant Shipping (Limitation of Ship-owners Liability) Ordinance (Chapter 434).

Other relevant domestic laws include the Control of Exemption Clauses Ordinance (Chapter 71), which prohibits carriers from excluding liability for death or injury due to negligence, and the Fatal Accidents Ordinance (Chapter 22) for the death of a passenger.

An action for damages related to a passenger's death or injury, or loss or damage to luggage, must be filed within a two-year time limit.

Limitations on Liabilities

Under Chapter 434, liability for death or personal injury is limited to 175,000 SDRs per passenger, multiplied by the ship's authorised passenger capacity. Separate limits apply to different types of luggage. A ship-owner or any person liable for maritime claims may limit liability by reference to the vessel's tonnage unless the loss was a result of the owners' intentional or reckless actions with knowledge of the probable outcome.

Chapter 434 also allows the constitution of a limitation fund under the admiralty jurisdiction of the Hong Kong Court of First Instance. Claims for indemnities for passenger personal injury are generally considered maritime claims instead of maritime liens.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Hong Kong courts recognise law and jurisdiction clauses in bills of lading. A properly incorporated jurisdiction or arbitration clause in a bill of lading will almost always be upheld, unless the resisting party shows strong cause such as unreasonable enforcement or serious injustice. Properly incorporated clauses bind third-party bill holders. Arbitration clauses are also routinely enforced under the Arbitration Ordinance (Chapter 609).

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Hong Kong courts recognise and enforce law and arbitration clauses in a charterparty when they are properly and effectively incorporated into a bill of lading. Incorporation requires clear, specific and express wording demonstrating an intention to include the dispute resolution clause (eg, "all terms, conditions and arbitration clause of the charterparty are incorporated"). Once validly incorporated, the clause binds

third-party bill holders, including consignees and endorsees.

However, incorporation will not be effective if it is ambiguous, where the charterparty is not identifiable or where it does not show clear intention to incorporate the specific arbitration clause.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention is applicable in Hong Kong because the PRC has extended its application to the HKSAR. The Convention is implemented domestically by the Arbitration Ordinance (Chapter 609). Therefore, foreign arbitral awards made in other Convention states are recognisable and enforceable in Hong Kong. However, awards from Mainland China are excluded from the Convention regime and are enforced under a separate statutory arrangement reflected in the Ordinance.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Hong Kong courts will generally order the arrest of a vessel or grant security where the claim is subject to foreign arbitration or a foreign court jurisdiction clause, provided the statutory requirements for arrest are met. Arrest is a procedural, protective remedy based on the court's admiralty jurisdiction over the underlying statutory maritime claim, not an attempt to enforce an arbitral award.

Claimants may therefore commence an in rem action and obtain arrest or security for claims (eg, under a charterparty or for necessities), provided statutory requirements are met. The existence of a foreign arbitration or jurisdiction clause must be fully disclosed on the arrest application. The clause does not bar arrest, but allows the ship-owner to apply for a stay of the Hong Kong proceedings in favour of the agreed forum, usually after security has been provided. Hong Kong courts are consistently pro-arrest and pro-arbitration, using arrest to support, not undermine, foreign dispute resolution.

7.5 Domestic Arbitration Institutes

HKMAG is a non-profit body of maritime and commercial professionals focused solely on maritime dis-

pute resolution, offering tailored procedures. HKMAG has its own maritime arbitration rules, adapted from internationally recognised standards (eg, the London Maritime Arbitrators Association rules) and tailored for use in Hong Kong under Hong Kong's arbitration law.

Despite not being exclusively maritime-focused, other institutions like the Hong Kong International Arbitration Centre (HKIAC) can also administer maritime or commercial arbitrations. Hong Kong supports maritime arbitration, with courts able to grant interim measures for HKMAG and HKIAC-administered arbitrations under a specific arrangement with Mainland China.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

If the parties have agreed an exclusive foreign jurisdiction clause, the court will generally grant a stay of proceedings unless the claimant shows strong cause. If the claimant brings proceedings in Hong Kong despite an arbitration agreement, the defendant can apply for a stay under the Arbitration Ordinance (Chapter 609), which generally mandates staying proceedings to give effect to arbitration agreements provided there is a valid arbitration agreement and the dispute falls within its scope. Anti-suit injunctions are available for both cases.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Hong Kong offers specific tax advantages for maritime owners under the Inland Revenue Ordinance (IRO). Profits derived from the international operation of ships (including carriage and chartering) by Hong Kong-resident operators are exempt from profits tax. Only Hong Kong-sourced shipping profits could be taxable under the territorial system, and exempt sums require a substantial activities test (adequate activities, employees and expenditure in Hong Kong). Hong Kong flag registration brings no standalone tax benefit.

While Hong Kong does not have “tonnage tax” or accelerated depreciation, many ship-owners achieve an effective 0% Hong Kong profits tax rate in practice.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Performance of a shipping contract, such as late delivery, non-arrival of a chartered vessel, or slow ratio of loading or discharging is very rarely excused.

Force Majeure

Force majeure is purely contractual; it is not recognised as a free-standing doctrine. A party can only rely on it if the contract contains an express force majeure clause.

Non-performance may only be excused when the event falls within the wording of the clause – eg, “Acts of God” (natural disasters), war, embargoes or government actions. The non-performing party must demonstrate that they fulfilled the mitigation requirements.

Frustration

When no force majeure clause is applicable to cover the event, frustration discharges the contract when a supervening event occurs after the contract is formed, without the fault of either party, which was unforeseen and fundamentally changes the nature of the contract. However, the threshold for frustration is very high. The event must render performance impossible, or transform the obligation into something radically different from what was agreed. Mere late delivery/slow loading, increased cost or non-arrival due to operational or commercial reasons does not frustrate a shipping contract.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Hong Kong has implemented domestic regulations that align with, and in some respects preceded, IMO 2020. Under the Air Pollution Control (Fuel for Vessels) Regulation (Chapter 311AB), vessels sailing or at berth within Hong Kong waters must use fuel with a maximum sulphur content of 0.5% by weight, or

approved alternatives. Use of equivalent compliance methods such as scrubbers is permitted with approval from the authorities.

In addition, the Merchant Shipping (Prevention of Air Pollution) Regulation (Chapter 413P) gives effect to MARPOL Annex VI, including the IMO “carriage ban” that prohibits the carriage of non-compliant fuel oil (sulphur content above 0.5%) for combustion purposes unless the vessel is fitted with an approved equivalent arrangement.

Enforcement is carried out by the Environmental Protection Department (EPD) through inspections, document checks and fuel sampling. Non-compliance may result in fines and imprisonment.

9.3 Trade Sanctions

Hong Kong does not incorporate or recognise unilateral international trade sanctions imposed by foreign governments such as the US, EU or UK. Only sanctions mandated by the United Nations Security Council (UNSC) are given domestic legal effect, implemented through subsidiary legislation under the United Nations Sanctions Ordinance (Chapter 537) and related ordinances.

Unilateral foreign sanctions have no legal force in Hong Kong, and Hong Kong courts and authorities do not enforce them as a matter of law. While the courts may take the practical commercial effects of foreign sanctions into account as facts, they do not treat such sanctions as legally binding within the jurisdiction.

Hong Kong therefore has not imposed Russia-specific sanctions arising from the war in Ukraine, as no UNSC sanctions exist. The main impact on Hong Kong businesses is indirect, stemming from the extraterritorial reach of foreign sanctions regimes.

Limited licensing and exemption mechanisms exist under Hong Kong’s UN-based sanctions framework, administered by the relevant authorities, to authorise activities otherwise prohibited under domestic sanctions legislation.

9.4 International Conflict

International conflicts such as the war in Ukraine or the Red Sea crisis can have significant legal and commercial impacts in Hong Kong, particularly for shipping, trade and insurance, but their legal consequences are often fact- and contract-specific.

Frustration is exceptional under Hong Kong law. Increased costs, longer routes (eg, diversion via the Cape of Good Hope) or war-related delays will not normally frustrate shipping or carriage contracts unless performance becomes impossible or the delay defeats the contract's entire commercial purpose.

More commonly, parties rely on express contractual mechanisms, including war risk and force majeure clauses (eg, the BIMCO War Risks Clause for Time Charter Parties (CONWARTIME)/War Risks Clause for Voyage Charter Parties (VOYWAR)), which may justify deviation, suspension or termination and allocate responsibility for additional costs and war risk premiums.

Conflicts also trigger insurance implications, including increased war risk premiums and disputes over coverage. Constructive total loss typically arises only in insurance contexts involving prolonged detention, capture or deprivation, rather than ordinary delay or cargo deterioration.

For Hong Kong businesses, the practical impact is higher costs, delivery disruption, insurance complexity and increased disputes, underscoring the importance of careful contract and insurance review.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

There is no relevant legal information that has not been dealt with in the foregoing sections.

*The contents of this publication are provided for general information and reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action.

In research, artificial intelligence tools were used. All legal analysis, interpretation and conclusions were independently reviewed and approved by the author(s), exercising their own professional judgement.



Law and Practice

Contributed by:

Stephen Igor Warokka and Mutiara Kasih Ramadhani
SSEK Law Firm

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SSEK Law Firm is a leading shipping law firm in Indonesia, covering the full spectrum of maritime work. The team is led by a partner and foreign legal adviser and includes seven associates. Its work includes advising companies in the natural resources sector on Indonesia's cabotage rules, acting for foreign shipping companies in the acquisition and sale of vessels, assisting clients in entering into joint ventures with

Indonesian shipping entities, assisting with licensing requirements, and advising foreign cruise lines on their operations in Indonesia. The team has worked on numerous major port projects and advised some of the biggest port operators in the world. The firm is active in representing lenders and buyers in ship and rig leases.

Authors



Stephen Igor Warokka is a supervising partner of SSEK Law Firm's shipping and maritime law practice. He has represented foreign shipping companies in the acquisition and sale of vessels, acted for an

Indonesian shipping company in connection with a syndicated facility agreement, and advised shipping companies on foreign ownership restrictions, shipping agency and cabotage issues. His practice also covers M&A, general corporate law and foreign capital investment.



Mutiara Kasih Ramadhani specialises in general corporate and commercial law at SSEK Law Firm, with a particular focus on shipping law, oil and gas law, mining, and the pharmaceutical industries. She has

represented several shipping companies in vessel acquisitions and sales, and has advised a wide range of clients, including foreign corporations and state-owned enterprises, on shipping and maritime-related matters. She earned her Bachelor of Laws in 2018 from Airlangga University and is fluent in English and Indonesian.

SSEK Law Firm

14th Floor
Mayapada Tower I
Jl. Jend Sudirman Kav 28
Jakarta
12920
Indonesia

Tel: +62 21 521 2038
Fax: +62 21 521 2039
Email: ssek@ssek.com
Web: www.ssek.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Indonesian maritime court, or *mahkamah pelayaran*, is regulated under Law No 17 of 2008 regarding Shipping, as last amended by Law No 66 of 2024 (specifically, the “Third Amendment to the Shipping Law” and, collectively, the “Shipping Law”). The Shipping Law defines the maritime court as a panel of experts that is responsible to, and under, the Ministry of Transportation. The maritime court has the authority to conduct follow-up investigations into shipping accidents and to enforce a professional code of ethics and competence for ship masters and officers after a preliminary examination by the harbour master.

The maritime court also has the authority to examine collisions between commercial ships and state ships, and between state ships and warships. Nevertheless, it is not considered a juridical court within the framework of Indonesia’s legal system, and at most is only able to issue administrative sanctions.

Moreover, both the Shipping Law and the Indonesian Commercial Code (ICC) provide that maritime claims may also be submitted to the Indonesian district courts. Common maritime claims include maritime casualties and collisions, cargo claims and passenger claims.

1.2 Port State Control

Under Article 218 of the Shipping Law, a harbour master (*syahbandar*) has the authority to conduct seaworthiness and safety inspections of Indonesian-flagged ships, and of foreign-flagged ships at Indonesian ports. Harbour masters’ powers also include the authority to inspect vessels and seek information for the purpose of gathering evidence in relation to marine casualties.

Minister of Transportation (MOT) Regulation No PM 119 of 2017 regarding Foreign Ship Safety and Safety Check Officers (“MOT Reg 119/2017”) defines “port state control” as state supervision of the seaworthiness and safety of foreign ships entering ports to

ensure the fulfilment of requirements implemented by harbour masters.

In general, port state control officers appointed by the harbour master have the power to detain and delay the departure of a ship when the ship’s failure to meet the aforementioned requirements threatens the safety of the ship, human lives and/or the maritime environment. Indonesia’s port state control system has been implemented with reference to the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (the “Tokyo MOU”), of which Indonesia is a signatory. The Tokyo MOU is specifically mentioned in MOT Reg 119/2017.

Port state control officers do not have any authority over marine casualties such as grounding, pollution or wreck removal. According to Government Regulation No 31 of 2021 (“GR 31/2021”), ship-owners are responsible for managing grounding and wreck removal. However, if the ship-owner has not carried out wreck removal within 180 days of the collision, the removal must be carried out by the MOT, at the expense of the owner of the wreck. If the position of the wreck and/or its cargo is disrupting the operation of the port and/or polluting the maritime environment, the harbour master may order the ship-owner to immediately lift or get rid of the wreck and/or its cargo.

In addition, in line with Section 3.1 of the Tokyo MOU, the authority of port state control officers in connection with pollution matters is limited to inspecting a ship’s master or crew and their readiness to prevent pollution.

Indonesia recently succeeded in fulfilling the whitelist criteria for the Tokyo MOU, which should help reinforce shipping safety and security in Indonesian waters.

1.3 Domestic Legislation Applicable to Ship Registration

The Shipping Law provides that an Indonesian vessel’s legal status is only valid if the vessel has already been registered in a particular jurisdiction. Under Minister of Transportation No PM 39 of 2017 regarding the Registration and Nationality of Vessels (“MOT Reg 39/2017”), vessel registration includes registration of the following:

- ownership rights;
- the granting of mortgages; and
- other proprietary rights (such as bareboat charters and leasing).

The MOT has appointed the director general of sea transportation to oversee this process.

1.4 Requirements for Ownership of Vessels

In Indonesia, the operation or use of a vessel requires registration and licensing. The owner of a vessel can register the vessel in Indonesia with a vessel title transfer and registrar official (*pejabat pendaftar dan pencatat balik nama kapal*) appointed by the MOT. For a vessel to be registered, it must have a minimum of seven gross tonnage (GT) and be owned by an Indonesian citizen or an Indonesian legal entity that is majority Indonesian owned. Article 7 of MOT Reg 39/2017 provides that the following documents must be submitted for vessel registration:

- proof of title on the vessel;
- identity of the vessel owner;
- taxpayer registration number (*nomor pokok wajib pajak*);
- tonnage certificate (*surat ukur*);
- proof of payment for the transfer of title (*balik nama*); and
- power of attorney (if an application is submitted by a proxy).

The vessel registration application is submitted online through the electronic vessel registration system (*sistem pendaftaran kapal elektronik – SPKE*), and the vessel title transfer and registrar official will examine the application within three working days to ensure the completeness of the documents. Minutes of the vessel registration will be issued if the requirements described above have been satisfied. As stipulated by Article 11 (1) of MOT Reg 39/2017, the vessel owner will then receive a grosse vessel registration deed.

1.5 Temporary Registration of Vessels

MOT Reg 39/2017 permits the temporary registration of vessels that are under construction in Indonesia or abroad. This temporary registration will be made in the form of a temporary registration certificate, which will only be issued when construction of the

hull, main deck and the entire superstructure has been completed.

Article 160 of the Shipping Law prohibits the dual registration of vessels.

1.6 Registration of Mortgages

Vessel mortgages in Indonesia fall under the authority and jurisdiction of the MOT. Under Articles 28 and 29 of MOT Reg 39/2017, the beneficiaries of vessel mortgages may be Indonesian or foreign citizens, banks and financing or non-financing institutions (both national and international). Vessel mortgages will only be granted following the submission of an application to a vessel registrar, accompanied by the following documents:

- a credit/loan agreement;
- the original grosse vessel registration deed or grosse deed of the vessel's title transfer; and
- a power of attorney in notarial deed form (if such registration is registered by a proxy).

Following execution of the vessel mortgage deed by the mortgagor, the mortgagee and the MOT official, Article 31 of MOT Reg 39/2017 provides that the vessel registrar will then hand over a grosse mortgage deed as well as the vessel registration grosse deed or vessel transfer of title grosse deed to the mortgagee.

Under Article 33 of MOT Reg 39/2017, the assignment of a mortgage on a vessel requires the preparation of a deed of assignment of a vessel mortgage. The receiver of the assignment of a vessel mortgage must submit an application to the vessel title transfer and registrar official where the vessel is registered through the SPKE. The following original documents are required for the application:

- proof of assignment of the mortgage;
- original grosse vessel registration deed or grosse deed of the vessel's title transfer; and
- grosse deed of mortgage on vessels.

1.7 Ship Ownership and Mortgages Registry

Under Article 43 of MOT Reg 39/2017, the registration or documentation of ships will be recorded within a daily register, master register and central register.

The master register will be open to the public. Furthermore, the MOT has established the SPKE, which allows ship ownership and registration to be viewed and accessed by the public. An application to the relevant vessel title transfer and registrar can be made to obtain a vessel legal status statement letter that indicates whether a mortgage has been imposed on a vessel.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship financing in Indonesia is commonly undertaken through a combination of debt and equity, with debt financing – typically provided by international or domestic banks or non-bank financial institutions – playing a predominant role in vessel acquisitions. Transactions are often structured either around the purchase of second-hand vessels, where disbursement occurs against delivery, or the construction of new-build vessels, where financing is released progressively in line with milestone achievements during construction. Such arrangements are treated as secured asset-based lending, with the vessel serving as the primary collateral under a registered ship mortgage.

The loan documentation typically includes comprehensive covenant packages, including negative pledges, undertakings to maintain proper insurance and certification, restrictions on further encumbrances, and requirements to maintain compliance with Indonesian cabotage and licensing rules. Events of default are usually tailored to shipping-related risks, such as arrest of the vessel or prolonged off-hire. Off-shore lenders extending facilities to Indonesian borrowers may be subject to Bank Indonesia reporting obligations, particularly if the proceeds are disbursed in foreign currency.

Equity financing is often carried out in the context of Indonesian shipping joint ventures, particularly where a foreign shipping company seeks to acquire equity in a local ship-owning entity. Such structures, however, remain subject to the shareholding and vessel ownership requirements introduced under the Third Amendment to the Shipping Law.

2.2 Ship Leasing

Leasing remains a recognised but relatively limited form of ship financing in Indonesia. While domestic and foreign banks continue to provide the bulk of vessel acquisition financing through secured loans and ship mortgages, some Indonesian shipping companies have explored lease-based alternatives such as finance leases and sale-and-leaseback arrangements, which are most often observed among local fleet operators seeking to monetise existing vessel assets by selling their vessels to a financing party (typically a leasing company or financier) and simultaneously leasing them back for continued use. These transactions are typically structured as long-term finance leases, with a nominal purchase option at the end of the lease term.

In a loan transaction, the borrower acquires legal title to the vessel, and the lender obtains a security interest in the form of a registered ship mortgage. In a lease, legal title to the vessel remains with the lessor throughout the lease term, and the lessee is granted contractual rights to use (subject to the lease fee), maintenance covenants, and restrictions on disposal. From an enforcement perspective, Indonesian law draws a clear distinction between ship mortgage claims and lease defaults. A registered ship mortgage grants the lender, as mortgagee, a secured interest over the vessel and carries executorial force equivalent to a final and binding court judgment. In theory, this permits direct enforcement without the need for separate civil proceedings. However, in practice, Indonesian courts often require a fiat or supervisory order from the competent district court before permitting execution or judicial sale, particularly where the debt is contested or the borrower resists enforcement. Meanwhile, lease defaults are treated as breaches of contract rather than enforcement of a security interest. The lessor, as the legal owner of the vessel, may therefore seek to terminate the lease and repossess the vessel.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Indonesia has ratified the International Convention on Civil Liability for Oil Pollution Damage of 1969 (the "CLC") and the Protocol of 1992 to Amend the CLC, by way of Presidential Decree No 18 of 1978 and Presidential Decree No 52 of 1999, respectively.

Indonesia ratified the International Convention for the Prevention of Pollution from Ships of 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997, through Presidential Decree No 46 of 1986 and Presidential Regulation No 29 of 2012. In 2014, Indonesia also ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, through Presidential Regulation No 65 of 2014.

3.2 International Conventions: Collision and Salvage

Indonesia has ratified the 1972 International Regulations for Preventing Collisions at Sea, by way of Presidential Decree No 50 of 1979, but has not ratified the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels. Liability in the event of ship collisions is also regulated by the ICC.

Article 535 of the ICC provides that, if a vessel collision occurs due to an accident or an act of force majeure, or if there is doubt concerning the cause of the collision, damages will be borne by those who have suffered losses. Under Article 536 of the ICC, if a vessel collision is the fault of one of the colliding vessels, the damages will be borne by the vessel entrepreneur (*pengusaha kapal*) who has committed the fault. Nevertheless, as stated in Article 537 of the ICC, if a vessel collision occurs due to the fault of both colliding vessels, the liability of each party will be proportionate to the fault committed. A judge appointed by the party claiming indemnity will establish the extent of this liability. If the judge fails to establish the extent of the liability, the liabilities will be equal for both parties.

Indonesia has not yet ratified the 1989 International Convention on Salvage or any other protocols or conventions on salvage. It has enacted MOT Regulation No 71 of 2013 regarding Salvage and/or Underwater Works, as last amended by MOT Regulation No 27 of 2022 regarding the Third Amendment of MOT Regulation No 71 of 2013 regarding Salvage and/or Underwater Works. This regulation provides that loss or damage to the skeleton of ships and their goods is the liability of the ship's owner, as are any fees that arise.

3.3 Convention on Limitation of Liability for Maritime Claims

Indonesia has not ratified the 1976 Convention on Limitation of Liability for Maritime Claims. Maritime claims are currently regulated by the ICC and are defined in Article 223 of the Shipping Law. The ICC provides a limitation of liability depending on the context and nature of the event (eg, ship collision, marine cargo damage).

3.4 Vienna Convention on the Law of Treaties

Indonesia is not a party to the Vienna Convention on the Law of Treaties 1969 (VCLT).

3.5 Procedure and Requirements for Establishing a Limitation Fund

Indonesian laws and regulations do not specify the form, amount or procedures for a limitation fund. In practice, a shipper may request the owner of a vessel provide a deposit in the form of cash with the intention of using the deposit as a limitation fund.

3.6 Seafarers' Safety and Owners' Liability

Indonesia has ratified the Maritime Labour Convention (MLC) through Law No 15 of 2016, which is entrenched further by Article 87 of GR 31/2021. GR 31/2021 requires all Indonesian-flagged vessels to adhere to MLC requirements and to obtain MLC certification. To enforce this obligation, the MOT has issued MOT Regulation No PM 58 of 2021 regarding Maritime Labour Convention Certification ("MOT Reg 58/2021"). Under MOT Reg 58/2021, ship-owners or ship operators are required to apply for a declaration of the satisfaction of MLC requirement Part I and a declaration of the satisfaction of MLC requirement Part II certificates ("DMLC").

These certificates must include essential information that must be provided by the ship-owners or operators during the submission, such as:

- minimum age;
- seafarer health certificates;
- education and qualifications;
- working hours and rest periods;
- crew composition;
- accommodation;
- recreational facilities on board;
- catering;
- health and safety;
- accident prevention;
- onboard health care;
- complaint procedures;
- wage payments;
- financial guarantees for repatriation; and
- related financial assurance for ship-owners or operators.

Technical inspections to ensure compliance with the DMLC are carried out regularly by marine inspectors (*pejabat pemeriksa keselamatan kapal*) with the qualifications and authority to conduct ship safety inspections.

MOT Reg 58/2021 also sets minimum standards for various aspects of seafarers' well-being, including:

- accommodation;
- onboard facilities;
- health rooms;
- recreational amenities; and
- food services.

The regulation also underscores the significance of having an employment agreement in place to provide legal certainty and protection to seafarers.

4. Cargo Claims

4.1 Bills of Lading

Indonesia has not ratified any international conventions concerning bills of lading. Carriage by sea and bills of lading are therefore regulated by the ICC. The ICC does not stipulate a standard form so bills

of lading may be issued in a form that is convenient for the parties, as long as they properly indicate the main functions of bills of lading under the ICC – ie, a receipt or acknowledgment that the goods have been received by the carrier, prima facie evidence of a contract of carriage, and a document of title to claim the goods upon shipment.

4.2 Title to Sue on a Bill of Lading

Under Article 510 of the ICC, the lawful bearer of the bill of lading has the title to sue. This can be the shipper, the consignee or a notified party. By virtue of the ICC, the recipient or bearer may be identified as the person designated by the sender, and this designation can be specified with or without explicitly naming the person in the bill of lading. The ICC also provides that the term “bearer” is interpreted as referring to either the person designated by the sender or the person presenting the bill of lading.

However, in practice, the bill of lading typically specifies the name of the recipient or the consignee. Accordingly, if the bill of lading does not specify the name of the bearer, the transfer of title may occur by executing proper documentation on the assignment of the underlying contractual arrangement and simply delivering the bill of lading document to the new bearer. In the more likely and common case where the bill of lading specifies the name of the bearer, a new bill of lading must be issued to the designated new bearer to effectuate the transfer of title.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Indonesia has not ratified any relevant international conventions for marine cargo claims to date. The liability of ship-owners for cargo damage is generally regulated within the applicable contract or agreement between the parties. Furthermore, Article 468 of the ICC provides that a carrier must compensate, either wholly or partially, losses or damages that arise as a result of the failure of delivery of goods due to damage, unless it can be proven that the non-delivery of goods is a result of a force majeure event that could not have been prevented. Therefore, rather than the ship-owner, it is the carrier that should be responsible for any cargo damage.

If the ship-owner is not the actual or contractual carrier for cargo, they may not be liable, as they will not be bound by any contract relating to cargo damage with the owners of the cargo.

4.4 Misdeclaration of Cargo

Under Article 479 of the ICC, a carrier can establish an indemnification or compensation claim for a misdeclaration of cargo by the shipper. In terms of court judgments, Indonesia does not adopt the stare decisis principle, meaning that different courts have discretion to interpret cases and the applicable underlying laws.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Article 741 of the ICC, there is a one-year limit for the submission of claims for damaged or lost cargo. This time limit will be calculated after the voyage has been completed or after the vessel has failed to arrive at the designated location where the cargo was meant to be delivered, within one year after the start of the voyage.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Indonesia is a party to the 1999 International Convention on Arrest of Ships, 1999, but has not ratified the convention into law, so it is not yet enforceable in Indonesia. Nevertheless, ship arrests are regulated by Article 222 of the Shipping Law. This states that ship arrests may be carried out by harbour masters after a written court order if the ship is connected to a criminal or civil claim. Article 223 of the Shipping Law provides that the detention of ships in connection with a maritime civil claim may take place in the event of the following:

- loss or damage due to the operation of a ship;
- loss of life or fatal injury that occurs on land or in the water or sea due to the operation of a ship;
- damage to the environment, ship or cargo due to salvage operation activities or an agreement on salvage;
- damage or threat of damage to the environment, coastline or other interests caused by a ship, including costs needed to take measures to pre-

vent damage to the environment, ship or cargo, as well as for remediation of the environment as a result of the damage caused;

- costs or expenses relating to lifting, removal or repair, or relating to the ship, including costs of rescue of the ship and the ship's crew;
- costs for the use, operation or rental of a ship as set out in a charterparty or otherwise;
- transportation costs for cargo or passengers on board a ship, as set out in a charterparty or otherwise;
- loss or damage to cargo, including trunks/suitcases, transported on board a ship;
- loss and damage to a ship and cargo due to an accident at sea (general average);
- towage costs;
- pilotage costs;
- costs of goods, equipment, ship supplies, fuel oil or bunker, or ship tools, including containers provided for service purposes and ship supplies for the operation, upkeep, rescue or maintenance of the ship;
- costs of construction, reconstruction or reconditioning, repair, alteration or completing ship supplies;
- fees for port, canal, dock, harbour, shipping lane and/or other levies;
- salaries and other payables for a ship's captain, officers, crew members and others employed on board a ship, including repatriation and social insurance costs for their interests;
- financing or disbursements incurred for the interest of the ship on behalf of the ship's owner;
- insurance premium (including "mutual insurance call") for the ship payable by the ship's owner or charterer without the ship's crew or bareboat (demise charterer);
- commission, fees, broker or agency fees payable relating to the ship on behalf of the ship's owner without the ship's crew (demise charterer);
- costs of a dispute related to the ownership status of the ship;
- costs of a dispute between the co-owners of a ship related to the operation and revenue or mining products of the ship;
- a mortgage fee on a ship or other encumbrance of a similar nature on the ship; and

- costs of a dispute caused by a ship sale agreement.

At the time of writing, there are no implementing ministerial regulations regarding these procedures for the detention or arrest of ships.

The Third Amendment to the Shipping Law introduces an express provision on the possibility of ship arrest in the context of asset seizures under either civil or criminal procedures, which must be carried out pursuant to the applicable laws. With regard to civil case arrests, while the Shipping Law stipulates that a written court order may be enforced without the process of a lawsuit, due to the paucity of further implementing regulations, it appears that a court order related to civil claims may only be issued as a result of or in relation to a court proceeding, such as in the context of collateral seizure or enforcement seizure. It is therefore unlikely a court will issue a vessel arrest instruction without undergoing a civil lawsuit litigation process. With regard to criminal cases, the Indonesian Criminal Procedural Code (*Kitab Undang-Undang Hukum Acara Pidana* – KUHAP) allows the Indonesian police to seize a vessel by virtue of a warrant issued by the chairman of the relevant district court. In dire and urgent circumstances, seizures may be enforced by the police with a warrant obtained at a later time. See **5.5 Arresting a Vessel** for further discussion on this matter.

5.2 Maritime Liens

In Indonesia, maritime liens are referred to as prioritised maritime receivables, in which a party may exercise a maritime lien for claims to receivables where ships or vessels will act as a security. Indonesia has also ratified the International Convention on Maritime Liens of 1993, by way of Presidential Regulation No 44 of 2005. Furthermore, Article 65 (2) of the Shipping Law states that maritime receivables include the following:

- payment of wages and costs, and other payments to the master and crew of the vessel, including repatriation costs and social insurance contributions to be financed;

- payment for the death or medical expenses for bodily injuries in relation to the operation of the vessel, both at land and at sea;
- payment for the salvage of the vessel;
- payment of port fees or other shipping routes and pilotage fees; and
- any losses that arise from physical loss or damage caused by the operation of the vessel, other than loss or damage to the cargo, container and passenger baggage.

Under Article 66 of the Shipping Law, the payment of maritime receivables will be prioritised over the payment of pledges, mortgages and registered receivables. In the absence of prioritised receivables or maritime liens, a party may file a civil claim to the relevant district court.

Maritime claims are defined in Article 223 of the Shipping Law as being in line with provisions regarding the arrest of ships, as described in **5.1 Ship Arrests**. Maritime claims also include expenses related to the utilisation, operation or leasing of a vessel, as well as transportation expenses for cargo or passengers aboard a ship, as stipulated in a charterparty or other relevant arrangements.

5.3 Liability in Personam for Owners or Demise Charterers

In the case of a civil claim relating to a maritime claim, Article 223 of the Shipping Law stipulates that a ship can be detained without a lawsuit process. However, as far as is known, this has never occurred in practice, and both civil and criminal matters must go through the process of obtaining a court order to determine that a liability has been established. After a court order is obtained, the harbour master may carry out the arrest of the vessel.

5.4 Unpaid Bunkers

Under Article 223 of the Shipping Law, the cost of bunkers and bunkering activities may be a basis for maritime claims and therefore can lead to the arrest of a vessel. Indonesian law does not provide any further regulations on the difference between a contractual supplier and an actual supplier for unpaid bunkers. As a vessel arrest will take place as a result of a court order, the contractual supplier, actual supplier or

whomever is the aggrieved party may ask the courts to issue an arrest warrant to the harbour master.

If bunkers are supplied to a chartered vessel, it is possible that the bunker supplier may not be able to submit a claim to arrest the vessel, as the charterer is not seen as the owner of the vessel. Although the ICC provides that the costs for the bunker should be borne by the charterer, the degree of the charterer's responsibility and authority over the vessel arising from the contract may differ based on the specific terms outlined in the charter agreement.

Nonetheless, the bunker supplier claimant may still submit a civil claim with a standard civil proceeding for unpaid bunkers. In any event, as stated above, due to the absence of implementing regulations, the bunker supplier claimant still needs to pursue a standard civil proceeding even in the case of supplying bunkers to a vessel operated by the ship-owner.

5.5 Arresting a Vessel

As discussed in **5.1 Ship Arrests**, under Article 222 of the Shipping Law, the arrest of vessels may be carried out by the harbour master at the relevant port, pursuant to a court order. As a ship arrest may be carried out based on criminal or civil maritime claims, reference must be made to the confiscation of assets within civil or criminal proceedings.

As stated in Article 1 (16) of the Indonesian Criminal Procedural Code (*Kitab Undang-Undang Hukum Acara Pidana* – KUHAP), the confiscation of assets will be carried out by an investigator, where there will be a seizure of movable or immovable and tangible or intangible assets to be used for evidence in an investigation, prosecution and proceeding. Article 39 of the KUHAP states that certain assets may be seized if they are directly used to commit a crime or to prepare for the same, if they are used to prevent a criminal investigation, or if they are directly related to a crime.

Nevertheless, as described above, Indonesia has not issued any regulations regarding the formalities or procedures for the arrest of a vessel. The law is also silent on the need for security deposits in the context of ship arrests. Furthermore, neither the Indonesian Civil Procedural Law nor Supreme Court decisions

have provided any guidelines or requirements for ship arrests. As a result, the authority of the harbour master or the courts remains unclear.

On the matter of powers of attorney or notarisations, in general, to act on behalf of foreign parties who are located outside Indonesia, the claim petitioner will be required to obtain a power of attorney, and to be notarised and consularised at a local Indonesian embassy.

5.6 Arresting Bunkers and Freight

Indonesian law does not provide any explicit regulation on the arrest of bunkers or freight. Nevertheless, under Article 223 of the Shipping Law, costs related to bunkers may be seen as a maritime claim and therefore arrest of a vessel due to its bunkers or freight should be executed through a court order.

5.7 Sister-Ship Arrest

The Shipping Law does not contain any provisions concerning the arrest of sister-ships or associated ships.

5.8 Other Ways of Obtaining Attachment Orders

Parties can obtain attachment orders by filing a civil claim with the district court. During the civil proceeding, the plaintiff may file an attachment order petition with the chair of the court for seizing the defendant's assets to obtain security. By applying for this confiscation, it is possible for the plaintiff to request the seizure of all the ships possessed by a ship-owner acting as the defendant in the civil claim.

5.9 Releasing an Arrested Vessel

As discussed in **5.5 Arresting a Vessel**, Indonesia does not have any implementing regulations that govern the procedures for vessel arrests. As a result, the release of arrested vessels is akin to the confiscation of assets, conservatory attachment or detainment. As noted, vessels are arrested based on a court order, so the release will only be carried out based on a court decision.

Indonesia does not recognise the concept of using securities or guarantees in exchange for the arrest or seizure of assets. The release of arrested vessels will

only take place upon the resolution of the claim or through the revocation of the arrest via a court order. The use of a club's letter of indemnity or a foreign bank's guarantee may therefore not be accepted by the court.

5.10 Procedure for the Judicial Sale of Arrested Ships

As discussed in **5.5 Arresting a Vessel** and **5.9 Releasing an Arrested Vessel**, there is an absence of regulations on the procedure for the arrest of ships.

If the ship has previously been arrested and subjected to a collateral seizure (ie, a seizure order issued to ensure that the assets remain accessible and are not transferred or removed for enforcement purposes) prior to the issuance of a final and binding decision, subject to procedures relevant to the applicable laws, the execution of these assets may be carried out through a private sale agreed between the parties. This process allows the judgment debtor (the losing party) to fulfil its obligations to the judgment creditor (the winning party) in line with the relevant court decision.

However, if there is no previous collateral seizure imposed prior to the decision, and it is the intention of the judgment creditor to arrest the ship owned by the judgment debtor for the purpose of enforcing the decision, then the judgment creditor may file a petition with the courts to execute the decision. As a result of this petition, the State Auction Office will carry out a judicial sale in the form of an auction. The costs for such auction may vary depending on the district court. In addition, there are no detailed regulations or guidelines regarding the maintenance of assets during the period of arrest. However, the arrest of the vessel itself will be carried out by the relevant port authority.

Under Article 316 of the ICC, the following claims are seen to have priority rights for the proceeds of auction sales:

- costs for execution – ie, confiscation/seizure for judicial sale (*biaya sita-lelang*);
- claims for the captain and crew of ships arising from labour agreements;
- fees for assistance, sea guides and signage, ports and other shipping costs; and

- collision claims.

Article 316a of the ICC provides that claims or receivables with priority rights as described above will take precedence over mortgages.

5.11 Insolvency Laws Applied by Maritime Courts

Law No 37 of 2004 regarding Bankruptcy and Postponement of Debt Settlement Obligation (the “Indonesian Bankruptcy Law”), as last partially revoked by Law No 4 of 2023 regarding the Development and Strengthening of the Financial Sector, is analogous to Chapter 11 of the United States Bankruptcy Code. The Indonesian Bankruptcy Law regulates the reorganisation of a company to allow it to continue business while simultaneously paying its debts to its creditors.

As discussed in **1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts**, the authority of Indonesia's maritime court is limited to the inspection of ship accidents and the enforcement of ethical codes for captains and officers. Therefore, under Article 222 of the Shipping Law, the arrest of a vessel will be ordered by the district court (*pengadilan negeri*), whereas the competent bankruptcy court in Indonesia is the commercial court (*pengadilan niaga*). However, Articles 242 and 245 of the Indonesian Bankruptcy Law prohibit the arrest of the vessel and judicial sales by the owners during “Chapter 11” proceedings before the Indonesian Commercial Court.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Indonesia is a party to the International Convention on Arrest of Ships, 1999 but has not yet ratified it into law. As discussed in **5.5 Arresting a Vessel** and **5.9 Releasing an Arrested Vessel**, the lack of regulations concerning the procedure for vessel arrest results in uncertainty in the event of a wrongful arrest. If a party intends to get indemnified or obtain damages due to wrongful arrest, it will have to file a claim or lawsuit with the district court. The judges at the district court will determine whether to order payments for the wrongful arrest, using their discretionary authority.

It is important to note that Article 223 of the Shipping Law does elaborate on the circumstances that con-

stitute maritime claims that may be submitted to the courts, as described in **5.1 Ship Arrests**.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Indonesia has not ratified any international conventions regarding the resolution of passenger claims, including the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea of 1974. However, Article 522 of the ICC stipulates that the carrier is required to compensate passengers for losses suffered because of the voyage. Losses caused by the passengers themselves are not within the scope of this compensation. If an injury results in death, the compensation will be made to the spouse, children and parents of the deceased. If passengers are transported based on an agreement with third parties, Article 522 of the ICC provides that the carrier will be responsible to the third party, the passenger and their heirs.

According to Article 741 of the ICC, the time limitation for filing a claim is one year after the arrival of the vessel or, if the vessel did not arrive at the destination, one year after the commencement of the transport to the place where the passengers were to be unloaded.

The available limitation on liabilities for owners who are also the carrier of the vessel applies if the loss is caused by injuries sustained by the passengers transported by that vessel.

Article 525 of the ICC limits the responsibility of the owners to pay only 50 gulden per cubic metre of the net content of the vessel. However, if the vessel is mechanically operated, the amount of payment will be calculated according to the net content of the vessel that is deducted from the gross contents for the space occupied by the propulsion apparatus. The amount of 50 gulden is used, as the ICC was enacted during the Dutch occupation of Indonesia and has not been amended. In practice, the damages are usually determined by judges through court decisions. If the goods carried by the passengers or their heirs suffer losses, the carrier will be wholly liable if the damage

was caused intentionally or if damage occurred as a result of a material or significant offence carried out by the carrier.

The Shipping Law further stipulates that one of the maritime liens for which payment should be prioritised is compensation for death or medical expenses for bodily injury, whether occurring on land or at sea, directly related to the operation of the ship, and other losses resulting from physical damage/injury caused by the operation of the ship.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Indonesian courts will recognise and enforce law and jurisdiction clauses in bills of lading, as long as the bill of lading fulfils the requirements under Article 1320 of the Indonesian Civil Code for a legitimate contract under Indonesian law. Under Article 1320, a legitimate contract requires:

- the free consent of the parties;
- the legal capacity of the parties to conclude an agreement;
- an object of the contract that is defined or specific; and
- a lawful purpose or admissible cause.

The freedom of contract principle under Article 1338 of the Indonesian Civil Code will apply to a bill of lading if the requirements for a legitimate contract are met. This principle allows the parties to choose the law applicable to their contract and the jurisdiction to settle any disputes arising from the contract.

The implementation of this principle was applied in a Supreme Court decision in January 1986, meaning the freedom of contract principle is recognised and utilised by Indonesian courts as a basis to adhere to the parties' choice of law. In the 1986 Supreme Court decision, the bill of lading of the parties contained the following statement: "The contract evidenced hereby or contained herein shall be governed by English Law. Any claim or other dispute thereunder shall be solely

determined by the English Court, unless...” The court concluded that, by this agreement, the dispute was to be decided by a court in England according to English law, so the Indonesian courts were not authorised to examine and adjudicate this dispute.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

As discussed in 7.1 **Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**, the courts will recognise and enforce a law and arbitration clause in a bill of lading as long as the bill is a legitimate contract as defined by Article 1320 of the Indonesian Civil Code. The courts will consistently uphold the principle of freedom of contract, even when it is in relation to a charterparty.

In addition, under Article 1 (3) of Law No 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (the “Indonesian Arbitration Law”), an arbitration clause within a written agreement is considered a valid arbitration agreement. Furthermore, Article 3 of the Indonesian Arbitration Law explicitly states that the courts do not have the authority to adjudicate matters governed by an arbitration agreement. The existence of an arbitration clause in a bill of lading automatically removes the courts’ jurisdiction over the dispute.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Indonesia on 5 August 1981 and is therefore applicable. Other than that, the Indonesian Arbitration Law will apply in the case of arbitration.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Article 222 of the Shipping Law states that the courts will only order an arrest of a vessel or an attachment where the relevant claim is subject to a court order. However, Indonesia is a signatory to the New York Convention and, as further confirmed by Article 66 of the Indonesian Arbitration Law, this participation enables overseas arbitration decisions to be enforced in Indonesia, including an attachment or an arrest of a vessel.

Nonetheless, this is only possible if the arbitration award is issued by an arbitration institution in a contracting state of the New York Convention. In order to request the execution of an international arbitration award in Indonesia, Article 67 of the Indonesian Arbitration Law states that the relevant party or its proxy must file a request of execution to the registrar of the Central Jakarta District Court.

When the relevant claim is subject to a foreign jurisdiction clause that gives rise to a decision by a foreign court, the claim is prohibited from being executed in Indonesia. The court will therefore not order an arrest of a vessel or attachment. This is consistent with Article 436 of the Indonesian Regulations on Legal Proceedings (*Reglement op de Rechtvvordering* – RV), which states that “the execution of a foreign district court’s decision cannot be implemented, unless a law provides otherwise, or at least in order to be implemented it is necessary to file a new lawsuit using the foreign district court’s decision as evidence for reconsideration by the competent court”. This provision is a confirmation of the interpretation of Article 222 of the Shipping Law, whereby the “court order” stated thereunder will refer to an Indonesian court order.

The alternative solution in this situation is to resubmit the claim to an Indonesian district court and utilise the foreign court decision obtained to persuade the court to decide in favour of the claimant.

7.5 Domestic Arbitration Institutes

There is no Indonesian domestic arbitration institute that specialises in maritime claims. However, maritime claims can be settled through the Indonesian National Arbitration Centre (*Badan Arbitrase Nasional Indonesia* – BANI), an independent arbitration institution in Indonesia, if agreed by the parties.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

When court proceedings are commenced in Indonesia, the relevant party can file an objection to the court on the basis of Article 11 of the Indonesian Arbitration Law, which explicitly prohibits the courts from adjudicating in disputes that are validly governed by an arbitration clause.

However, when the proceedings commence outside the jurisdiction of Indonesia, Indonesian law does not provide any remedy or injunction to restrain those court proceedings.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The income of a ship-owner's companies in Indonesia may receive an exemption from Article 22 income tax (ie, income tax arising from the export and import of goods) or VAT on the importation of a transportation or fishing vessel, on the condition that the vessel-owner holds a sea transportation company business licence ("SIUPAL"). The SIUPAL has recently been replaced with a sea transportation business standard certificate (*sertifikat standar usaha angkutan laut*, or "Standard Certificate"). For more detail, see **10.1 Other Jurisdiction-Specific Shipping and Maritime Issues**. Generally, Article 22 income tax is imposed on government-owned and private business entities that carry out export, import and re-import trading activities.

Other than that, a VAT exemption may be implemented, depending on the services generated by certain national water transportation companies. However, Indonesia provides no optional tonnage tax on the income of a ship-owner's companies.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

The Indonesian Civil Code recognises the concept of force majeure, with the key provisions found in the following Articles of the Indonesian Civil Code:

- Article 1244 obliges compensation for losses unless the obligor proves that non-performance was due to unforeseen events beyond their control, even in the absence of bad faith; and

- Article 1245 waives compensation if obligations cannot be fulfilled due to uncontrollable circumstances or unforeseen events.

In line with these provisions, the ICC also states that a carrier is not liable for delays or the safety of carriage if it can be proved that these issues arose from circumstances beyond their control which could not reasonably have been prevented or mitigated.

The Indonesian Civil Code and the ICC do not provide particular examples of force majeure, and the concept lacks specificity compared to modern international standards. It is therefore common for contracting parties to tailor force majeure clauses to suit their specific needs within their contractual arrangements.

Indonesian law does not recognise the concept of frustration of contract. However, Article 1254 of the Indonesian Civil Code provides an alternative concept, stating that all conditions that are intended to do something that cannot be done, something that is contrary to morality, or something that is prohibited by law are void, rendering agreements conditioned upon them as void.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Through Presidential Regulation No 29 of 2012, Indonesia has ratified Annexes III, IV, V and VI of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (the "MARPOL Convention"), which includes the "IMO 2020" rule.

The IMO 2020 rule is further implemented through:

- Directorate General of Sea Transportation Circular Letter No UM.003/93/14/DJPL-18 regarding Limitation of Sulphur Content in Fuel and Obligation to Deliver Fuel Consumption on Ships; and
- Directorate General of Sea Transportation Circular Letter No 35 of 2019 regarding Obligation to Use Low Sulphur Fuel and Prohibition on Transporting or Carrying Fuel that Does Not Meet the Requirements and Management of Waste from Exhaust Gas Recirculation from Ships.

Both of the circular letters make reference to Annex VI of the MARPOL Convention.

In summary, the circular letters provide that, as of 1 January 2020, ships sailing in Indonesian territory are required to use fuel with a sulphur content not exceeding 0.5% mass by mass (m/m). Indonesian-flagged ships that still use fuel with a sulphur content greater than 0.5% m/m must be equipped with an exhaust gas cleaning system or scrubber as approved by the Directorate General of Sea Transportation. Nonetheless, all Indonesian-flagged vessels sailing internationally are prohibited from transporting or carrying fuel with a sulphur content greater than 0.5% m/m for propulsion/the propulsion system or fuel for the operation of other equipment on board, starting 1 March 2020, unless exempted under the MARPOL Convention.

9.3 Trade Sanctions

Indonesia does not recognise or enforce any international trade sanctions as part of its domestic law. Indonesia also does not exert general restrictions on specific jurisdictions carrying out trading activities, although it does impose temporary export and/or import restrictions on certain products from certain jurisdictions. For example, Indonesia issued Minister of Trade Regulation No 10 of 2020 on Temporary Restriction on the Import of Living Animals from the People's Republic of China in response to the COVID-19 pandemic, and ratified the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, through Indonesian Law No 7 of 1997.

Indonesia became a member of the World Trade Organisation with the ratification of the Agreement Establishing the World Trade Organisation by virtue of Law No 7 of 1994 and therefore can impose trade sanctions as a countermeasure or “retaliatory action” in the case of a non-fulfilment of obligations pursuant to the rules of the WTO.

Indonesia has not imposed any trade sanctions in relation to the Russia-Ukraine war, and continues to partake in trade activities (eg, exports and imports) with both states.

9.4 International Conflict

Articles 464 and 465 of the ICC allow for the termination of an agreement by providing written notice to the other party, if the enforcement of the agreement is obstructed due to the outbreak of war, and the obstruction cannot be resolved within a reasonable time. If the ship is carrying freight or passengers and is not in port at the time of termination, it must proceed to the nearest seaport. In all cases where the agreement is terminated prior to its completion, the ICC requires that freight costs remain payable in full up to the last day of the contract.

In relation to war risk insurance coverage, Articles 646 and 647 of the ICC provide that in the case of an insurance agreement that includes the term “free from damage”, the insurer will be liable for damage unless the insured goods are destroyed due to acts of violence, robbery, hijacking, detention by order of a ruler, a declaration of war or acts of retaliation. At the time of writing, there are no legal precedents regarding defaults or non-performance of obligations caused by ongoing international conflicts in publicly available court decisions.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Previously, under MOT Regulation No 89 of 2018 regarding the Norms, Standards, Procedures and Criteria for the Electronically Integrated Business Licensing System in the Sea Transportation Sector, a SIUPAL was required for businesses in the sea transportation sector. Indonesia has now adopted a risk-based licensing regime where business licences will be assessed and granted in line with the risk of the business activity.

With the implementation of the risk-based licensing regime, the SIUPAL has been replaced by a Standard Certificate, pursuant to MOT Regulation No 12 of 2021 regarding Standards of Business Activities and Products in the Implementation of Risk-Based Business Licensing in the Transportation Sector, as lastly amended by MOT Regulation No 13 of 2023, which is

intended to simplify the requirements and procedures for obtaining the business licence. However, since the nomenclature of the Standard Certificate is still relatively new, there may be discrepancies between the regulation and the actual implementation of it.

Vessel Certification

Besides the SIUPAL (now the Standard Certificate), a company that owns a ship will obtain several additional licences from the online single submission system. Ship-owning companies must obtain the following commercial/operational licences:

- a vessel nationality certificate (*surat tanda kebangsaan kapal*);
- a tonnage certificate (*surat ukur*);
- a safety certificate (*sertifikat keselamatan*);
- a load line certificate (*sertifikat garis muat*);
- a safe manning certificate (*sertifikat pengawakan kapal*) for manned vessels;
- a document of compliance (*dokumen penyesuaian manajemen keselamatan*) for manned cargo vessels with a gross tonnage equal to or larger than 500 tonnes; and
- a safety management certificate (*sertifikat manajemen keselamatan*) for manned cargo vessels with a gross tonnage equal to or larger than 500 tonnes.

Foreign and locally flagged vessels operating in Indonesia must acquire the following pollution prevention certificates:

- an international oil pollution prevention certificate (*sertifikat internasional pencegahan pencemaran oleh minyak*);
- an international air pollution prevention certificate (*sertifikat internasional pencegahan pencemaran oleh udara*); and
- an international sewage pollution prevention certificate (*sertifikat internasional pencegahan pencemaran oleh kotoran*).

In addition, any vessel communicating through the radio frequency spectrum must obtain a ship radio station certificate, according to Law No 36 of 1999 regarding Telecommunications, as amended by Law No 6 of 2023 regarding the Stipulation of Government Regulation in Lieu of Law No 2 of 2022 regarding Job

Creation into Law, and Minister of Communication and Informatics (now Minister of Communication and Digital) Regulation No 7 of 2021 regarding the Use of Radio Frequency Spectrum, as recently amended by Minister of Communication and Informatics Regulation No 9 of 2023.

Cabotage Principle

The Shipping Law provides that domestic sea transportation must be carried out by an Indonesian shipping company with an Indonesian-flagged vessel and Indonesian crew. The scope of these provisions is often seen to cover most vessels, including vessels in Indonesian waters that do not engage in domestic sea transportation.

Specific types of foreign-flagged vessels operating in Indonesian waters for specific types of activities may be exempted from cabotage rules as regulated under MOT Regulation No PM 2 of 2021 regarding Procedures and Requirements for the Granting of Foreign Vessel Utilisation Approval for Activities Other than Domestic Carriage of Passengers and/or Goods. This Regulation provides an exhaustive list of the types of activities for which foreign vessels may be used, namely:

- oil and gas surveys;
- drilling;
- offshore construction;
- offshore operational support;
- dredging;
- salvage and underwater works;
- electricity activities (performed by power plant vessels); and
- terminal construction.

To be able to conduct these activities, foreign-flagged vessels must apply for approval for the use of a foreign vessel (*persetujuan penggunaan kapal asing* – PPKA) after obtaining their SIUPAL/Standard Certificate.

Vessel Ownership Shareholding Requirement

Before the introduction of GR 31/2021, vessel registration in Indonesia was governed under the Shipping Law and MOT Reg 39/2017. Article 158 (2) of the Shipping Law and Article 5 (2) of MOT Reg 39/2017

stipulate identical criteria for vessels to be eligible for registration in Indonesia, as follows:

- vessels with a gross tonnage of at least seven GT;
- vessels owned by Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia; and
- vessels owned by Indonesian legal entities that are joint ventures, where the majority of the shares are owned by Indonesian citizens.

While Article 93 of GR 31/2021 consistently provides the same wording as above, the elucidation thereof specifies that such local majority shareholders in the context of a joint venture company must manifest in the form of:

- a national sea transportation company wholly owned by Indonesian citizens for commercial activities; and/or
- Indonesian legal entities wholly owned by Indonesian citizens for non-commercial activities, including social activities, tourism and sports.

While the above indicates that there is more of a restriction in place regarding the entity that can serve as the majority shareholder of a vessel-owning joint venture company, there is also a lack of clarity regarding which parties are expected to engage in commercial or non-commercial activities and what these activities respectively entail. Therefore, it is yet to be affirmatively determined whether “commercial activities” or “non-commercial activities” refer to the activities of the majority shareholder of a vessel-owning company or to those of the vessel-owning joint venture company itself.

Shareholding and Vessel Ownership Requirements for Shipping JV Companies

The government of Indonesia recently enacted the Third Amendment to the Shipping Law, which introduces sweeping changes that reshape the regulatory landscape for Indonesian shipping joint ventures (ie, shipping companies established in Indonesia which have a foreign entity as a shareholder) (“Shipping JV”). A Shipping JV intending to own a vessel must now have a wholly Indonesian-owned shipping company as their majority shareholder. This new requirement

effectively excludes Indonesian individuals and wholly Indonesian-owned non-shipping entities from partnering with foreign entities to form Shipping JVs and holding the majority of the shares therein.

The Third Amendment to the Shipping Law imposes further restrictions on foreign participation by limiting shareholding in JVs to foreign shipping companies. The term “foreign shipping company” remains undefined, leaving its interpretation uncertain until implementing regulations are issued. However, it can be inferred that foreign shareholding in a Shipping JV (which must hold the minority stake in any event) is required to be held by an entity actively engaged in shipping in order to qualify as a foreign shipping company.

The Third Amendment to the Shipping Law also imposes a substantial increase in the vessel ownership requirement by a Shipping JV, which raises the minimum measurement for each vessel operated by a JV to 50,000 GT, a tenfold jump from the previous 5,000 GT threshold. This minimum measurement requirement is also applied to vessel-owning joint venture companies engaging in the manufacturing and/or mining sectors.

While the Third Amendment to the Shipping Law provides that existing Shipping JVs (and the joint venture companies engaging in the manufacturing and/or mining sectors, as applicable) benefit from a conditional exemption under a grandfathering clause therein, this privilege is forfeited if they amend their corporate deeds, modify shareholding structures or acquire additional vessels. Notably, the statutory language refers to “corporate deeds” rather than specifically to amendments to a company’s articles of association. This has prompted questions from existing shipping companies as to whether this refers exclusively to amendments to their articles of association, or more broadly, to any notarial deed executed by a company for the purpose of reporting corporate changes to the Ministry of Law, including routine updates such as changes to the board of directors or commissioners. It therefore remains unclear whether changes limited to board composition, without any amendment to the articles of association of the relevant Shipping JV,

would be deemed sufficient to nullify the grandfathering exemption.

That said, as the relevant provisions under the Third Amendment to the Shipping Law only came into effect in October 2025 and the contemplated implementing regulations have not yet been issued, it is possible that the implementing regulations may provide clarity on several issues, including the interpretation and application of the grandfathering provisions.

Trends and Developments

Contributed by:

Emir Nurmansyah, Ulyarta Naibaho, Muhammad Muslim and Adithya Lesmana
ABNR Counsellors at Law

ABNR Counsellors at Law was founded in 1967 by professionals with a deep respect for the law and a keen interest in assisting both foreign and domestic clients to achieve their commercial goals within the Indonesian legal environment. ABNR has the insight and awareness to see the whole picture, and the expertise and experience to develop solutions that meet clients' needs and priorities over the long term. Enquiries from clients receive an instant response, and a partner or associate is always on hand to attend to

issues without delay. ABNR ensures that it uses the most appropriate resources for each task, applied in a timely and efficient manner. As ABNR continues to grow, it will continue the tradition and record of innovation, integrity and professionalism that has characterised it for more than four decades, and made it a counsel of choice for foreign companies enacting business in Indonesia, and for Indonesian enterprises working with local and foreign companies.

Authors



Emir Nurmansyah is a senior partner at ABNR and a member of the firm's management board. After some 30 years in legal practice, he is a market-leading lawyer in project finance, banking and finance, corporate and

M&A, and FDI. He also offers extensive experience and expertise in TMT, restructuring and insolvency, shipping and aviation. He is recognised in Chambers Asia-Pacific Guide for his prowess in banking and finance, corporate/M&A, projects and energy, and restructuring/insolvency. He has also received several awards and been recognised by other leading organisations and publications. He is the head of ABNR's project finance department and banking and finance department.

in-house counsel with several private-sector companies prior to joining ABNR. She is a listed arbitrator at the Indonesian arbitration centre, BANI, and is recommended for dispute resolution in the Chambers Asia-Pacific Guide.



Muhammad Muslim (or Oka, as he is popularly known) is a partner at ABNR. He focuses on maritime and shipping law but also works on foreign direct investment, and projects and energy matters,

especially those connected to the maritime industry. He earned his bachelor's degree from the University of Indonesia and has an LLM in maritime law from the University of Southampton, United Kingdom.



Ulyarta Naibaho is an experienced and versatile litigator and joint head of ABNR's disputes and ADR department. Her work in contentious matters extends across all industry sectors and practice areas, with an

emphasis on commercial, shipping, FDI, mining, cybersecurity/cybercrime, administrative law, hate speech, corporate crime, and environmental disputes. She also frequently represents clients in arbitration proceedings and other ADR forums. Uly holds an LLM in mineral law and policy from the University of Dundee, Scotland, and worked as



Adithya Lesmana joined ABNR in September 2010 and is now a partner and member of the firm's award-winning litigation team. His main areas of practice encompass shipping and maritime, commercial litigation,

restructuring and insolvency, arbitration and ADR matters. Adithya graduated from the University of Indonesia, majoring in international law, in 2010. In 2014, he received an Indonesia Endowment Fund for Education scholarship to pursue a master's degree, and in December 2015 graduated with an LLM with merit at Queen Mary University of London,

majoring in comparative and international dispute resolution.

ABNR Counsellors at Law

Graha CIMB Niaga 24th Floor
Jalan Jenderal Sudirman Kav. 58
Jakarta 12190
Indonesia

Tel: (62) 21 250 5125
Fax: (62) 21 250 5001
Email: Info@abnrlaw.com
Web: www.abnrlaw.com



The Third Amendment to Law No 17 of 2008 on Shipping (the “Shipping Law”) through Law No 66 of 2024 (the “Third Amendment”) was enacted on 28 October 2024. It introduced tighter restrictions on foreign investment in Indonesia’s shipping industry. These restrictions are applicable not only to foreign JV shipping companies operating in Indonesia, but also to any foreign joint ventures engaged in mining or industrial activities that utilise vessels to support their main business.

Complex and Stricter Requirements for Foreign Investors

The Third Amendment places stricter restrictions on foreign investment in the shipping sector by significantly increasing vessel ownership requirements for foreign JV shipping companies. New foreign JV shipping companies can only own and operate vessels of at least 50,000 Gross Tonnage (GT) each – slightly larger than a Panamax vessel. This marks a major change from the previous rule, which required only one vessel with a minimum of 5,000 GT.

In addition, joint ventures must partner with a “National Shipping Company” that holds at least 51% of the shares. A National Shipping Company is defined as a limited liability company engaged in sea transportation activities, possessing a valid sea transportation business licence, and fully owned by Indonesian shareholders up to the ultimate ownership level. Consequently, even an Indonesian wholly owned com-

pany would now be prohibited from holding a 51% stake in a JV shipping company unless it has a sea transportation business licence and therefore qualifies as a National Shipping Company.

As a background, Indonesian law has previously established that any company with foreign ownership – even partial – cannot qualify to hold the 51% stake in a JV shipping company, even if it is incorporated under Indonesian law. Under the previous regime, foreign investors could partner with any Indonesian individual or entity to meet the 51% ownership requirement. However, the Third Amendment now mandates that the majority shareholder must be a National Sea Transportation company with a valid licence. This requirement also applies to foreign joint ventures in non-shipping sectors that operate vessels for their own use – they too must own at least one vessel of 50,000 GT.

It should be noted that the Third Amendment includes a grandfathering provision that exempts JV sea transportation companies, which already own vessels and began operations prior to the enactment of the legislation, from the new vessel ownership requirement. This new vessel ownership requirement came into effect one year after the legislation’s enactment on 28 October 2024.

However, there are limitations to the applicability of this “grandfathering” provision. JV sea transportation

companies that began operations before the enactment of the Third Amendment may not benefit from the grandfathering provision if they undertake any of the following corporate actions after the new vessel ownership requirement becomes effective:

- amend their articles of association; and/or
- change their shareholding composition or structure; and/or
- acquire a new vessel.

As a result, the exemption will be revoked if these companies alter their shareholding structure or acquire new vessels. However, the legislation does not clearly specify whether JV companies undertaking any of these actions would be prohibited from operating their existing fleet or whether their existing business licence would be suspended or revoked, creating further confusion.

Hurdles of Implementation of Stricter Requirements

Due to the Third Amendment, the cabotage principle under the Shipping Law now introduces more complex requirements for shareholding composition and vessel specifications for a JV National Shipping Company that includes foreign individuals or entities as direct shareholders through the following.

- Vessel specifications – the Shipping Law mandates that all vessels owned by a JV National Shipping Company must have a minimum size of 50,000 GT as explained above.
- Shareholding composition – the Shipping Law now requires that a minimum of 51% of the shares in a JV National Shipping Company must be owned by another National Shipping Company wholly owned by Indonesian individuals. Meanwhile, foreign shareholders may hold a maximum of 49% of the shares. In addition, the Shipping Law stipulates that such foreign shareholder must be a foreign shipping company.

Vessel specifications

Regarding the vessel specifications, it is important to note that many vessels do not exceed 50,000 GT in size. These specifications and/or requirements entail significant operating expenses and substantial invest-

ment, thereby increasing the financial and logistical burden for potential foreign investors intending to carry out vessel registrations.

In addition, the requirements outlined above are not limited to traditional shipping operations, they also extend to joint ventures in other sectors, such as mining, offshore oil and gas, and construction, where vessels are utilised and/or operated under a Special Sea Transportation Operation Licence (known as *Surat Izin Operasi Perusahaan Angkutan Laut Khusus* or SIOPSUS). These industries usually employ smaller, more specialised hi-tech vessels, which are mostly procured through a foreign direct investment (FDI) scheme. Moreover, other similar hurdles confront foreign investors intending to carry out business activities such as cargo handling, floating storage, and bunkering, which also typically involve smaller vessels. This creates additional complexity, as compliance with vessel specifications is a prerequisite for shipping operations.

Shareholding composition requirements

Further specifications regarding shareholding composition under the Third Amendment are included in Circular Letter No SE-DJPL 31 of 2024 on the Supervision of the Implementation of Vessel Registration Activities and Sea Transportation Business Licensing (“Circular Letter 31/2024”). Under Circular Letter 31/2024, it is required that a minimum of 51% of the shares in a shipping company be held by domestic investors, either by a single entity or collectively, based on their respective shareholding proportions. These domestic investors may consist of:

- a National Shipping Company wholly owned by Indonesian citizens; or
- a National Shipping Company wholly owned by Indonesian citizens, together with Indonesian legal entities, non-legal entities, and/or individual companies,

that holds a valid shipping business licence, namely *Surat Izin Usaha Perusahaan Angkutan Laut* (SIUPAL). Therefore, in respect of the shareholding composition requirement, foreign investors may only hold minority shares in a JV National Shipping Company if they qualify as shipping companies under their respective

laws of incorporation. On the other hand, the majority shares of the JV National Shipping Company may only be held by another National Shipping Company. Thus, the foreign investors must ensure that the investor must engage another National Shipping Company wholly owned by Indonesian individuals which holds a valid SIUPAL to serve as the majority (51%) shareholder and the minority (49%) shareholder must either qualify as a shipping company or designate an affiliated company that is considered a shipping company under its laws of incorporation.

Inconsistencies of Regulatory Interpretation

Based on recent experiences, there have been inconsistencies between the provisions set out in shipping-related regulations and their implementation in practice, including the interpretations by the relevant government officials.

For example, as explained above, the shareholding composition requirements introduced by the Third Amendment specify that the Indonesian shareholder(s) holding the 51% majority shares in a shipping company must be National Shipping Company(-ies) (entirely free of foreign ownership at any level) and must also hold a valid SIUPAL. This may also be interpreted as requiring that the 51% ownership in a shipping company holding a SIUPAL be held by a single domestic shipping company. Consequently, under this interpretation, it would not be permissible for two or more domestic shipping companies to collectively own the 51% majority shares.

Furthermore, the language of the provision under the Third Amendment may also be construed as implying that foreign shareholders holding the 49% shares in a shipping company must themselves be shipping companies. However, the requirement for both domestic/national and foreign shareholders of a shipping company to be duly established and licensed shipping companies is not expressly stated in the legislation. Rather, it is inferred from the interpretation of Article 29 (2) of the Third Amendment.

Article 29 (2) of the Third Amendment stipulates that a wholly Indonesian-owned domestic shipping company may enter into a co-operation with foreign shipping companies to establish a JV sea transporta-

tion company, provided that the majority ownership remains with the domestic shipping company. The use of the term “may” in this provision suggests freedom to choose rather than exclusivity. Consequently, the wording of Article 29 (2) does not explicitly restrict co-operation solely to foreign shipping companies for the purpose of establishing a JV shipping company. Instead, it suggests an alternative interpretation where involving a foreign shipping company as a partner in the establishment of a JV shipping company is one of several possible approaches, rather than a mandatory requirement.

In addition, the legislation does not expressly define what constitutes a “foreign shipping company”. Definitions may vary across jurisdictions, and such discrepancies could lead to interpretational challenges when applying Indonesian law. It also remains unclear whether the regulator would require the foreign shareholder to submit their constitutional documents and relevant licences issued by their home jurisdiction when the JV company applies for a SIUPAL. This uncertainty is compounded by the practical difficulty local authorities may face in verifying foreign documents and licences.

Another inconsistency of regulatory interpretation that warrants highlighting concerns the application of non-binding administrative instruments in practice. Internal circulars or directives issued by the Directorate General of Sea Transportation are intended as guidance rather than binding law. However, in practice, such instruments are often treated by certain local authorities as if they carry the same legal force as formal regulations.

Differences in interpretation can lead to enforcement varying from port to port, particularly regarding requirements such as the composition of local shareholders in joint ventures. Some harbourmasters view these internal directives as non-binding guidelines that cannot override higher legislation, while others adopt a stricter approach, insisting on full compliance even when the directive introduces conditions not expressly stated in the underlying law. Such divergence results in inconsistencies between the formal hierarchy of laws and actual administrative practice.

Consultation with government officials on the interpretation of these provisions has revealed significant inconsistencies. For instance, statements that an Indonesian shipping company with foreign shareholding (Foreign Investment Company/PT PMA) qualifies as a National Shipping Company, despite the relevant Shipping Law stating otherwise. Similarly, in the context of a JV National Shipping Company, the interpretation that only one domestic shareholder needs to be a shipping company (and the remaining domestic shareholder can be a non-shipping domestic company) diverges from the apparent intent of the legislation.

Similar interpretational ambiguities arise in other areas, such as cargo-handling activities. Under Article 4 (1) of Minister of Transportation Regulation No PM 59 of 2021 on the Operation of Service Businesses Related to Water Transportation, loading and unloading activities conducted by a National Shipping Company are limited to certain goods for vessels operated by that company. However, despite this restriction, officials have confirmed that, in principle, a National Shipping Company is also permitted to provide loading and unloading services for third parties.

When faced with broad and/or inconsistent interpretations, the common practice is to submit a formal written request for clarification to the relevant government authority and/or departments. This is often followed by an invitation to consult or meet with such officials. However, even after such engagements, the interpretations provided by different officials may remain inconsistent with one another in practice, largely due to the broad and ambiguous nature of the regulatory provisions. Compounding this issue is the absence of a clear and uniform solution from the government. Despite repeated consultations and requests for clarification, no definitive guidance or formal mechanism has been provided to resolve these interpretational gaps.

These inconsistencies highlight a systemic issue in the regulatory framework governing shipping and related services in Indonesia: the lack of precise definitions and clear implementing guidelines. While the legislation sets out broad principles, it leaves significant room for discretion at the administrative level, which can lead to divergent interpretations among officials. This uncertainty may lead to legal and operational risks for parties conducting shipping activities, which require predictability to structure their investments and ensure compliance. As a result, businesses are often left to navigate regulatory uncertainty on a case-by-case basis, relying on informal confirmations that may not be legally binding.



Law and Practice

Contributed by:

Joseph Sprinzak and Rahel Rimon
J.SPRINZAK

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J.SPRINZAK was founded in 2003 and is located in the centre of Tel Aviv, with offices in one of the most prestigious buildings in the city. The firm enjoys strong contacts throughout the shipping sector, gaining a strong international reputation in the specialised fields of shipping and maritime law, international transport, insurance, international trade and international arbitrations. In particular, the firm deals with and has broad experience in these areas: admiralty/ in rem actions, cargo claims (recovery and defence), charterparty contracts and disputes, coastal shipping, contracts of affreightment, dangerous goods'

transportation, general average, marine insurance and policy drafting, maritime liens, necessities, pilotage, pollution, port operations, property damages and personal injury arising from commercial or small-vessel operations, protection and indemnity risks, receivership, sale and purchase of vessels, salvage, ship arrest and detention, ship collisions, ship equipment and supplies, ship finance including mortgages, ship registration in Israel and abroad, ship repairs, ship-building, towage contracts and liabilities, and notarial services in relation to all of these.

Authors



Joseph Sprinzak founded **J. SPRINZAK** in 2003 and is a specialist in the fields of shipping, multimodal transport, marine insurance and aviation law. Joseph has wide experience litigating in all types of

marine and shore-based disputes for a variety of corporations, ship-owners, time charterers, port agents, freight forwarders, ports, terminals, liability insurers, P&I clubs, cargo interests and their insurers, bunker suppliers, shipyards, etc. Joseph has been involved in some landmark decisions, participated in litigation and arbitrations in and outside Israel and accepted instructions from overseas clients on many occasions. Joseph's expertise covers most aspects of commercial shipping. He is a member of the Israeli Bar and the Israel Maritime Law Association.



Rahel Rimon is an English-trained lawyer and specialises in admiralty matters, marine insurance and reinsurance, drafting in-house and expert opinions for the courts, drafting contracts, ship sales, ship registration and local and international arbitrations. She is a member of Lincoln's Inn (London) and the Israeli Bar, and has written widely on a variety of legal topics over the years.

J.SPRINZAK

150 Menachem Begin Road
WE Towers
Tel-Aviv
6492105
Israel

Tel: +972 3608 1177
Fax: +972 3608 1178
Email: office@sprinzak.com
Web: www.sprinzak.com



J. SPRINZAK
Maritime Law Firm

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Admiralty Court in Israel applies the admiralty law and jurisdiction adopted by the English High Court of Admiralty in 1890, and consequently the Admiralty Courts Acts of 1840 and 1861 (legislation left over from the time of the British Mandate). However, this jurisdiction is naturally subject to subsequent local legislation.

The most important local law affecting the Admiralty Court's jurisdiction is the Shipping (Vessels) Law – 1960. This Law deals with:

- the registration of vessels;
- their transfer and devolution;
- liens;
- mortgages;
- loss of qualification;
- striking off the register;
- the effect of the registration of rights, nationality and flag; and
- the name of the vessel.

The provisions that affect the jurisdiction of the Admiralty Court are laid out in Section 40, which provides for debts to be secured by a first lien (on the vessel, freight and accessories), and in Section 41, which lists the type of debts that can be secured and the order of priority of the liens.

The Shipping (Vessels) Law does not expressly refer to the position under the Admiralty Courts Acts, although it does retain existing legislation concerning the creation or transfer of a mortgage or charge upon a vessel.

It is accepted that the creation of these statutory liens also confers complementary jurisdiction in rem on the Admiralty Court.

1.2 Port State Control

The Israel Ministry of Transport has established the Shipping and Ports Administration (SPA) to regulate

all activities relating to Israel's maritime activities. The SPA is responsible for the safety of Israeli shipping.

Port Regulations provide very detailed regulations relating to the conduct of vessels, safety and order in Israeli ports. The State of Israel implemented the Port State Control (PSC) inspection system in 1997, in accordance with International Maritime Organization (IMO) and International Labour Organization (ILO) resolutions.

Section 99 of the Ports (Shipping Safety) Regulations, 1982, empowers the manager of the Ports Authority in the Ministry of Transport to appoint a casualty investigator in respect of any Israeli vessel wheresoever or foreign vessel located in the Israeli jurisdiction upon the occurrence of a maritime accident, including those involving seafarers. The investigator may examine witnesses, collect documents and evidence, and make recommendations to prevent similar accidents in the future.

PSC inspections are conducted to ensure that foreign vessels calling at Israeli ports comply with international regulations and conventions. The SPA is responsible for all PSC activities and aims to inspect each and every tanker and passenger ship arriving at Israeli ports, as well as 25% of the container ships and general cargo, with an emphasis on bulk carriers.

1.3 Domestic Legislation Applicable to Ship Registration

The principal law governing the registration of vessels in Israel is the Shipping (Vessels) Law – 1960. Other relevant legislation includes the Shipping (Registration & Marks) Law – 1962, the Shipping (Regulations of Building & Measurements) Law – 1961 and the Vessels (Mortgage & Transfer) Ordinance – 1948.

Under Israeli law, all Israeli vessels must be registered, using the same process without distinction as to the size or purpose of the vessel concerned. Nonetheless, in practice, small boats, namely, vessels less than seven metres in length, are exempted from registration in the registry, and the details of the boat are maintained in a separate small boats registry. Vessels under construction in Israel or abroad may also be registered

in certain circumstances. Separate registries are kept for each port.

In addition, the Shipping (Foreign Vessel Under Control by Israeli Interests) Law – 2005 provides that any vessel that is not eligible for registration in the Register in accordance with the conditions specified in the foregoing, but which is controlled by Israeli interests (as these terms are defined in this Law), must be registered in Israel in a registry book, which is customarily referred to as the Secondary Register (or the Grey Register), regardless of its ownership registration in a foreign registry. A vessel so registered shall be subject to the technical supervision of the Israeli Ministry of Transport and to the manning regulations with respect to the employment of Israeli crew members. Nonetheless, various exemptions are available in respect of Israeli vessels, set out in Section 6 of the Shipping (Seamen) (Manning of Ships and Tugs with Israeli Crew) Regulations – 2016; for example, in circumstances relating to the area of trade of the ship or the security situation relating to the voyage of the vessel, the chartering of the vessel or unusual circumstances concerning the technical operation of the vessel, and the owner's ability to control the vessel.

Israeli law does not provide for bareboat-charter registration of foreign ships under the Israeli flag, nor does it provide for the bareboat-charter registration of Israeli flag ships under a foreign flag.

1.4 Requirements for Ownership of Vessels

A vessel owned by the State of Israel, an Israeli citizen or a company registered in Israel or owned by a foreign company, where more than 50% of the shares in the vessel are owned by an Israeli citizen, must be registered in the Israeli vessel registry. Israeli law allows the registration in Israel of a vessel, less than 50% of which is Israeli-owned, upon special application to the Minister of Transport. Similarly, where more than 50% of a vessel is Israeli-owned, the owner may apply to the Minister of Transport for permission not to register the vessel.

A non-Israeli may register an interest in an Israeli vessel, provided that this registration does not preclude the vessel from being registered as an Israeli vessel

and, as previously noted, a foreign vessel controlled by Israeli interests must be registered in Israel.

Vessels under construction in Israel or abroad may also be registered in certain circumstances.

1.5 Temporary Registration of Vessels

Temporary registration of vessels is permissible in accordance with Section 16 of the Shipping (Vessels) Law – 1960 in respect of vessels located in foreign ports. The temporary registration is effective for six months but may be extended for up to one year. In all cases, the temporary registration lapses within seven days of the vessel first reaching an Israeli port.

Dual registration is not permitted, except in the case of foreign vessels controlled by Israeli interests. See **1.3 Domestic Legislation Applicable to Ship Registration**.

1.6 Registration of Mortgages

The process for registration of a mortgage before the Registrar of Vessels is a simple commercial financing procedure. The agreement, setting out the degree of the mortgage and conditions for repayment, must be drafted in writing, and one copy thereof must be delivered to the Registrar and entered into the vessel's file.

When both parties have signed the mortgage deed before the Registrar, the Registrar approves the deed and registers it in the Register on the page corresponding to the vessel in question. The same procedure is followed when the owner of the vessel wishes to "increase the mortgage amount", "transfer the mortgage", "change the terms of the mortgage" or "delete the mortgage" from the Register of Vessels.

If a lien is imposed on a vessel by virtue of a competent court decision, and a written order is produced to the Registrar, the Registrar will record the court's order in the Register of Vessels, without being under an obligation to notify the vessel owner that such an entry has been made. Finally, it should be noted that, if the grantor of the mortgage (the mortgagor) is a company, the mortgage must also be registered as a charge with the Registrar of Companies. All documents submitted to the Registrar may be drawn up in English or Hebrew.

1.7 Ship Ownership and Mortgages Registry

According to Section 109 of the Shipping (Vessels) Law – 1960, the Vessels Registry and all documents filed with the Registrar in connection with the registration, cancellation of registration or other transaction in connection with a vessel shall be open for inspection by any person. Additionally, under the Freedom of Information Law – 1999, every Israeli citizen or resident has the right to obtain information from a public authority in accordance with the provisions of the law. The public authority is not under any obligation to provide information that is a commercial or professional secret, or which has economic value; information on commercial or professional matters connected with a person's business; or information that may infringe a person's privacy.

In practice, the Registrar will provide access to all entries (registrations, mortgages, charges, pledges); however, access will not be provided to the underlying documents.

The fee for an application to the SPA to inspect or verify any entry in the Registry of Vessels currently stands at ILS476.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship financing in Israel is generally structured as traditional bank debt financing. Equity is typically provided by owners through ordinary share capital or straightforward shareholder loans, while complex equity or hybrid financing structures are uncommon.

The primary form of security is a ship mortgage. A ship mortgage must be in writing and registered with the Israeli Registrar of Vessels to be valid and enforceable. It must identify the secured obligations and the loan amount or maximum secured amount. In the event of default, the mortgage may be enforced through arrest and judicial sale of the vessel by the Israeli Admiralty Court, subject to statutory maritime liens and preferred maritime claims, including crew wages and salvage.

In practice, lenders usually require a broader security package in addition to the ship mortgage, commonly including pledges over the shares of the ship-owning company, assignments of earnings and insurances, charges over bank accounts and corporate or personal guarantees.

Ship finance transactions most commonly relate to the acquisition, construction or refinancing of vessels owned or controlled by Israeli interests or registered under the Israeli flag. In financings involving foreign-flagged vessels, lenders often require parallel security under the relevant flag state law.

2.2 Ship Leasing

Ship leasing and sale and leaseback transactions are used to a limited extent in Israel. However, publicly available information does not indicate a market-wide shift away from traditional secured bank lending. These structures function primarily as complementary financing tools reflecting global shipping finance trends, rather than as domestically driven alternatives to bank debt.

Israeli law does not recognise ship leasing as a distinct statutory financing regime, and there is no developed body of Israeli case law addressing the enforcement of ship lease defaults as such. Leasing and sale and leaseback transactions involving Israeli operators are typically structured with foreign lessors and financiers and governed by foreign law. As a result, issues of default and enforcement in such transactions are generally determined under the applicable foreign law, while Israeli law remains relevant mainly in relation to vessel registration, flag state matters and procedural enforcement where applicable.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Israel is a party to the following International Conventions relating to pollution:

- International Convention for the Prevention of Pollution from Ships, 1973 as modified by Protocol, 1978 (MARPOL 73/78);
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage (CLC PROT 1992);
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 92);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 as amended (OPRC 1990); and
- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995.

Local legislation relating to pollution includes:

- Prevention of Sea-Water Pollution by Oil Ordinance [New Version] – 1980;
- Regulations for the Prevention of Sea-Water Pollution by Oil (Guarantee for Fine Payments and Cleaning Expenses) – 1983; and
- Regulations for the Prevention of Sea-Water Pollution by Oil (Marine Environment Protection Fee), 1983.

The Prevention of Sea-Water Pollution by Oil Ordinance applies to Israeli territorial waters and inland waters, and its provisions may be applied to non-Israeli vessels outside Israeli territorial waters that threaten to pollute Israeli territorial waters. The Ordinance specifies actions to be taken in the case of oil discharges and creates the Fund for the Prevention of Sea-Water Pollution, with the goal of creating financial resources for the fight against and prevention of pollution of sea water and the seashore and for their cleansing and inspection. In cases of discharge of oil into the sea, the Minister of Transport may, by notice, request the owner of the vessel to take specified measures aimed at preventing, stopping or reducing the discharge. A “marine environment protection fee” may be imposed on owners or operators of vessels, as well as on owners or operators of installations on land or at sea from which oil might be discharged or allowed to escape into the sea.

After many years of delay, in January 2022 the Knesset’s Economic Committee finally approved the Ministry of Transport Regulations, designed to protect the marine environment by drastically reducing the amount of organic and non-organic sewage dumped by vessels at sea. The regulations give effect to MARPOL 1973, Annex IV. The new regulations provide for the removal of waste stored in vessels while in port, and sanctions for infringement. It remains to be seen how efficiently these regulations will be enforced. It should be noted in this regard that legal advisers to the Economics Ministry consider that Israeli law applies to Israel’s exclusive economic zone, relevant in terms of enforcement of these regulations as well as others.

With regard to wrecks, the Ports Ordinance – 1971 provides that the Israel Ports Company may demand that owners remove a vessel that has been lost or abandoned in Israeli waters where that vessel poses a danger to navigation or docking.

Further, the Wrecks and Salvage Fees Ordinance – 1926 provides that where any services are rendered wholly or in part within the waters of Israel in saving life from any vessel; assisting any vessel that is wrecked, stranded or in distress; or saving the cargo or apparel of that vessel, or any part thereof, there shall be payable to the salvor, by the owner of the vessel, cargo, apparel or wreck, a reasonable amount of salvage, to be determined in the case of dispute.

The Ordinance provides for determination of salvage disputes by arbitration. Section 20 (3) of the Ordinance provides that the decision of the arbitrators shall, for the purposes of execution, have the effect of a judgment of the Magistrate’s Court.

Finally, the order of priority of the maritime lien for salvage, including life salvage, is determined by Section 41 of the Shipping (Vessels) Law – 1960, although it has been argued that the Court has discretion to deviate from the order prescribed in the section on grounds of equity.

3.2 International Conventions: Collision and Salvage

With regard to matters of salvage, see **3.1 International Conventions: Pollution and Wreck Removal**.

In terms of collision, Israel has ratified the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72) and incorporated them into Israeli law via the Ports (Preventing Collisions at Sea) Regulations 1972.

Israel is not a party to the Salvage Convention 1989. Section 41 (7) of the Shipping (Vessels) Law – 1960 creates a statutory lien for damages resulting from collisions or damage caused by the vessel to port installations, buildings and dry docks, as well as loss or damage to cargo and to passengers' personal effects.

3.3 Convention on Limitation of Liability for Maritime Claims

The Israeli Shipping Law (Limitation on a Ship-Owner's Liability) – 1965 adopts the International Convention relating to the liability of Owners of Sea-Going Ships (Brussels, 10 October 1957).

As Israel has not ratified the International Convention on Limitation of Liability for Maritime Claims, 1976 ("LLMC 1976"), no limitation is available for those claims introduced by the LLMC 1976 and not found in the 1957 Convention.

Accordingly, the types of claims subject to limitation of liability are those set out in Articles 1 (a)–(c) of the 1957 Convention. Claims that are not subject to limitation of liability are set out in Article 1 (4) of the 1957 Convention.

The Israel Shipping (Limitation on a Ship-Owner's Liability) (Amendment) Law – 1987 amended the 1965 Law previously referred to by adopting the 1979 Protocol and replacing gold francs with Special Drawing Rights (SDR). Pursuant to the 1979 Protocol, the limitations of liability applicable in Israel are SDR66.67 per tonne for cargo claims and SDR206.67 per tonne for personal claims.

It should be noted that the Shipping (Limitation on a Ship-Owner's Liability) (Amendment) Bill, 2015 pro-

poses that Israel adopt the 1976 Convention, together with the Protocols of 1996 and 2012. The proposed law intends to allow salvors to limit their liability.

3.4 Vienna Convention on the Law of Treaties

Israel has not ratified the 1969 Vienna Convention on the Law of Treaties. However, Israeli courts and legal authorities generally regard the Vienna Convention as a persuasive reflection of customary international law on treaty interpretation and may refer to its principles, including those on interpretation and non-retroactivity, as an interpretative aid when construing treaties binding on Israel. In the context of limitation of liability, Israel has implemented the 1957 Brussels Limitation Convention through the Shipping Law (Limitation of Liability of Sea-Going Ships), 1965, and has not adopted the 1976 LLMC. Accordingly, any limitation issues before Israeli courts would arise under the 1957 regime as incorporated into domestic law, with the Vienna Convention potentially serving as a non-binding interpretative reference, in a manner broadly consistent with the approach endorsed by the UK Supreme Court in *MSC Flaminia*.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Owners can apply to the Admiralty Court to establish a limitation fund, calculated as set out in **3.3 Convention on Limitation of Liability for Maritime Claims**. The Court will give orders as to the ship-owner's deposit and the manner in which notices will be published to creditors.

It should be noted that the Israeli courts accept the deposit of funds in Israeli currency, in a sum determined by the court. However, parties will often agree on the provision of local bank guarantees and, in some cases, foreign bank guarantees. Further, as the Israeli Admiralty Court has accepted letters of undertaking issued by P&I clubs as security for the release of vessels from arrest (in essence, in a manner similar to the position taken in the English case *Atlantik Confidence* [2014] 1 Lloyd's Rep 586), it seems likely that they would follow the same approach and accept letters of undertaking issued by P&I clubs in lieu of limitation funds.

Once a fund is constituted, claims by local creditors must be filed within 30 days, whereas foreign creditors are given 60 days to file their claims. According to Section 9 (a) of the Law, constitution of a fund creates a bar to other actions.

In an important precedent concerning the establishment of a limitation fund in Israel, the Israeli Admiralty Court has recently held (In Rem File 44990-07-19 *Moraz Shipping v Israel Ports Company*) that no limitation fund would be approved in cases of marine pollution on the grounds that “the polluter pays”. The Court upheld the Israel Ports Company’s objection to the establishment of the fund, inter alia, because the provisions of the Oil Pollution Prevention Ordinance – 1980 impose an obligation on those convicted of offences under the law to clean up, and after analysing the principles of the International Convention on the Limitation of Liability of Owners of Sea-Going Ships 1957 as adopted into Israeli law.

3.6 Seafarers’ Safety and Owners’ Liability

Israel is not a party to the MLC 2006, although legislative efforts have been initiated to encourage the employment of Israeli seamen. Israel has also ratified 49 International Labor Organization Conventions and one Protocol, including all eight Fundamental Conventions. The Technical Conventions include:

- the Placing of Seamen Convention, 1920 (No 9);
- Paid Vacations (Seafarers) Convention (Revised), 1949 (No 91);
- C092 – Accommodation of Crews Convention (Revised), 1949 (No 92);
- C133 – Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No 133);
- C134 – Prevention of Accidents (Seafarers) Convention, 1970 (No 134); and
- C147 – Merchant Shipping (Minimum Standards) Convention, 1976 (No 147).

The Ports (Shipping Safety) Regulations, 1982, govern the safety of seafarers and use of safety equipment, as well as the seaworthiness of vessels, including through the adoption of the provisions of the International Convention for the Safety of Life at Sea (SOLAS) 1974 and the Convention on Training and Certification 1978, as amended in 1995.

4. Cargo Claims

4.1 Bills of Lading

Israel has adopted the Hague-Visby Rules by virtue of the Carriage of Goods by Sea Ordinance – 1926, as amended in 1992. By virtue of this Ordinance, as amended in 1992, the Hague-Visby Rules apply to any bill of lading in respect of carriage of goods by sea in any vessel:

- from a port in Israel to another port, whether in Israel or outside Israel;
- from a port in a country that is party to the Hague Rules or the Hague-Visby Rules, or when the bill of lading was issued in a country that is party to the Rules;
- when they apply to the contract of carriage included in the bill of lading, or where the bill serves as proof of its existence, according to a term stipulated in a contract or under the laws of the country whose laws apply to that contract; and
- to a port in Israel when the laws of Israel apply to any such carriage, whether according to the contract of carriage, another agreement between the parties or the determination of the court.

4.2 Title to Sue on a Bill of Lading

As a rule, the lawful holder of the bill of lading may bring suit under the bill of lading. There may be cases, however, where a party who is a named consignee under a non-negotiable bill of lading may have a cause of action against the maritime carrier – for example, the buyer of the cargo under a sale contract, who has not received by way of transfer or endorsement a right to assert a claim under the bill of lading.

Under Section 22 of the Torts Ordinance [New Version], it is generally not permissible to assign the right to a remedy for a tort or liability, except by operation of law. However, in the landmark case of *Ma’ale Ephraim Printing Ltd v Ellerman Lines and Others* (Judge King), later affirmed by the Supreme Court, the Court clarified several important principles.

Regarding a bill of lading, the Court held that, upon its transfer, the proprietary right in the cargo passes to the transferee, who is thereby entitled to sue and be sued in their own name. While English law restricts the

right to sue for cargo damage to the holder of the bill of lading who has a proprietary interest in the goods, the Court found no reason to adopt this principle in Israeli law. In this case, the plaintiff's contractual right to receive the cargo, coupled with their distinct economic interest in it, was deemed sufficient to confer standing to sue for damages caused to the cargo.

In a tort action for negligence, the Court emphasised that the right to sue is not limited to the owner of the damaged property. A holder or any person with a proprietary interest in the property may also sue. The tort of negligence is not confined to individuals entitled to immediate possession of the property, and any party with a legitimate right of recourse may avail themselves of this remedy. The Court dismissed concerns that broadening this right would overwhelm the judicial system.

An individual creates a cause of action that is not tortious and therefore not subject to the limitation in Section 22 of the Torts Ordinance; therefore, there is no impediment to the assignment of the right to sue. The Court explained that a significant reason for prohibiting the assignment of the right in torts is that it is sometimes a personal right, which cannot be reduced to a purely monetary right. However, no "personal" element exists in a claim for compensation for damage caused to machinery.

Certain statutory provisions in Israeli law also specifically allow for the assignment of claims, such as subrogation under Section 62 of the Insurance Contract Law, 1981. This provision enables an insurer to step into the shoes of the insured to recover damages from a third party.

It should be noted that in *Bellina Maritime SA Monrovia v Menora Insurance Company Ltd* (2002), which interpreted Section III(6a) of the Hague-Visby Rules providing for a one-year time limit for claims by cargo owners against the carrier, the Supreme Court determined that the carrier, as a direct party to the bill of lading, is not a "third party" in relation to the cargo owner. When the insurer steps into the shoes of the cargo owner through subrogation, the carrier remains a direct counterparty, not a third party. In addition, the insurer is bound by the same one-year time limitation

under Section III(6) that applies to the cargo owner. The Supreme Court held that the District Court had erroneously treated the insurer's subrogation claim as falling under Section III(6a)'s exception for third-party indemnity claims. The Supreme Court overturned this, emphasising that subrogation does not alter the direct relationship between the insured and the carrier.

It should be noted that, according to Article 8 of the Ordinance (and without derogating from Article I(b) and Article III Part 4 of the Hague-Visby Rules and any other provisions of law), the party to whom the cargo was consigned (the consignee) and the party to whom the bill of lading was duly endorsed (the endorsee) are considered, as applicable, as a party to the bill of lading, and as such are entitled to all the rights arising from the transaction pursuant to which the bill was made, and subject to the obligations referring to that transaction in exercising their aforementioned rights.

Finally, the Israeli Supreme Court has also recently recognised the right of foreign insurers to institute subrogation proceedings in Israel. See also **10. Additional Maritime or Shipping Issues**.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The limitation of liability regime available to carriers is as set out in the Hague-Visby Rules, as amended by the 1979 Protocol and, where appropriate, the provisions of the Israeli Shipping (Limitation on a Ship-owner's Liability) Law – 1965, as amended in 1987. See also **3.3 Convention on Limitation of Liability for Maritime Claims** and **10.1 Other Jurisdiction-Specific Shipping and Maritime Issues**.

4.4 Misdeclaration of Cargo

In accordance with the Hague-Visby Rules, Article III(5), the shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by them, and the shipper is required to indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to this indemnity in no way limits the latter's responsibility and liability under the contract of carriage to any person other than the shipper.

It should be noted that, as part of the effort to deal with safety problems at sea and on shore arising from incorrect declarations of weight of containers, Israel has taken steps through its Port Regulations to ensure the reliability of weights of containers by scrutinising the SOLAS VGM (Verified Gross Mass) declarations issued by shippers, as well as the weighing of all trucks entering the port.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Israel has adopted the Hague-Visby Rules by virtue of the Carriage of Goods by Sea Ordinance 1926, as amended in 1992. In accordance with these Rules, the limitation period for filing a claim against a maritime carrier for damage/shortage of cargo is one year from the date of arrival of the cargo at its destination or from the date the cargo was due to reach its destination. This limitation period also applies to subrogation claims brought by insurance companies.

As noted, Israel has incorporated the Hague-Visby Rules into its law. In accordance with Article III 6 of the Rules, subject to paragraph 6 bis, the carrier and the vessel shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. According to Israeli case law, the time bar is not merely a procedural matter but a substantive right, and the limitation period may therefore only be extended if the parties agree to this voluntarily.

It will be recalled that Article 6 bis provides that an action for indemnity against a third person may be brought, even after the expiry of a year, if brought within the time allowed by the law of the court seized of the case; however, the time allowed shall be not less than three months, commencing from the day when the person bringing such an action for indemnity has settled the claim or has been served with process in the action against themselves.

In the Supreme Court case ALA 9444/00*Bellina Maritime SA Monrovia v Menorah Insurance Co Ltd*, the Court held that a subrogated insurer cannot benefit from the provisions of Article III 6A of the Rules (name-

ly, the provision that forms an exception to the short prescription period of one year set out in Article III 6).

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Israel is not a party to either the 1952 or the 1999 Arrest Conventions. For historical reasons, the jurisdiction of the Israeli Admiralty Court is equivalent to that applied by the English High Court of Admiralty in 1890. Similarly, the admiralty practice is that set out in the Vice-Admiralty Rules of 1883.

It is to be noted that the Admiralty Court's material jurisdiction under the English Admiralty Courts Acts is fairly limited. Thus, in a recent case (In Rem File 31813-10-22*Vos Prince*) the Israeli Admiralty Court held that prima facie a dispute over the validity of a sale agreement for a vessel does not fall within the Court's jurisdiction to deal with causes for possession.

5.2 Maritime Liens

The Shipping (Vessels) Law – 1960, Section 40 deals inter alia with debts to be secured by a first lien (on the vessel, freight and accessories). Section 41 lists the type of debts that are capable of being secured as a maritime lien and the order of priority amongst the liens.

The Law does not expressly refer to the position under the Admiralty Courts Acts, although it does retain existing legislation concerning the creation or transfer of a mortgage or charge upon a vessel. It is accepted that the creation of these statutory liens also confers complementary jurisdiction in rem on the Admiralty Court, but the Court has not yet dealt with the issue of the ranking of priorities in the event of a conflict between the provisions of Section 41 of the Shipping (Vessels) Law and accepted principles of general admiralty law. In any event, Section 41 sets out the debts in the following order of priorities:

- expenses of judicial sale;
- pilotage and port fees;
- expenses of guarding and maintaining the vessel;
- Master and crew wages;
- salvage;

- personal injury;
- collision; and
- necessities.

It should be noted that Section 41 (4) specifically provides for a statutory right in rem in respect of payments claimed by the captain, crew or their survivors, due to their employment on the vessel, according to a contract or as compensation for civil damages or in any other way.

According to Section 53 of the Shipping (Vessels) Law – 1960, debts accumulated by a charterer are dealt with in the same way as those accumulated by an owner. More precisely, the Section states: “The provisions of this chapter shall apply also to a vessel operated by a charterer or some other person who is not the owner thereof, unless he obtained the vessel unlawfully and the fact was known to the creditor”. Consequently, it is arguable, pursuant to Section 53, that debts created by a charterer during the period of a charterparty will vest a maritime lien, or at minimum a statutory action in rem, against the vessel. However, this matter has not yet been decided by the highest instance in Israel.

With regard to foreign maritime liens, it should be noted that the Israeli Admiralty Court will look at the proper law of the claim in order to determine the validity of a lien.

5.3 Liability in Personam for Owners or Demise Charterers

The Admiralty Court has concurrent jurisdiction in rem and in personam. While there is no statutory requirement that owners be personally liable in order for a right in rem to arise, recent case law suggests that the Admiralty Court will not enforce a maritime lien in the absence of personal liability on the part of the owner (ALA 851/99M/V *Ellen Hudig* (2004)). Similarly, in CF 45897-02-12M/V *Emmanuel Tomasos* (2014), the actual bunker supplier’s claim was denied on the ground that only the contractual supplier who had contracted with the owners could be a creditor under the necessities lien. Likewise, in AF 24399-05-15M/V *Nissos Rodos* (2016), it was held that the local agent who had been nominated by the operator of the vessel, and paid the port dues for the numerous calls of

the vessel at Haifa Port, was not entitled to enforce a maritime lien for “port dues of any kind... paid by a third party” on the ground that the agent had no agreement with the owners such that the owners were not personally liable to pay the agent.

Equally, in AF 22358-02-14M/V *Captain Harry* (2016), a supplier’s claim was dismissed due to a lack of owner’s liability; nonetheless, the Admiralty Court noted that there were different types of maritime liens and that, for example, the maritime lien for salvage existed, even if the owners were not liable for the circumstances leading to the salvage event. On appeal, the Supreme Court held that the claim for unpaid bunkers could not be heard on the merits due to the principle of *res judicata* (CA 7138/16M/V *Captain Harry* (2018)).

5.4 Unpaid Bunkers

It should be noted that bunker supplies are regarded as necessities both under Section 41 (8) of the Shipping (Vessels) Law – 1961 and under Section 5 of the Admiralty Court Act 1861, and accordingly a bunker supplier may arrest the vessel in the event of breach of contract to pay for the bunkers. Nonetheless, according to the judgment handed down in CF 45897-02-12OW *Bunker Malta Ltd v M/V Emmanuel Tomasos* (referred to in 5.3 Liability in Personam for Owners or Demise Charterers), the lien, and consequently the right of arrest, is limited to the party that directly entered into the supply agreement with the vessel and does not follow into the hands of subcontractors who supplied the fuel.

The rationale behind the distinction between the supplier of the goods and subcontractors is that the supplier has collateral to secure the payment for the goods, namely the vessel itself. Under this construction, the vessel may proceed with its regular voyage, while the supplier need not wait for other collateral, thereby delaying and interfering with the operation of the vessel. By comparison, the subcontractor (namely, the physical supplier) does not have a direct arrangement with the vessel and will receive its payment from the party ordering the goods and not the vessel, its owners or crew. The grant of security over the vessel to a subcontractor is not required in order to secure the mobility of the vessel. The court also noted that the recognition of the right of each one in the chain

of subcontractor suppliers to realise a maritime lien would probably lead to the situation whereby the vessel would be required to pay a number of entities for the same supplies, contrary to the vessel's expectation that it would have to pay one supplier the agreed consideration for these supplies.

5.5 Arresting a Vessel

A claimant seeking to arrest a vessel will usually file an ex parte application supported by an affidavit and supplement it with a claim in rem before the court, asking for the arrest of the vessel as security for their claim. The grounds for arrest must satisfy the provisions of the Admiralty Courts Acts. Once the court is persuaded that there is a cause of action and that the damage caused to the applicant by not granting the warrant of arrest would be greater than the damage caused to the defendant by the grant of the order, it will issue a warrant of arrest, which will be valid for six months. To become effective, the warrant of arrest is served on the Master, the Port Authority and the Border Police. Usually, service is effected by electronic means. A ship-owner anticipating this process may file a caveat against arrest, undertaking to provide security in lieu of arrest.

There is a court fee, equal to 2.5% of the amount being sought, for filing the claim. Of this, 1.25% is payable upon filing the claim in rem or the application for arrest, whichever is earlier, and 1.25% is payable seven days before the first evidentiary hearing.

In accordance with rules of procedure and Supreme Court precedent, particularly CA 168/93 and ALA 201/93 *Fullwood Marinated Inc v Lofobunker Co SA (The Arctic Hunter)*, claimants in admiralty proceedings seeking the arrest of a vessel will not be required to put up any security for the arrest, except in exceptional case. According to the aforementioned case, an exceptional circumstance might be if the application for a warrant of arrest is based on documents the veracity of which is doubtful. Nonetheless, the court will take into account the property rights of the ship-owner, if appropriate, in accordance with Section 3 of Basic Law: Human Dignity and Liberty and the need to balance these fundamental rights against the claimant's right to an ex parte order of arrest, and where

necessary do so by ordering counter-security in favour of the ship-owner.

5.6 Arresting Bunkers and Freight

According to Section 10 of the Vice Admiralty Rules 1883, a writ in rem may be served upon cargo, freight or other property if the cargo or other property is on board a ship. Conceivably, an issue of title would arise in the event of an attempt to arrest unpaid bunkers.

5.7 Sister-Ship Arrest

Israel does not recognise the right of a plaintiff to arrest a vessel that is not directly connected with the cause of action – ie, claims against sister-ships or associated vessels (although any such vessels may be attached within the framework of in personam proceedings in the civil courts) as previously described. This was confirmed in the AF 6731-02-17M/V *Huriye Ana* (2017), where the Admiralty Court held that it had no jurisdiction to order a “sister-ship arrest”.

Nonetheless, within the context of a civil suit against the ship-owner as opposed to admiralty proceedings, and subject to strong evidence, the court could order the “corporate veil” to be lifted, and consequently the attachment of sister ships or vessels owned by affiliated companies; it should be noted that attachment orders in civil proceedings are comparable to arrest orders, except insofar as concerns collateral security.

5.8 Other Ways of Obtaining Attachment Orders

In contrast to the in rem proceedings described in 5.5 **Arresting a Vessel**, a vessel or other asset may be attached in ordinary civil proceedings. In such cases, claimants are required to provide a letter of undertaking (LOU) on their own behalf, as well as a third-party LOU to reimburse the defendant, should the temporary application be set aside and/or the claim be dismissed on the merits, causing the defendant to incur a loss. The court may exempt the claimant from providing a third-party LOU if it deems it just and proper to do so.

5.9 Releasing an Arrested Vessel

An owner or interested party may produce a P&I club LOU as acceptable security in lieu of arrest. Similarly, an Israeli bank guarantee is acceptable security, as is

the deposit of the claimed amount in the court treasury.

5.10 Procedure for the Judicial Sale of Arrested Ships

Once a vessel has been arrested in accordance with the rules, and judgment has been entered in rem against the vessel and/or ship-owner, the court, usually at the request of the claimant, will examine whether the ship-owner is able to pay the sum awarded. In the event that it concludes that they are incapable of paying this sum, the court will order the sale of the vessel.

There have been cases, particularly where the vessel is deteriorating in value, guarantees have not been produced in lieu of arrest or crew and suppliers have not been paid, where the court, at the request of a claimant, will order the appointment of a receiver in order to preserve the vessel, and her crew and cargo. Normally, this process will shortly afterwards be followed by an order of sale, with or without judgment in favour of the claimant. In all these cases, the sale proceeds will serve as substitute security for the claim, pending judgment on the claim in rem and subsequently subject to an order as to priorities in accordance with Section 41 of the Shipping (Vessels) Law – 1960.

It should be noted that in mortgage cases where an urgent sale is required in order not to prejudice the rights of a mortgagee, Section 74 of the aforementioned law specifically allows the sale of the vessel by private agreement even before judgment is given on the claim. Section 72 of the law empowers the court to appoint a receiver or manager for a vessel and to grant them any of the powers that a district court may grant to a receiver, and this would likely also include the power to conduct a private sale of the vessel in a non-mortgage case.

All of the maritime liens set out in Section 41 (except “necessaries”) rank higher in terms of priority than the statutory right in rem granted by a mortgage.

5.11 Insolvency Laws Applied by Maritime Courts

As a matter of Israeli practice, a ship-owning or other company must settle its business, file suits, etc, while

it retains its legal personality. Usually, all business is taken care of prior to or during the process of dissolution of the company and not after it has ceased to exist.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

There is no decisive authority in the Admiralty Court regarding damages for wrongful arrest. A party seeking an interim remedy (such as an attachment) may potentially be liable in tort if they have acted unreasonably or maliciously (CA 732/80 *Arens v Bait-El*, where the Supreme Court discussed the applicant’s duty to present the Court with the full factual basis).

Alternatively, if the Admiralty Court has required a guarantee to be put up at the time of arrest, that could be forfeited in the appropriate circumstances.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Israel is not a party to the Athens Convention relating to Carriage of Passengers and their Luggage by Sea. Accordingly, it seems likely that in passenger claims brought in Israel the courts would apply Section 5 of the Prescription Law – 1958, which sets a limitation period of seven years for non-land disputes. It is possible to stipulate a limitation period in a contract, albeit such a stipulation would be open to scrutiny as a potentially unfair restrictive clause. Section 41 (6) of the Shipping (Vessels) Law creates a statutory right in rem to claim compensation for death and bodily injury caused to passengers on the vessel.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The Israeli courts give full effect to choice of law clauses contained in any contract, including contracts of carriage and bills of lading. Where the case is conducted in Israel, foreign law is considered a matter of

fact, which must be proved in the usual way, generally through expert testimony.

With regard to jurisdiction clauses, the Israeli courts will give effect to exclusive jurisdiction clauses, even where the action sought to be stayed is in rem. In the case of CA 8205/16M/V *Thor Horizon*, the Supreme Court held that a foreign jurisdiction clause contained in a bill of lading issued by a sub-charterer could apply to a claim in rem against the vessel for damage to goods. The Supreme Court emphasised that seizure of the vessel in Israel alone, without further links to the country, would not be sufficient to determine that Israel is the convenient forum in the face of a foreign jurisdiction clause. Further, the fact that the damage to the goods was discovered upon the arrival of the vessel in Israel was not, on its own, sufficient to weigh against a stay of proceedings in Israel. Nonetheless, in that case, prescription in the foreign forum meant that, in the particular circumstances, the convenient forum for hearing the case was in fact Israel.

In another case, ALA 1785/15 *Cosco Container Lines Co Ltd v Alison Transport Inc*, the Supreme Court upheld the District Court decision that a consideration against an argument that Israel was not a forum non conveniens was that suit was being brought against the carrier, shipper and other parties, and it was important for all the disputes to be heard in a single forum.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In the event of a foreign arbitration clause, Section 6 of the Israeli Arbitration Law – 1968 provides that when an action is brought before a court in a dispute in which it had been agreed to refer to arbitration, and if an international convention to which Israel is a party applies to the arbitration and that convention lays down provisions for a stay of proceedings, the court will exercise its power under Section 5 in accordance with and subject to those provisions.

This is also true where the arbitration clause is in a charterparty incorporated into the relevant bill of lading, subject always to the true construction of the relevant arbitration clause (ALA 1917/19M/V *Chem Antares* (2019)).

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Israel is a party to the 1958 New York Convention on the Enforcement and Ratification of Foreign Arbitral Awards, which provides for the stay of judicial proceedings in the case of a foreign arbitration agreement unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Section 29 of the Israeli Arbitration Law – 1968 provides that matters regarding the enforcement or cancellation of an arbitration award governed by an international convention to which Israel is a party will be dealt with according to the provisions of that convention. As a result, a court considering the ratification of a foreign arbitral award would give consideration to such matters as whether the subject matter is capable of arbitration according to the laws of Israel and whether recognition and enforcement of the award is consistent with Israeli public policy.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The Admiralty Court has jurisdiction to order the attachment of a vessel as security for foreign judicial or arbitral proceedings, upon provision of prima facie evidence that the ship-owner will not be in a position to satisfy a judgment or arbitral award. Moreover, interim relief in the form of ship arrest or temporary attachment may be obtained before the foreign arbitration proceedings have been initiated (CA 102/88 *Silver Goose Delicatessen Ltd v Cent or SARL*).

7.5 Domestic Arbitration Institutes

There are a number of expert maritime lawyers and retired judges who specialise in handling maritime arbitrations.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

A defendant facing proceedings in breach of an exclusive foreign jurisdiction or arbitration clause may ask for a stay of the proceedings until judgment is rendered by a competent foreign tribunal.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Israeli shipping companies are subject to the same corporate tax regimes as other companies in Israel, and are not subject to any special regulation or legislation. Incentives are, however, provided to shipping companies in terms of amortisation, and seafarers are provided with incentives in terms of income tax deductions.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Israeli legislation does not contain a definition of the term “force majeure”. Accordingly, when considering non-performance of contractual obligations, the Israeli courts always look first at the construction of the contract and the intention of the parties. Force majeure in shipping contracts usually relates to wars and hostilities, natural disasters such as hurricanes and other matters outside the control of the parties. When considering the construction of the clause, the courts will also take into account the foreseeability of the event.

Even if a particular event does not fall within the definition of force majeure, it is possible that in the appropriate circumstances the court would consider the shipping contract to be frustrated. In this regard, the Israeli courts have held that “war” per se in Israel does not frustrate a contract governed by Israeli law. It is highly likely that the on-going Russia-Ukraine war would also not be considered a frustrating event by the Israeli court in relation to a contract governed by Israeli law, in light of the foreseeability of the hostile activities.

Section 18 (a) of the Israeli Contracts (Remedies for Breach of Contracts) Law 1970 provides that, where the breach of contract is the result of circumstances that at the time of making the contract the person in breach did not or could not know or foresee, and which they could not have avoided, and the perfor-

mance of the contract under these circumstances is impossible or fundamentally different from what was agreed between the parties, the breach will not give cause for enforcement of the contract or a right to compensation. The outcome is termination of the contract. The breaching party is not required to pay compensation; however, by virtue of Section 18 (b) of the law, they must return the moneys or goods received from the innocent party.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

The State of Israel adopted new national regulations for the prevention of air pollution from ships, which took effect on 23 February 2023. These regulations reflect the Regulations to Annex VI of MARPOL.

The new regulations adopt low-sulphur limits at berth, similar to the requirements in EU member states, based on an EU Directive. The regulations require ships to change to 0.1% low-sulphur fuel as soon as possible, but not more than one hour after arrival/ before departure to/from port (pier or anchorage), and to maintain proper records in the sulphur record book.

Ships equipped with an exhaust gas cleaning system (EGCS; scrubber), in accordance with IMO guidelines, which has been approved by the flag state, may use it within the port limits. These ships will not be required to use compliant fuel as stipulated in the Regulations. Wash water from EGCS may not be discharged overboard within port limits.

Israel has also stipulated in the Regulations provisions limiting volatile organic compound (VOC) emissions in its ports. The Regulations define what is considered as a VOC and to which ships the Regulations shall apply. A 2016 task force funded by the Ministry of Environmental Protection recommended a number of measures to reduce pollution in the marine sector at both the Haifa and Ashdod ports.

9.3 Trade Sanctions

In Israel, issues of trading with the enemy are governed by the Trading With The Enemy Ordinance, which was enacted during the British Mandate in 1939.

Section 3 (1) of the Ordinance prohibits all trade with an enemy, and also establishes criminal sanctions for contravention of the prohibition. The term “enemy” is defined in Section 4 (1) to include “any individual resident in enemy territory” and “any state... at war with the State of Israel”. Section 3 (3) of the Ordinance states the prohibition on trading with the enemy, which applies also to a “person acting on behalf of an enemy”. The prohibition on trade with the enemy also applies to payment or transmission of money “to an enemy or for the benefit of an enemy or to a place in enemy country” (Section 3 (2)(a)(2) of the Ordinance). Section 4 (d) of the Prevention of Terror Ordinance, 5708 – 1948, prohibits the transmission of money “for the benefit of a terrorist organisation”.

The Ordinance also prohibits transferring money or commercial documents and securities (Sections 6 and 7 of the Ordinance), clearly with the purpose of preventing any financial assistance that might aid the enemy in its war against Israel. The Finance Minister is responsible for determining the enemies of the State of Israel, and currently this list consists of citizens and residents of Syria, Lebanon and Iran.

Israel is also a member of the Organisation for Economic Co-operation and Development (OECD) and therefore adopts a wide range of legislation regarding anti-money laundering and terror financing, as well as laws forbidding trade with “terrorist organisations”.

Israel has not imposed formal trade or economic sanctions against Russia following the invasion of Ukraine; however, many companies are reluctant to engage in trade with Russia for fear of being blacklisted under international sanctions regimes. Moreover, in practice, Israeli banks comply with almost all financial sanctions against Russia and Belarus set by European and US regulators.

9.4 International Conflict

The most notable legal impact of the war in Ukraine on commercial grain contracts has been the shift in the attachment of the risk in cost, insurance and freight (CIF) contracts to the entry into the Bosphorus Straits. This provides a measure of comfort to Israeli buyers seeking to mitigate the risk attendant on loading in Black Sea ports.

A month after the Hamas attack on Israel on 7 October 2023, the Houthis began attacking commercial vessels suspected of being linked to Israel or to Israeli entities or individuals in the Bab el-Mandeb straits and Gulf of Aden, leading to the diversion of shipping routes between Asia/Oceania and the Mediterranean/Europe from the shorter route through the Red Sea to the longer route around the Cape of Good Hope and West Africa.

According to Bank of Israel findings, the impact on Israeli imports and exports of these attacks has been limited compared to other OECD countries in the Mediterranean, first in light of the small volume shipped to and from Asia/Oceania and second because of the swift action taken by ZIM Integrated Shipping Services Ltd to divert its vessels to an alternative shipping route that bypasses Africa, followed by the majority of the international shipping industry. Similarly, there have been minimal legal consequences of the Houthi attacks in the Israeli jurisdiction.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

In Israel, cabotage is regulated by the Coastal Shipping (Permit to Foreign Vessel) Law – 2005, and the regulations promulgated thereunder in 2012 regarding applications for permits.

Section 1 of the Law defines coastal shipping broadly and includes the carriage of goods and passengers originating from and destined for a port, vessel, facility or structure located in coastal or internal waters of Israel, without calling on a foreign port, excluding the carriage of empty containers or empty tows used by the ship-owner to carry goods.

The law provides for permits to engage in cabotage, including the requirement for a permit to perform any other operation in such waters, excluding fishing, oil and natural gas drilling and production, and the placing of pipes for conducting oil or natural gas on or under the sea bed. Insofar as the contiguous zone is

concerned, the placing of cables or pipes on or under the seabed is also excluded.

It should be noted that, in practice, foreign vessels are permitted to operate in Israeli coastal waters under a 30-day temporary permit. The vessel will be subject to testing by the Chief Marine Engineer of the SPA prior to being given a full permit.

As to sea collisions and casualties, the right of non-Israelis, including foreign insurance companies, to access full investigative materials from the Ports Authority by virtue of the Freedom of Information Law – 1998 was confirmed in Administrative Petition 67484-03-19 *HDI Global Antwerp v The State of Israel et al (The Diana)*, despite this law essentially being intended to establish Israeli citizens' rights to receive information held by public authorities (see **1.2 Port State Control**).

In 2025, the Israeli government introduced new regulations implementing a significant reform to enhance port services, accelerate cargo handling, strengthen the economy and reduce the cost of living.

Amendments to the operational permits of four port terminals at Haifa and Ashdod enable them to expand operations and compete under fair conditions. The reform is expected to ease port congestion, and improve efficiency, by opening additional berths to reduce wait times and increase unloading speeds. Specific steps address congestion in both general cargo and container handling, recognising that 99% of Israel's imports and exports pass through its seaports:

- in Haifa Port, additional land has been allocated for logistics and commercial activities;
- in Bay Port (at Haifa), authorisation has been granted to use berths 7 and 8 for general and bulk cargo, with a maximum annual handling capacity of 750,000 tons per cargo type, valid until the end of 2031 – restrictions can be lifted if more than 30 vessels are waiting;
- Ashdod Port has been granted 40 dunams (approximately ten acres) at berth 25 for six years, while maintaining its status as Israel's "national port" for strategic security reasons; and
- South Port (at Ashdod) has been authorised to use berth 28 under similar conditions to Bay Port.

Finally, it should be noted that the Israeli Minister of Transport together with the Minister of Finance, issued an order amending the operational licence of the Israel Shipyard Port (ISP), removing as of 2025 all restrictions on the cargo-handling capacity of the port, except in relation to the import of new vehicles, which may not be imported to the ISP at all. This regulatory update forms part of the broader port sector reforms aimed at increasing competition and efficiency in Israel's maritime trade operations.

In an interesting recent case, *Maersk A/S v Gold Bond Group Ltd* (Israel Supreme Court, 5 May 2025), the Court held that the one-year time bar under Article III(6) of the Hague-Visby Rules applies only to parties to the bill of lading (or their successors), and does not bar indemnity or tort claims brought by third parties. The case concerned damage to heavy cargo that occurred during unloading at Gold Bond's Haifa container terminal, a facility providing container handling, storage and inland transportation services, following carriage by sea. Gold Bond, which was not a party to the bill of lading, subsequently sought indemnity from the ocean carrier, Maersk. The Supreme Court denied leave to appeal, confirming that such third-party claims are governed by Israel's general limitation regime rather than the Hague-Visby Rules, thereby clarifying the limited personal scope of the Hague-Visby time bar under Israeli law.

In another recent case, *Xin Hai Tong 23* (Haifa Maritime Court, Case No 73288-06-23), the Court upheld an in rem claim for unpaid general average (GA) contributions against a visiting Chinese-flagged vessel, notwithstanding a GA bond governed by English law with exclusive English jurisdiction. Relying on the historic Admiralty Acts 1840/1861 and Section 41 of the Shipping (Vessels) Law, the Court asserted local admiralty jurisdiction and enforced the GA claim, applying the York-Antwerp Rules 2016 and awarding approximately USD1.8 million plus costs and interest. The decision reinforces the Israeli Admiralty Court's robust in rem jurisdiction over foreign vessels in Israeli waters for GA and related maritime claims, prioritising local enforcement and public policy over foreign forum selection clauses, consistent with prior authorities such as *Chem Antares* and *Thor Horizon*.

Trends and Developments

Contributed by:

Yoav Harris and Domiana Abboud
Harris & Co Maritime Law Office

Harris & Co Maritime Law Office was established in 1977 by the late advocate John Harris (1940–2023). It provides comprehensive legal services and handles a broad range of legal work across various areas of law, with a principal focus on maritime and admiralty law. The firm's expertise includes ship arrests, charter-party disputes, cargo claims, ship sale and purchase transactions, financing of ship acquisitions, arbitration and commercial litigation. The firm represents ship-owners, charterers, agents, freight forwarders, P&I clubs, oil refineries and other commercial enti-

ties in shipping and maritime law matters. Harris & Co regularly receives instructions from leading shipping and maritime law departments of international law firms and keeps abreast of developments in English and other jurisdictions' maritime law through judgments and professional publications. The firm is also frequently instructed by foreign law firms seeking legal assistance in maritime matters relating to Israel. Harris & Co consistently receives top-tier rankings from Chambers & Partners, among other legal directories.

Authors



Yoav Harris graduated in 1999 summa cum laude from the law faculty of Haifa University. Yoav specialises in maritime law and commercial litigation. He is known for his deep and wide legal knowledge,

the sharpness of his written and verbal pleadings, the quality of his cross-examinations and his skill in obtaining successful, satisfactory outcomes for his clients. Yoav contributes articles to the Israeli monthly magazine *The Cargo* and is co-author, with John Harris, of the Israeli chapters of the annual *Ship Arrest in Practice* guide of *Shiparrested.com*. He is also the editor of the *Chambers Shipping Global Practice Guide* and the Israeli chapters of the international shipping guides of other legal directories.



Domiana Abboud is an associate attorney at Harris & Co. She graduated from the University of Haifa Faculty of Law in 2019. Prior to joining Harris & Co., Domiana gained valuable experience as a law clerk to

a judge at the Haifa District Court and as an associate attorney at one of Israel's leading law firms. Since 2021, she has been part of Harris & Co, where she specialises in maritime law and commercial litigation. Domiana is currently an LLM candidate in International Corporate and Commercial Law at King's College London.

Harris & Co Maritime Law Office

16 Pal-Yam St, 5th Fl
Haifa 330952
Israel

Tel: +972 54 420 2951
Fax: +927 04 874 4040
Email: yoavh@maritime-law.co.il
Web: www.lawships.com



The Haifa Maritime Court

The sets of rules governing the Maritime Court's authority

Israeli maritime law is a legacy of the British Mandate for Palestine, which was officially valid from 1923 to 1948. By a King's Order-in-Council dated 2 February 1937, the Supreme Court of Jerusalem was constituted as a maritime court under the Colonial Courts of Admiralty Act, 1890 (the "Colonial Act"). On the date the Colonial Act was enacted, the most relevant acts of admiralty in force were the Admiralty Court Acts of 1840 and 1861 and the Naval Prize Act 1864. These continue to apply to the Israeli Haifa Maritime Court's jurisdiction.

Clause 2 (2) of the Colonial Act empowers the jurisdiction of a Colonial Court of Admiralty with the jurisdiction over "the like persons, matters, and things, as the Admiralty jurisdiction of the High Court in England whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations". In accordance with these provisions, and following the transfer of powers from the Supreme Court, when exercising its jurisdiction over maritime claims and matters, the Haifa Maritime Court can apply its civil and other powers as a district court under Israeli law.

When enacting the Israeli Shipping Act of 1960, the Israeli legislature included specific chapters on mortgages and liens, adopting the continental lien regime of the Brussels Convention of 1926 and preferring this regime over English law. Therefore, the Israeli Maritime Court (seated in the Haifa District Court) has two sets of rules related to maritime liens.

A maritime lien is a substantive right

The main Supreme Court judgment relating to maritime liens was rendered in the matter of *MV Nadia S*. The Court held that a maritime lien is a substantive right rather than a procedural right (and in this regard diverged from the majority opinion in the English judgment in the matter of the *Halcyon Isle*), attaching to the ship and following the res into the hands of third parties, and is determined according to the *lex causae*.

The requirement for owner's liability

The concept of a maritime lien can be described metaphorically to emphasise its unique nature. It can be said to "spring into existence the moment the circumstances give birth to it" (Thomas, *Maritime Liens*, 1980, page 1) and like an unseen demon attaches itself to the res and creates a "subtraction from the interest of the owners" (Thomas, page 23, citing *The Teravate* (1922), using the words of *The Ripon City* (1897)). This lien remains invisible to owners and other creditors, maintaining a silent hold over the vessel until it manifests in a legal process, typically through a claim in rem that "relates back to the period when it first attached" (*The Bold Buccleugh*, 1851).

The question of whether a maritime lien requires an owner's personal liability seems to be viewed differently by European civil admiralty law (rooted in Rhodian Sea Law, Roles (Rules) of Oleron, Consolato del Mare Laws of Visby and the Ordonnance de La Marine of 1861) and by English common law, which imported the concept of a maritime lien through the Doctors' Commons.

While under English law "a proper maritime lien must have its root in personal liability of the owner" (*The Castlegate* (1893)), no such requirement appears in the European maritime lien regime, at least according to the Brussels Convention of 1926, which, as mentioned, was adopted by the Israeli legislature.

However, in *MV Ellen Hudig* (2004), the Haifa Maritime Court denied a maritime lien for "indemnities for loss of or damage to the cargo or baggage". This was because alleged damages to the cargo (additional expenses related to its discharge from the vessel in Haifa and additional freight paid to another vessel to complete its intended voyage to Singapore – after the port agent's notice that the vessel will not continue its voyage) resulted from the crew's decision not to continue sailing, as there was no one to pay their wages, and from a subsequent bankruptcy order issued by a Belgian court (where such an order does not constitute liabilities towards others and third parties). Therefore (in the Court's view), as the owners did not cause the vessel to discontinue the voyage, the claim did not fall under the owners' personal liability.

Ever since, *Ellen Hudig* has been cited by the Haifa Maritime Court as an authority establishing the need to show owners' liability in order to recognise a maritime lien.

Accordingly, in *MV Nissos Rodos* (2016), the Maritime Court cited *MV Ellen Hudig*, insofar as the local ship agent was not entitled to a maritime lien for port dues paid by the agent for the vessel during its calls at Haifa Port. Reasoning that the agent was engaged with the operator of the vessel and not with the owners, and given the accounting arrangements between the owners and the operators, the owners paid for the port dues through a set-off towards the operator.

Only the contractual supplier is recognised as a necessary lien

On what might be considered similar grounds, in *MV Emmanuel Tomasus* (2012), it was held that only the contractual supplier was entitled to a maritime lien for the supply of necessities. Therefore, the actual physical supplier, who did not enter into an agreement with the owners, was not entitled to recover its debt from the arrest and sale of the supplied vessel.

MV Captain Hurry (2016) was similar; a bunker supplier's claim was denied as, by acknowledging a German declaratory order under *res judicata*, it was accepted that the contractual relations took place with the charterers and not with the owners.

However, in the matter of *Captain Hurry*, the Haifa Maritime Court also mentioned that the maritime liens differed from each other, whereby some were intended to secure voluntarily liabilities and others to secure liabilities under law. It is obvious that the owners will be liable for salvage even if they were not responsible for the circumstances leading the vessel into distress. Owners can be liable towards third parties for a vessel's acts, and this liability is recognised as the maritime lien of "indemnities for collisions or other accidents of navigations", etc.

Acts of managers and others who are considered authorised by owners

In the matter of *Moraz Shipping*, while denying the owners' application for establishing a limitation fund (according to the Brussels Convention of 1957), for

damages caused to port basins and facilities due to oil leakage from the vessel while bunkered, the Maritime Court cited *Captain Hurry* as an authority that in rem proceedings can be taken against a vessel regardless of the owner's liability. To enforce these, it is sufficient that those who were authorised to render the vessel liable in rem also caused the damage. In the matter of *Moraz Shipping*, the managers of the vessel failed to provide sufficient instructions to the crew and did not intend for, or supervise, the bunkering. Therefore, the damage was the "actual fault or privity of the owner"; following the wording of Article 1 of the Convention, the application was thus denied.

In the matter of *MV HUA YANG MEU GUI*, the vessel was successfully arrested due to unpaid bunkers supplied while it was under charter. The charterers were liable for ordering and paying for the bunkers, as per the charterparty.

By reference to US law (the governing law as per the supplier's terms and conditions), the Haifa Maritime Court presumed that charterers and their agents have the authority to bind the vessel by ordering necessities, unless an explicit notice from the owners states otherwise. This principle was cited from *World Fuel Services v MV HEBEI SHIJUAH*, and the arrest was ultimately granted.

The same principle was applied by the Haifa Maritime Court in *M/V Mirage 1*, where the intended buyer of the vessel, who took possession of it while it was still under the ownership of the seller, was considered authorised to bind the owners in a lien for necessities for the bunkers supplied during such possession.

To conclude, although the Haifa Maritime Court's approach is that a maritime lien requires owner's liability, there is some flexibility in how such liability is established – directly or through those acting on behalf of the owner. Not all maritime liens are uniform in nature, and some might exist without personal liability of the ship-owner.

Enforcement of maritime lien for damage "done to goods"

In *Poliva v Ruby T*, the Haifa Maritime Court held that the intended receiver of alleged damaged goods, who

denied the goods and rejected the bill of lading (B/L) issued (and who did not become the holder), has no title to sue for its commercial losses associated with the purchasing of substitute cargos. The court dismissed the maritime claim filed under the maritime lien for “damage done to the goods”. This decision has been appealed and is pending before the Supreme Court.

Sister-ship arrests

In *MV Huriye Ana* (2017), the Maritime Court held that Israeli law did not allow for a sister-ship arrest, as no such authority is mentioned in the Admiralty Acts of 1840 and 1861, or in the Israeli Shipping Act 1960. Furthermore, Israel is not a signatory party to any of the Conventions allowing such an arrest (ie, the Brussels Convention 1952 and the Geneva Convention 1999).

In the matter of *MV OSOGOVO* (2021), while denying a supplier’s arrest application for necessities supplied to sister-ship vessels of the subject vessel, the Haifa Maritime Court mentioned that it did not deny the possibility of extending, under “judicial legislation”, the possibility of sister-ship arrest, leaving the path open for applying for such an arrest by using, for example, the legal principles of lifting the corporate veil.

Charges paid at foreign ports also constitute the lien for general port charges

In *MV Mirage 1*, the Haifa Maritime Court held that the lien for “general port charges” included port charges paid by the agent (for the vessel) at a foreign port.

Do pollution damages constitute the lien of “damage done by any ship”?

Two matters of contamination damage caused to port decks and commercial losses due to the shut-down of a berth for the purpose of cleaning contamination were handled before the Haifa Maritime Court. The claimants asked the Court to apply the maritime lien of “any damage done by a ship”, according to Article 7 of the Admiralty Court Act 1861, referring to the Court’s mission of interpreting the Admiralty Court Acts of 1840 and 1861 in accordance with the modern world and applying the environmental principle of “the polluter pays”. The matters were recently settled.

Registration

In *MV BADR* (2022), the Haifa Maritime Court accepted the owner’s claim and held that a vessel registered in Libya cannot also be registered in Israel, thus ordering cancellation of the Israeli registration; this was done ex parte, without the consent of the owners (a Libyan government company).

In its judgment, the Haifa Maritime Court referred not only to the Israeli Shipping Act 1960 and the relevant regulations relating to registrations of vessels, but also to the Convention on the High Sea 1958 (to which Israel is a signatory party) and the UN Convention on the Law of the Sea 1994 (UNCLOS) (“the Law of the Sea”) – under which ships shall sail under the flag of one state only (Article 94). Israel is not a signatory party to UNCLOS but its official position, as presented recently before the Supreme Court (in a different matter), is that customary international law is incorporated into Israeli law insofar as there is no contradiction between the two.

Mortgage

In *Vapi Kredi Banaksi v MV Hurriye Ana* (2020), the Haifa Maritime Court denied a bank’s claim to enforce a mortgage that was written in the vessel’s registration. The Court held that the validity of the loan agreement was not proven, and that no information was provided in relation to the payment schedule agreed with the debtor (which was not the owner) or the exact amount of remaining debt. The fact that a mortgage is written in the vessel’s registration is not enough to have it enforced.

Cargo claims

Under the Order of Carriage of Goods in Sea, as amended in 1992, Israeli law has adopted the Hague-Visby Rules, which apply to any B/L that governs the sea carriage of cargo from any Israeli port, or from any port of a country that is a party to either the Hague or the Hague-Visby Rules.

In a Supreme Court judgment in the matter of Civil Appeal 7779/09 *HDI v OrI*, it was held that the quantities stated in the B/L are prima facie evidence not only towards the owners, but also towards the underwriter insuring the cargo (which was carried under the B/L).

In Civil Appeal 7195/18 *Fhya v Millobar* (2018), the Supreme Court held that if a claim filed within one year after discharge of the cargo was filed by a claimant that had no title to sue, the one-year time limit (of Article III (6) of the Hague-Visby Rules) will not be “cut” (stopped). Consequently, amending the claim to add a new claimant with the title to sue after the one-year period is not permissible if the claim of the additional claimant is already time-barred.

In *MV Chrysopigi*, the Haifa maritime judge, the honourable R Sokol, held that a foreign marine insurer has title to sue under the insured rights that have been subrogated to it, even if the foreign insurer is not listed in the Israeli insurance supervisor’s list as an insurer active in Israel and subject to the supervisor’s supervision.

Under this decision, the court has given effect to the Israeli legislature’s wording and meaning when excluding the marine insurance from supervision and other liabilities according to the Insurance Agreement Act of 1982 (this decision was approved by the Supreme Court).

In the similar matter of Civil Claim 31521-01-20 *Nobel Energy v Zim*, the Haifa District Court further ordered that the act of subrogation does not relate to the manner in which an insurer handles its insurance agreements; therefore, the act of subrogation should not be subject to local regulations and supervision.

In *M/V Xin Hai Tong 23*, the Haifa Maritime Court held that the cargo interest’s claim for indemnification from the owners for any such payment falls within its rights according to Article 6 of the Admiralty Act 1861, which concerns “damage done to the goods”. The Court further held that the law and jurisdiction clause in the general average guarantees signed after the Master declared general average – following malfunction of the vessel’s engine while navigating through the Suez Canal, and which referred the parties to English law courts – does not prevent the cargo interests from filing their claim before the Haifa Maritime court. This is because the two claims are of a different nature, and the agreement between the above-mentioned law and jurisdiction clause pertains only to the general average arrangement relating to the allocation of risks in a

marine adventure. The cargo interests’ claim relates to the owner’s liability for placing a vessel that is unseaworthy into service for the voyage in the first place.

Limitation fund

In *MV Moraz* (2022), the Haifa Maritime Court denied the owners’ application to constitute a limitation fund in order to limit its liability to damages resulting from an oil leak from the vessel while bunkered near Haifa Port – and from the fact that, for some reason, the valves of the receiving tank, which should have been closed, were open.

The Court held that the nature of the damages caused, namely the contamination of port facilities and the port area by ten tonnes of oil, should be construed as damages to “harbour works, basins and navigable water ways”, per Article 1 (1) (c) of the Brussels Limitation Convention of 1957, which was excluded by the Israeli legislator when adopting the convention through the Israeli Shipping Act (Limitation of the Liability of Owners of Sea Going Ships) of 1965.

As mentioned above, the Haifa Maritime Court held that the incident was caused by the actual fault or privity of the owners – ie, by the actions of the local managers and operators of the vessel, who did not issue the vessel’s crew the required instructions, check the qualifications of the crew members or supervise the bunkering operations.

Seafarer’s rights

The Israeli Shipping Act (Vessels) of 1960 recognises, under clauses 40–41 (4), the maritime lien for “Payments claimed by the master, crew and others who served on the vessel, as a result of their employment in the vessel, either by their heirs or their substitutes, which are due either according to an agreement, or for compensation for civil damages or by any other way”.

In *MV Moraz* (2021), the Haifa Maritime Court accepted that the costs of medical treatment provided by a local hospital to a crew member constitute the above-mentioned lien.

In *MV Stellar Pacific* (2022) and *Astrid L* (2022), the Haifa Maritime Court accepted claims for compensation filed on behalf of the heirs of two Ukrainian

seafarers who sadly lost their lives while serving on the vessels. In both cases, the owners denied liability and at the same time did not pay any compensation to the heirs, which led to the arrest of the vessels on their call at an Israeli port.

In both cases, the amounts awarded by the Court exceeded the amounts stated in the collective agreements as compensation for the seafarers' deaths. Although judgments were awarded without reasoning, with the parties' consent, the amounts awarded seem to imply the Israeli law proposition that owners' limitation of tortious and other liabilities in relation to casualties of seafarers will be void, as such limitation is not within the public policy.

Grounding and marine casualty investigations

Under Folio No 67484-03-19HDI and *Others v State of Israeli/Ministry of Transportation and the Owners of MV Diana*, the Haifa District Court held that the Administration of Shipping and Ports (within the Ministry of Transportation) will disclose to foreign cargo interests the rescue co-ordination centre (RCC) communications that took place between the distressed *MV Diana* and the RCC at Haifa prior to its grounding on 19 January 2018, 250 metres from the Haifa Bay shore.

These communications were collected by the Administration while investigating the incident, in accordance with their authority under the Port Regulations (Navigation safety) of 1982, and the Court held that the parties with cargo interests on board the *MV Diana*, whose cargo was damaged due to the vessel's grounding, were entitled to receive the communications based on the Israeli Freedom of Information Act, 1998 and the Arbitration Act, 1968, and in view of the London arbitration being conducted between the cargo interests and the owners.

Enforcing a foreign order

In *MV Tiber River*, an arrest order was obtained under a claim for executing a judicial bailment order issued a few days before by the Piraeus Court. The latter order transferred legal and physical possession of the vessel to the claimant nominated as the judicial bailee, in order to keep the vessel as a security for its claim regarding management services and payments made for the vessel. The issuance of the arrest order

indicates that, in certain circumstances, the Haifa Maritime Court is willing to enforce a foreign order regarding the detention of a vessel even if the foreign order has just been issued (and is still appealable).

The authority to act as a prize court

On 9 November 2025, the state of Israel applied to the Haifa Maritime Court to confiscate the 50 vessels comprising the Sumud Flotilla, captured by the Israeli navy while attempting to break the naval blockade imposed offshore of the Gaza Strip. In the application, it was stated that 16 of the vessels were registered to a company named "Cyber Neptune", owned by a member of the Palestinian Conference for Palestinians Abroad (PCPA, which the application claims was affiliated with Hamas). It was further claimed that the total amount of humanitarian aid in those vessels was not more than five tons – less than one-third of what is carried in one aid truck, hundreds of which entered the Gaza strip every day at that time (currently more).

The validity of the naval blockade declared and imposed in January 2009 was recognised by the UN Panel of Inquiry, headed by Sir Geoff Palmer, which investigated the "31 May 2020 Flotilla Incident" (involving the Marmara flotilla), finding that a "blockade in those circumstances is a legitimate exercise of self-defence". The "circumstances" included more than 5,000 rockets, missiles and bombs being fired from the Gaza Strip into Israel between 2005 and January 2009, causing more than 25 deaths and hundreds of injuries. The Sumud Flotilla took place against the backdrop of the current war between Hamas and Israel, which began with Hamas attacks on 7 October 2023.

The attempt of the vessel *Estelle* to break the blockade in October 2012 resulted in its detention and an application for confiscation filed before the Haifa Maritime Court, which is authorised under the Naval Prize Act 1864 and its amendments to order the confiscation of vessels attempting to break a naval blockade. Although the vessel was released, in subsequent incidents the Haifa Maritime Court ordered confiscation of the vessels, which were then sold – and with the proceeds transferred to the state of Israel (*MV Marianne* (2016), *MV Zaytouna Olivia* (2019), and *MV FREEDOM* and *MV KAARSTIEN* (2021)).

Another confiscation matter pending before the Haifa Maritime Court relates to the vessel *Handala*, captured by the Israeli Navy on 26 July 2025. Those who have appeared in court on behalf of the vessel argued, inter alia, that as a vehicle for delivering medical/humanitarian aid, *Handala* should have been permitted to arrive on Gaza's shore and is immune from being detained and confiscated.

On 27 October 2022, in the UN case *Naqura*, the Israeli and Lebanon delegations signed the Israel–Lebanon Maritime Border Agreement, demarcating the maritime boundary line between the countries. The Israeli–Lebanese agreement complements the agreements between Lebanon and Cyprus (January 2007) and Israel and Cyprus (December 2010) with regard to delimitation of the exclusive economic zones of the two countries.

These agreements have established stability in relation to the boundaries of Israel's exclusive economic zone; this will impact natural gas drilling and related maritime and shipping activities in these areas, which are expected to increase once stability is achieved in the region.

The Treaty of Peace, Diplomatic Relations and Full Normalisation Between the United Arab Emirates and Israel, followed by normalisation agreements with Bahrain, remained solid throughout the two years of war that began with the Hamas attacks of 7 October 2023.

As long as the ceasefire holds, and the Houthi attacks on vessels navigating through the Red Sea at the Bab-al Mandab Straits come to an end, the activities of Israeli ports located in Eilat, Ashdod and Haifa are expected to increase. If Gaza enters a period of rehabilitation, and commerce between Turkey and Israel resumes, the increase in activities of the Israeli ports is expected to be greater still.

The Haifa Maritime Court has already shown its capacity to accommodate diverse international interests. For example, it has exercised its rights in favour of a bunker supplier located in Dubai (arresting MV Huseyn Javid for unpaid bunkers) and a Libyan owner (in cancelling the Israeli registration of MV BADR). With the conclusion of the Abraham Accords, claimants from the Persian Gulf, and other Middle Eastern claimants and interests, will find the Haifa Maritime Court to be a favourable jurisdiction.



Law and Practice

Contributed by:

Jumpei Osada, Masaaki Sasaki, Takuto Kobayashi and Hiroshi Ideyama
TMI Associates

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TMI Associates provides full legal services with global know-how through its 30 offices and desks located throughout Japan and around the world. TMI has over 700 lawyers and patent lawyers and its shipping team has ten key lawyers and is led by partner Jumpei Osada. The shipping team advises on every aspect of shipping through its lawyers, who have extensive experience and a wide array of knowledge in those fields to offer the firm's clients (eg, ship-owners, operators, shipyards, financiers, insurers, P&I clubs,

and energy, and oil and gas companies). The team's practice has significant experience in both ship finance and dry/wet shipping matters. On the contentious side, TMI acts for clients in litigation related to cargo claims, casualties, insurance claims, shipbuilding and charterparties. Another strength of TMI lies in its ability to provide clients with one-stop services for issues involving several different legal fields in the shipping industry, such as mergers and acquisitions, bankruptcies and antitrust matters.

Authors



Jumpei Osada is the head partner of TMI & Associates' shipping team. He advises on all aspects of maritime-related matters, whether contentious or non-contentious, including charterparties, bills of lading,

insurance (both hull and P&I), ship-building contracts, ship sale and purchase, ship arrest and shipping finance. He graduated from Waseda University (Japan) with a postgraduate MA in Shipping Law and from the University of Southampton (England) with an LLM in Maritime Law. He also trained in several English shipping law firms. In addition, he has written a number of articles and books related to the subject of shipping.



Masaaki Sasaki is a partner in TMI & Associates' shipping team. He works principally on shipping dispute resolution, including charterparties, bills of lading, insurance and ship-building contracts. He also advises on

international trade, economic and trade sanctions, and bankruptcy cases. He graduated from Waseda University (Japan) with an MA in Maritime Law and obtained a second masters' degree in maritime law from Swansea University (UK). He was seconded to a leading member of the International Group of P&I Clubs and trained at a London-based shipping law firm. He regularly contributes articles and has co-authored various shipping-related publications.



Takuto Kobayashi is a partner in TMI & Associates' shipping team. He advises on various international maritime projects, such as LNG tanker projects, oil tanker projects, offshore projects (including wind

power generation), joint-venture, sale and purchase (S&P) transactions and ship arrest. He also advises on sanction regulations, insurance matters and disputes arising from transactions in his areas of expertise. Further areas of focus include charterparties, ship-building contracts, cargo damages and bills of lading, including litigation and arbitration. He graduated from Kyoto University (Japan), and has an MA in Maritime Law from Waseda University (Japan) and from the University of Southampton (England).



Hiroshi Ideyama is an associate in TMI & Associates' shipping team. He focuses on both cross-border and domestic ship finance, ship purchase and leasing transactions (including Japanese operating lease/Japanese

operating lease with call option (JOL/JOLCO) transactions). He regularly advises banking corporations, leasing companies, ship-owners, shipbuilders, ship brokers and operating companies. His clients benefit from his experience of a number of complex finance transactions. He graduated from Waseda University (Japan).

TMI Associates

23F, Roppongi Hills Mori Tower
6-10-1 Roppongi
Minato-ku
Tokyo 106-6123
Japan

Tel: +81 3 6438 5511
Fax: +81 3 6438 5522
Email: josada@tmi.gr.jp
Web: www.tmi.gr.jp



TMI Associates

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Domestic Laws

Japan has ratified most of the major maritime conventions, such as the Hague-Visby Rules, the latest version of the Limitation of Liability for Maritime Claims (LLMC) Convention 1976 with its 1996 Protocol, the 1992 Civil Liability for Oil Pollution Damage (CLC) Convention and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund), and relevant rules and regulations. In maritime and shipping practice in Japan, both general civil and commercial law and specific shipping laws/legislation apply, and they are generally based on these conventions. The main domestic laws related to shipping matters are:

- the Civil Code;
- the Commercial Code;
- the Act on International Carriage of Goods by Sea (JCOGSA) incorporating the Hague-Visby Rules;
- the Limitation of Liability Act incorporating the latest version of the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 with its 1996 Protocol;
- the Act on Liability for Oil Pollution Damage incorporating the 1992 CLC Convention and Fund Convention, the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker)

2001 and the Nairobi International Convention on the Removal of Wrecks 2007; and

- the Mariners Act.

Common Maritime and Shipping Claims

One of the common maritime and shipping claims filed in the Japanese jurisdiction is related to cargo claims between carriers and shippers under carriage contracts and/or bills of lading. The claims are essentially classified into contractual claims and the shippers' claims are successful in the event that the carriers can be proven to be in breach of the carriage contract. The cargo claims for domestic sea carriage and international sea carriage are governed by the Commercial Code and the JCOGSA respectively.

Another key type of claim is a tort claim under the Civil Code, which can be broadly used in cases where the victims attempt to bring a claim for damages against the perpetrators. An example of this is where the owner of a vessel collided with another vessel and would be entitled to make tort claims for damages against the owner of the other vessel. It is worth noting that some general rules of the tort claim under the Civil Code are amended in line with the nature of maritime and shipping claims, such as the statute of limitations.

1.2 Port State Control System of Port State Control

Japan has entered into a memorandum of understanding on port state control (PSC) in the Asia-Pacific region (TOKYO MOU). The TOKYO MOU has been used to conduct concentrated inspection campaigns

with the other PSC MOUs. Under the New Inspection Regime of the TOKYO MOU, vessels are categorised as either High-Risk Ships, Standard-Risk Ships or Low-Risk Ships, based on a consideration of the vessel type and age, flag, recognised organisation, and the number of deficiencies and detentions.

Vessels are detained by the PSC in the event that the condition of the vessel or its crew fails substantially to satisfy the requirements of the applicable conventions to ensure that the vessel can proceed to sea with no danger to the vessel or persons on board and no threat of harm to the marine environment. The Ministry of Land, Infrastructure, Transport and Tourism publishes a list of the vessels detained in Japan on its website.

Maritime Casualty Response

Where maritime casualties such as grounding or pollution occur in the Japanese jurisdiction, the Japan Coast Guard and Japan Transport Safety Board have powers to deal with the casualties separately. A coastguard officer may take necessary measures, such as control of a vessel's movement, in the event of maritime casualties including seafarers. The Japan Transport Safety Board may conduct interviews with the parties involved in the maritime casualty, carry out an on-site survey and demand that the parties submit incident reports for the purpose of investigations into the maritime casualties.

1.3 Domestic Legislation Applicable to Ship Registration

Registration procedures for Japan-flagged vessels are mainly regulated by the Ship Act (*Sempaku-ho*). For vessels registered in Japan, there are two types of registration, each of which has a different purpose and competent authority. The first, commercial registration (*toki*), is under the control of the Legal Affairs Bureau and records ownership, mortgages, lease rights, ship administrators, etc. The second, administrative registration (*toroku*), is under the control of the District Transport Bureau or Shipping Bureau, which are subordinated to the Ministry of Land, Infrastructure, Transport and Tourism, and records the details of the hull, the owner, the port of registry, etc. The certificate of nationality is issued upon administrative registration.

Privileges of Japanese Ships

The privilege to fly a Japanese flag is granted only to Japanese vessels, and in turn there is an obligation to always show that flag. Only Japanese-flagged vessels are able to call at closed ports or conduct coastal transportation of cargos and passengers.

1.4 Requirements for Ownership of Vessels

For a vessel to be eligible to fly a Japanese flag, its owner must be:

- a Japanese authority;
- a Japanese citizen;
- a company incorporated under the laws of Japan, with all its representatives and at least two thirds of its executive officers being Japanese nationals; or
- an entity other than a company as described in the preceding point, in which all the representatives are Japanese nationals.

As long as either of these last two requirements is met, the owner may own Japanese-flagged vessels, even if its shares are held by a foreign individual or company.

The details of the hull, the mortgage and the identity of the owner upon delivery may be recorded on the commercial registry for vessels under construction.

1.5 Temporary Registration of Vessels Provisional Certificate of Nationality

If the certificate of nationality of a vessel ceases to be valid while the vessel is anchored in a foreign port, or if a vessel is delivered to a place outside the jurisdictional district of the maritime authority that has jurisdiction over the registered port (including cases outside Japan), a provisional certificate of nationality may be issued. Any such certificate will expire in one year or less if the certificate is issued in a foreign country, and six months or less if it is issued in Japan. In any case, however, it will expire upon arrival of the vessel at the registered port.

Dual Registration

Dual registration is not allowed for Japanese vessels (including in cases of both charter-out and charter-in). However, in Japan, a special system called “*maru-ship*” is permitted, and when a Japanese vessel is bareboat-chartered to a foreign company, and the

bareboat-charterer leases back the vessel to the original Japanese owner in the form of a time charter, foreign seafarers are allowed to be on board.

1.6 Registration of Mortgages

Competent Authority for Registration of Mortgages

Mortgages on Japanese vessels are recorded in a commercial registry and maintained by the branch office of the Legal Affairs Bureau, which has power over the location of the registered port (in the case of the vessels under construction, and the location of the manufacturer).

Documentary Requirements for Registration of Mortgages

The registration of a mortgage shall be applied to be recorded in the commercial registry with the original or certified copy of the ship mortgage agreement. In Japan, there is no designated form of the agreement. The registration of a mortgage on a ship under construction shall also be recorded in the registration after the delivery of the vessel without any additional application. The maturity date is not required to be stated, but the amount or the maximum amount of the principal must be specified. The secured claim must be owed by the registered mortgagee itself, and an agent or trustee for the benefit of lenders may not be registered as the mortgagee. Mortgages on several vessels securing the same single claim are also permitted. A registration and licence tax of four thousandths of the amount of the secured claim will be imposed in order to register the mortgage.

1.7 Ship Ownership and Mortgages Registry Certificate of Administratively Registered Matters and Registered Book

The certificate of administratively registered matters of a vessel can be obtained by anyone. Regardless of the location of the registered port, any District Transport Bureau or Shipping Bureau is available for inquiries. The certificate describes the status of ownership, but not the status of the mortgage.

Certificate of Commercially Registered Matters

The certificate of commercially registered matters can also be obtained by anyone. Not only the status of ownership but also the status of mortgages is described thereon. Such a request for issuance may

be made only to the competent branch office of the Legal Affairs Bureau. However, only interested parties are allowed to inspect collateral documents such as mortgage agreements.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

In Japan, ship financing is predominantly debt-based, with equity financing used mainly in structured investments (eg, shipping funds, leasing structures (including JOLCO), or joint ventures). The most common transactions involve bilateral or syndicated bank loans secured by a statutory ship mortgage (*Sempaku Tei-token*) under the Ship Act (*Sempaku-ho*), often combined with additional security and contractual protections.

Although it depends on the creditworthiness of the sponsor, the financial covenants (including the Loan-to-Value clause, minimum liquidity and net worth requirements) and the operative covenants (which, inter alia, restrict disposal of the vessel, change of flag or change in classification society, limit the arrangement of chartering and ensure compliance with applicable laws, sanctions and class requirements) are often stipulated under the debt and equity finance documents in general.

As with ship mortgages in other common flag jurisdictions, a ship mortgage deed under Japanese law typically contains provisions governing, inter alia, registration and perfection formalities, covenants for preserving the value of the mortgaged vessel and procedures relating to enforcement and private sale. It should be noted, however, that under Japanese law a ship mortgage does not confer any right of possession on the mortgagee; accordingly, enforcement must be carried out through formal attachment and judicial procedures rather than by taking possession of the vessel. In addition to the ship mortgage, the assignment of insurances and requisition compensation, and the assignment of charter hire, are typical security packages. In case of construction financing, the assignment of shipbuilding contract and refund guarantee is also included. Furthermore, account

pledge, share pledge and manager's undertakings may also be required by the lenders.

2.2 Ship Leasing

Ship leasing transactions have steadily increased in Japan over the past decade, particularly in the form of operating leases, finance leases, and sale and lease-back structures. This trend has been driven by several factors, including ship-owners' intentions to reduce balance sheet leverage, regulatory capital constraints on banks and the availability of long-term funding from leasing companies with lower cost of capital.

Japanese leasing companies, often affiliated with major financial institutions or trading houses, play a significant role in this market. In addition, leasing structures are frequently used in combination with tax-driven investment schemes, such as TK-GK structures, which have long been familiar to the Japanese market.

There has been a partial shift away from sole reliance on bank loans towards a more diversified funding landscape. Japanese banks remain conservative and influential lenders, and leasing transactions are often structured to coexist with or refinance bank debt rather than fully replace it. Chinese leasing houses are more active in cross-border transactions involving non-Japanese operators or offshore structures rather than purely domestic Japanese deals.

The main difference between the lessor/lessee relationship and the lender/borrower relationship lies in the attribution of vessel ownership. In the lessor/lessee relationship, where ownership of the vessel is attributed to the lessor, tighter operational and redelivery conditions are often imposed under the lease agreement and the lessor may, depending on the structure, enjoy the off-balance-sheet treatment and tax efficiencies. On the other hand, in the lender/borrower relationship, where the ownership of the vessel is attributed to the borrower, the loan agreement emphasises financial covenants rather than tight operative covenants.

From the treatment/enforcement perspective, the lessor may seek repossession and redelivery of the ship as the remedies for lease defaults; this is different from

the mortgage, which requires judicial attachment and court-led auction for the enforcement, as above.

Sale and leaseback transactions are relatively common in Japan, particularly as a refinancing tool for existing fleets or as a means of releasing capital from owned vessels. These structures are used by both domestic and international ship-owners and are especially prevalent in transactions involving Japanese leasing companies and foreign operators.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Japan has ratified major maritime conventions covering pollution, such as the 1992 CLC Convention and the Fund Convention, MARPOL 73/78 with its Annexes, the International Convention for the Safety of Life at Sea (SOLAS), the Bunker Pollution Convention 2001 and other relevant rules and regulations, as well as conventions covering wreck removal, such as the Nairobi Convention. These conventions are incorporated into or codified by Japanese local laws and regulations.

In 2020, the Nairobi Convention and the Bunker Pollution Convention 2001 were ratified, resulting in amendments to the Act on Liability for Oil Pollution Damage and other related domestic laws, which came into force on 1 October 2020. The amendments to the Act on Liability for Oil Pollution Damage mainly purport to bring this legislation into line with the conventions. The gist of the amendments lies in:

- expanding the scope of the vessels which are required to obtain compulsory insurance;
- admitting a direct claim against an insurer for compensation for loss and damage arising from bunker oil or wrecks;
- limiting the defence arguments which may be made by the insurer, other than the defences which that owner may have been entitled to invoke against the claimant; and

- recognition and enforcement of judgments made by the state parties under the Bunker Pollution Convention 2001.

3.2 International Conventions: Collision and Salvage

Japan has ratified the 1910 Collision Convention and the Convention on the International Regulation for Preventing Collisions at Sea 1972, which have each been promulgated and enforced as domestic laws. Whilst there had been a major difference between the 1910 Collision Convention and the applicable domestic law (ie, the Commercial Code) with respect to the relevant limitations period, this anomaly has now been resolved by the reform of the Commercial Code enacted on 1 April 2019.

Japan has also ratified the 1910 Salvage Convention, but not the 1989 Salvage Convention. The Lloyd's Standard Form of Salvage Agreement (LOF) and the Japan Shipping Exchange (JSE) Form of Salvage Agreement are the two forms most widely accepted by salvage operations in Japan. In the absence of any such specific agreement between the parties, the Commercial Code 2019 applies and provides that:

- the basic principle is “no cure, no pay”;
- the labour and costs incurred as a result of any necessary measures to prevent or reduce environmental pollution are taken into account in determining the amount of salvage reward (as special compensation); and
- the limitation period for making a claim for the salvage reward is two years from the time of salvage.

3.3 Convention on Limitation of Liability for Maritime Claims

Japan has ratified the LLMC Convention 1976 and the LLMC Protocol 1996, both of which have been implemented into the Limitation of Liability Act. The increase in the limits of liability brought about by the amendment of the Protocol of 1996 have been applied under the Act, which was amended in line with the amendment of the Protocol of 1996 and came into effect on 8 June 2015.

3.4 Vienna Convention on the Law of Treaties

Japan ratified the Vienna Convention on the Law of Treaties in 1981, and the Convention entered into force for Japan in the same year. To date, there appear to be no maritime cases in which the Convention has been raised as a principal legal issue before Japanese courts; however, it is expected that the Convention will be taken into account in future judicial decisions.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Under the Limitation of Liability Act, an applicant for limitation of liability must be classified as a “ship-owner, etc” or a “servant, etc”. “Ship-owner, etc” is widely construed as including ship-owners, voyage charterers, time charterers and slot charterers. “Servant, etc” is defined as “the servant of a ship-owner or salvor, or any other such person whose actions the ship-owner or salvor is responsible for”. The applicant must file an application to the local District Court to initiate limitation proceedings and, once the court has found its application appropriate, the court will order the establishment of a limitation fund by cash equivalent to the liability limit or by guarantee made by a bank, insurance company or protection and indemnity insurance (P&I) club.

Article 7 of the Limitation of Liability Act provides the information on how to calculate the limitation figure. A complex calculation is required to find the amount of the limitation funds, but the basic concept for the calculation is: (i) the limitation figure is calculated based on the gross tonnage of the vessel; and (ii) two types of limitation figures are set out, one for claims arising out of only property damage and the other for all other claims (including claims arising out of death and personal injury). No further funds (eg, a deposit) are required to be provided.

3.6 Seafarers' Safety and Owners' Liability

Japan has ratified the Maritime Labour Convention 2006 and it has been implemented into the Mariners Act (Act No 100 of 1947) since 2013. The purpose of the Mariners Act, in which the Convention has been directly or indirectly reflected, is to not only protect seafarers' rights with regard to working conditions but also to ensure safety of navigation of vessels. The main parts of the Act provide:

- basic conditions for seafarers' work (such as seafarers' employment agreements, hours of work or rest and complaint handling procedures) as international standards; and
- flag state inspections for vessels flying the Japanese flag and port state control for vessels flying a foreign flag so as to check if vessels comply with the Convention.

4. Cargo Claims

4.1 Bills of Lading

Contracts for international carriage of goods by sea under bills of lading are governed by the JCOGSA, which incorporates the essence of the Hague-Visby Rules, though with some variations. For example, unlike the Hague-Visby Rules, the JCOGSA extends the period of the carrier's obligation for reasonable care of cargo from receipt by the carrier up to delivery to the receiver.

The JCOGSA has force of law for the carriage of goods by sea when either or both of the port of loading or the port of discharge is located outside Japan (ie, international carriage), regardless of whether a bill of lading is issued. In contrast, contracts for domestic carriage of goods by sea are subject to the Commercial Code.

4.2 Title to Sue on a Bill of Lading

Under Japanese law, the lawful holder of a bill of lading is entitled to sue the carrier for loss or damage to the cargo, based on the contract of carriage on that bill of lading. Even if a bill of lading is not issued, the consignee has the title to make claims against the carrier after the cargo reaches the port of discharge, since the consignee is supposed to take over the shipper's title at that time. Under Japanese jurisdiction, it would not be admissible to assign only title to sue without transfer of rights of the underlying claims (including transfer of a bill of lading).

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Ship-Owner's Liability for Cargo Damages

Under the JCOGSA, two main duties are imposed on the carrier:

- the duty to receive, load, stow, carry, custody, discharge and deliver cargo properly and carefully; and
- the duty to ensure the vessel is seaworthy in three respects, namely, the physical condition of the vessel, the efficiency of the crew and equipment, and the vessel's cargo-worthiness.

In the event of damage to the cargo during a voyage, the carrier is liable for damages unless the carrier can successfully prove that exercise of due diligence on the aspects has been fulfilled by the carrier.

Calculation and Limitation of Liability for Cargo Damages

The JCOGSA sets out the rules for calculation of cargo damages, which state that the amount shall be either the current market price or, if there is no available market, the normal value at the place and time at which the goods should have been discharged. The prevailing view is that determination of the value should be consistent with the cost, insurance and freight value. The JCOGSA also includes a package limitation that is identical to that set out in Article IV (5) of the Hague-Visby Rules.

4.4 Misdeclaration of Cargo

The shipper is obliged to notify the carrier of the nature of the cargo, together with other information necessary to carry it safely, if the cargo has a flammable, explosive or otherwise dangerous nature. In the case of a breach of the shipper's duty to provide notice of the cargo (including a misdeclaration), the carrier is entitled to claim damages against the shipper.

On 12 December 2015, the Supreme Court affirmed a judgment by the Tokyo High Court in the *NYK Argus* case, in which it ruled that the shipper and the cargo manufacturers were liable for damage to the vessel and the cargo caused by a fire in the container of the cargo in question, on the basis of tort and product liability respectively.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time limits and prescription periods set out in substantive laws vary, depending on the nature of the claim. Claims for carrier's liability for breach of

contract for carriage of cargo (including a claim for damaged or lost cargo) are subject to one-year time limits from the date of delivery of the cargo, or the date when the cargo should have been delivered in the case of total loss of the cargo.

The shipper can agree with the carrier on an extension of time to sue the carrier in order to avoid unnecessary court proceedings, and this agreement on extension of time is commonly used in the practice of cargo claims.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Japan has not ratified the 1952 Arrest Convention, nor the 1999 Arrest Convention; thus, vessel arrest is carried out under the domestic laws of Japan. Under Japanese law, creditors may arrest vessels upon the following rights or orders:

- a lien;
- a mortgage; or
- a provisional attachment order.

An arrest by a lien or a mortgage is usually considered as the first option by creditors since it is the easiest way to arrest vessels.

5.2 Maritime Liens

Under Japanese law, which is basically a civil law system, maritime liens are not formally recognised in the same way as under common law, such as the laws of England and Wales.

Further, there is no distinction between maritime claims and non-maritime claims. However, the following claims are covered by statutory liens which enable the claimants to arrest the vessel more easily than other measures. Thus, these claims have a similar nature to maritime claims which are covered by maritime liens (for this reason, this type of lien will be referred to as a “maritime lien” in this chapter for ease of understanding):

- claims for death or personal injury directly in connection to navigation of vessels;

- claims for salvage and general average;
- claims for pilotage, towage or voyage-related taxes such as port charges;
- claims for necessity for continuation of a voyage; and
- mariners’ claims arising from their employment contracts.

In addition to the foregoing, the following claims are also covered by a lien:

- claims subject to a limitation held in accordance with the Limitation of Liability Act; and
- claims for the damage caused by oil pollution resulting from a spill or discharge of oil from a tanker.

As mentioned above, a maritime lien for indemnities for injuries of crew is recognised to the extent that such injury is directly in connection to navigation of vessels. On the other hand, the liabilities resulting from contracts for chartering a vessel do not provide grounds for a maritime claim.

5.3 Liability in Personam for Owners or Demise Charterers

In order to arrest a vessel upon a maritime lien under Japanese law, the prevailing view is that owners, demise charterers or time charterers of the vessel are required to be liable in personam (Articles 707 and 703 (2) of the Commercial Code).

5.4 Unpaid Bunkers

Arrest for Unpaid Bunkers

Bunkers are one of the necessities for vessels to continue a voyage. Therefore, a bunker supplier’s claim for the payment of unpaid bunkers against ship-owners or demise charterers is covered by a maritime lien by which the bunker supplier is able to arrest the vessel.

However, since it is considered that the maritime claim is required to be against owners or demise owners of the vessels, time charterers are not considered to have the authority to bind the vessel by ordering bunkers.

Possibility of the Arrest by Physical Supplier

If the bunker supplier is an actual supplier and not a contractual supplier, it is unlikely to be granted the right to arrest the vessel, since the claimant does not have a contractual claim against the ship-owners, demise charterers or time charterers of the vessel.

Issue of Conflict of Laws

It should be noted that Japanese courts may also require that (i) the governing law of the bunker supply contract, and/or (ii) the law of the country where the bunker is supplied or the flag state of the vessel, recognise and grant any such arrest, which is up to the interpretation of each court over the issue of conflict of laws.

5.5 Arresting a Vessel

In order to file an application for the arrest of a vessel, an original power of attorney and corporate certificates are required as a formality. Documents which prove the claimant's claims/liens and their supporting affidavit may also be required. All the documents must be attached with Japanese translations, but, generally, notarisation and apostille are not required.

5.6 Arresting Bunkers and Freight

Arresting Bunkers

Under Japanese law, it is extremely difficult or almost impossible to arrest a remaining bunker on board. This is due to the interpretation of the requirements of the Civil Execution Act and the difficulties lying in the practical process of arrest of a bunker which is in the tank of the vessel.

Arresting Freight

The right to arrest the freight on board the vessel may not be granted under Japanese law; however, claims for losses or damages of the freight may be covered by the lien which arises from the scheme of limitation of liability for marine claims.

5.7 Sister-Ship Arrest

It is not possible to arrest a sister-vessel with a maritime lien. Conversely, such an order may be granted by a provisional attachment. However, the thresholds are high in terms of the requirement that the registered owner of the sister-ship must be liable in personam, and, after arresting the vessel, the claimant must com-

mence normal litigation procedures to obtain title of debt against the aforementioned registered owner.

5.8 Other Ways of Obtaining Attachment Orders

In general, there is no other practical measure to arrest the ship, other than as mentioned in 5.1 Ship Arrests and 5.2 Maritime Liens, but this may still depend on the factual background.

5.9 Releasing an Arrested Vessel

In the Case of Arrest by Maritime Lien or Mortgage

If a vessel is arrested by enforcement of a maritime lien or mortgage, then cash, bank guarantees, insurance bonds or a P&I club's Letter of Indemnity (LOI) are accepted as security to release the vessel.

In the Case of Arrest by Provisional Attachment Order

If a vessel is arrested by a provisional attachment order, the courts will normally accept only cash as a security to release the vessel.

5.10 Procedure for the Judicial Sale of Arrested Ships

Procedure for the Judicial Sale

Arrest of a vessel as an enforcement of lien or mortgage is a part of the judicial auction procedure. If the arrested vessel is not released with sufficient security, the court will proceed to the sale of the vessel, by:

- deciding on the end of the period in which a person who has a claim may apply for distribution of proceeds;
- evaluating the vessel;
- holding a judicial auction;
- deciding on the sale of the vessel; and
- distributing the proceeds to claimants.

If a vessel is arrested under a provisional attachment order, a judicial sale procedure will not be held until the arresting party obtains title of the debt in the normal litigation procedures in the court.

In the Japanese jurisdiction, once a vessel is arrested by the court in the legal proceedings, a private sale is not allowed.

During the procedures, the vessel is maintained by the ship-management agent, who is appointed by the court. It normally takes six to 12 months from the commencement of the judicial sale until its completion (ie, the completion of distribution to each creditor).

Priority Ranking of the Claims

The basic priority ranking of claims is as follows:

- claims for costs of the procedure for the judicial sale;
- claims secured by maritime liens;
- claims secured by mortgages; and
- unsecured (ordinary) claims.

Priority Ranking of the Claims Covered by a Maritime Lien

Within the category of maritime liens, the ranking of covered claims is as follows:

- claims for death or personal injury;
- claims for salvage and general average;
- claims for pilotage, towage or voyage-related taxes such as port charges;
- claims for necessity for continuation of a voyage;
- mariners' claims arising from their employment contracts; and
- claims subject to a limitation held in accordance with the Limitation of Liability Act/claims for the damage caused by oil pollution resulting from the spill or discharge of oil from a tanker.

5.11 Insolvency Laws Applied by Maritime Courts

Under Japanese law, there are similar insolvency schemes to those under Chapter 7 and Chapter 11 of the United States Bankruptcy Code: namely, the schemes under the Bankruptcy Act, Civil Rehabilitation Act and Corporate Reorganisation Act of Japan.

If the owner of the vessel goes bankrupt and an insolvency procedure commences, the bankruptcy court/trustee may order or obtain an arrest order to recover its control over the vessel; however, this is not unconditional and depends on the terms of the relevant charterparty and other legal circumstances.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

In relation to an arrest by maritime lien, the threshold for the argument of wrongful arrest may be lower than that for arrest by provisional attachment order. The main requirement for such an argument is negligence or wilful misconduct of the arresting party in the course of the filing and arresting the vessel. The reason for this is that, since the arrest of the vessel by maritime lien is easier than for another normal attachment order procedure, the arresting party is required to be more cautious and should carry out sufficient analysis, both factual and legal, to avoid damage being incurred by innocent or irrelevant parties such as the owner who is not liable in personam.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims Convention and Domestic Law

Japan has not ratified the Athens Convention on Passenger Liability. The rights of the passenger to claim for damages against ocean carriers are governed by the passenger transportation agreement and the Commercial Code.

Carrier's Liability for Passengers

With regard to liability for death or personal injury of passengers, there is no legislative limitation in favour of the carrier. Further, any agreement which limits or releases a carrier's liability for death or personal injury of passengers is deemed to be null and void, except for the damage mainly due to delay, Act of God, or liability for passengers who may suffer damage from normal vibration or other similar causes, which is normal for ocean transportation.

Nature of Liability of the Carrier and Burden of Proof

The nature of a carrier's liability for passengers is not strict liability; however, the burden of proof on the exercising of due care by the carrier or its employees lies with the carrier (Article 590 of the Commercial Code).

Time Bar for Passenger Claims

The time bar for passenger claims for personal injury or death in relation to transportation as a tort claim is five years from the time when the passengers first become aware of the damage and the wrongdoers, or 20 years from the time when the damage occurs. For a contractual claim, the time bar is five years from the time when the passengers first become aware of the damage and the wrongdoers, or ten years from the time when the damage occurs.

Maritime Lien for Indemnities for Injuries of Passengers

A maritime lien for indemnities for injuries of passengers is recognised to the extent that such injury is directly in connection with the navigation of the vessels in question.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

If a bill of lading indicates a specific foreign law as a governing law, Japanese courts will respect and accept that foreign law. In the absence of a governing-law clause in a bill of lading, it would be extremely difficult to predict the decision on what laws should be applicable to and govern the bill of lading. In practice, almost all bill of lading forms issued by Japan-related carriers have a governing-law clause.

Japanese courts also are inclined, broadly, to admit and enforce an exclusive jurisdiction (and arbitration) clause on the reverse side of a bill of lading. This means that the courts will dismiss a claim brought to an undesignated jurisdiction under a contract of carriage covered by a bill of lading.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Where a bill of lading has clear clauses or wording for the incorporation of the terms set out in a specific charterparty, the incorporation of those terms (including the jurisdiction and dispute resolution clauses) into the bill of lading would be adopted by Japanese courts. However, the details of what the courts require

for such incorporation are still unclear, since there are only a few judgments by the courts on this issue.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Japan is a contracting state to the 1958 New York Convention. Arbitral awards rendered in signatory countries of the Convention are enforceable in Japan, as long as the requirements of the Convention have been fulfilled. Conversely, the enforceability of arbitral awards in non-party states is subject to the conditions set out in the Arbitration Act.

The Arbitration Act has very similar provisions to those provided in the 1958 New York Convention. For instance, in cases where the party to an arbitral award attempts to resist its enforcement, the main available grounds are set forth under the Arbitration Act, and are that:

- the arbitration agreement is not valid due to the limited capacity of a party, etc;
- the arbitration proceedings have serious defects, such as a lack of proper notice or opportunity for defence;
- the arbitral award is not valid on the premise that it contains a decision on matters going beyond the scope of the arbitration agreement, or the arbitral award is not final and binding, or the arbitral award has been set aside or its effect has been suspended by a judicial body of that country, etc; or
- the content of the arbitral award is contrary to public policy in Japan.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In Japan, it is considered that Japanese courts will issue an arrest order for a vessel if the courts find that the claim in question is secured by a maritime lien, regardless of whether the claim is subject to a foreign arbitration/jurisdiction clause under the relevant contract/bill of lading.

Where the creditors attempt to arrest a vessel by a provisional attachment order, the courts will not allow the creditors to arrest the vessel, unless there is a possibility that a claim which is subject to a foreign arbitration/jurisdiction clause, and which will eventu-

ally be awarded or judged by foreign arbitration or courts, is legally enforced in Japan.

7.5 Domestic Arbitration Institutes

The Tokyo Maritime Arbitration Commission (TOMAC), which is located in the Japan Shipping Exchange (JSE), is the only arbitral tribunal in Japan for resolving shipping disputes. It has a long history and a prestigious reputation, in particular with regard to disputes relating to the NIPPONSALE contract. The TOMAC is recognised as being the most popular choice for dealing with shipping issues.

The TOMAC has drawn up three types of arbitration rules:

- Ordinary Rules;
- Simplified Rules (claims up to JPY20 million); and
- Small Claims Arbitration Procedure (SCAP) Rules (claims up to JPY5 million).

These rules all have a basic concept that, the smaller the claim amount is, the lower the costs that will be borne by the arbitration and the quicker the arbitration proceedings are resolved. The average length of arbitration proceedings is about 13 months under the Ordinary Rules, three to five months under the Simplified Rules and five to ten weeks under the SCAP Rules.

An arbitral award has the same effect as a final and binding judgment and an appeal to the court to set aside the arbitral award is allowed only on narrow grounds (such as violation of the arbitration procedure or public policy). One of the advantages of arbitration by the TOMAC in comparison with court proceedings is that the successful party is entitled to recover, to a reasonable extent, its legal costs from the losing party upon application for recovery of those costs.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In the case that a claimant commences legal proceedings in a court or arbitral tribunal in Japan, despite the relevant contract having a foreign jurisdiction or arbitration clause, a defendant can simply seek to dismiss the claim in the court proceedings and to dismiss the

petition for an arbitral award, based on the defence of lack of jurisdiction or lack of valid arbitration agreement. Moreover, the defendant may be able to rely on a provisional court order prohibiting the commencement of legal proceedings in Japan on the ground that the claimant ignores the foreign jurisdiction or arbitration clause, resulting in a breach of the contract.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

In Japan, owners or operators of Japanese-flagged ships, or owners or operators who run a business in Japan with other countries' flagged ships, may enjoy the tonnage tax scheme. Moreover, ship-owners may enjoy accelerated depreciation, as is seen in many countries worldwide.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Whilst Japanese law does not expressly stipulate either "force majeure" or "frustration" in the Civil Code or any other Code, the force majeure clauses agreed by contractual parties in both shipping and commercial contracts are generally recognised as valid and enforceable. Further, force majeure is logically interpreted as "an event or circumstance caused by an external cause beyond the parties' control" and, in the case of the occurrence of a force majeure event, the parties are likely to be released from their liabilities under the contracts by relying on the no-fault defence.

It is difficult to state clearly what circumstances would justify non-performance of a shipping contract, such as late delivery or non-arrival of a chartered vessel, as a force majeure/exemption of liability. However, one of the key factors must be whether the circumstances in question can be considered to be unforeseeable and uncontrolled for the parties involved.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

IMO 2020 rules relating to a limitation on the sulphur content of fuel oil have been effective in Japanese territorial waters through domestic law (the Act on Prevention of Marine Pollution and Maritime Disaster, Articles 19–21), according to which the sulphur in the fuel oil used on board the vessel shall be less than 0.5%, and, in the specific designated area, the corresponding rate shall be less than 0.1%. For any violation of these rules, the vessel can be detained by the port state control and a fine of less than JPY10 million can be levied, for both the company and the individual person whose act or omission has caused the violation.

9.3 Trade Sanctions

Japanese jurisdiction has not incorporated any of the international trade sanctions directly, but it has implemented its own domestic sanctions in the Foreign Exchange and Foreign Trade Act. Under this Act, any exporting to, or any capital transaction for, any country, region or individual which is subject to the asset freeze is required to be permitted. Penalties for breaching such sanctions include imprisonment, a ban on exports and fines of up to three times the amount of the violation.

Any legal proceeding applying a significant quantity of fines is not open to the public, although some cases have been seen where a ban on export has been imposed, due to the export of goods to North Korea.

In response to the Russia–Ukraine war, the competent authorities announced prohibitions/restrictions on the following activities:

- exporting particular goods to any entity or person designated by Ministry of Economy, Trade and Industry (eg, the Ministry of the Defence of the Russian Federation and aircraft manufacturers in the Russian Federation);
- exporting particular dual-use goods, goods used for industrial infrastructure and luxury goods to the Russian Federation;
- importing particular goods (eg, alcoholic beverages, timber and electronic machines) from the Russian Federation;
- exporting to and importing from the so-called Donetsk People's Republic and Luhansk People's Republic in eastern Ukraine; and
- making certain non-permitted payments, loans or investments related to business conducted in the Russian Federation or by Russian-related legal entities.

As an exception, the competent authorities currently also have authority to approve or permit the above prohibited or restricted transactions.

9.4 International Conflict

The practice areas significantly affected by an international conflict are sanctions and insurance. For example, the direct impact of the war in Ukraine has been manifested in the strengthening of sanctions under the Japanese Foreign Exchange and Foreign Trade Act (see 9.3 Trade Sanctions). If a sanctioned person is involved in insured related parties or their business, the insurance coverage might be lost. Setting aside sanctions, geographical area covered by insurance would become narrower once a war or a hostile attack, such as Houthi's attacks on the vessel, is recognised.

In terms of contracts such as charterparties or shipping contracts, there might be some disputes in a situation where vessels have been trapped in areas that are at war or where navigation is perilous and particular obligations of the parties under the agreed charters or shipping contracts have become delayed or difficult to perform due to those events. In those circumstances, frustration under the Civil Code is sometimes alleged; however, under Japanese law, the requirement(s) for the frustration is controversial and not crystal clear (see 9.1 Force Majeure and Frustration). Generally speaking, non-foreseeability of such an event would be required. This means that since sufficient time has passed since the outbreak of the war in Ukraine, the mere continuation of the war is unlikely to be considered a ground for frustration of a contract.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The government of Japan has formulated and published a roadmap for revitalising the shipbuilding industry that aims to double domestic shipbuilding capacity by 2035 and to regain a 20% share of the global market. The roadmap sets out policy measures including:

- strengthening shipbuilding systems;
- securing and developing shipbuilding talent;
- driving a game-changing transition through decarbonisation;
- securing stable demand; and
- partnering with like-minded countries and the Global South.

It calls for mobilising public–private investment to the order of JPY1 trillion.

Meanwhile, in January 2026, Imabari Shipbuilding Co, Ltd acquired additional shares of Japan Marine United Corporation to strengthen the international competitiveness of Japan’s shipbuilding industry and made JMU a consolidated subsidiary.

Taken together, these steps are expected to further enhance the international competitiveness of Japan’s shipbuilding sector, which in turn is anticipated to stimulate greater activity across related maritime industries in Japan, including ship-ownership, shipbuilding, finance, and marine insurance.

Trends and Developments

Contributed by:

Reiko Yoshida

City-Yuwa Partners

City-Yuwa Partners was formed in 2003 through the merger of a cross-border transaction-focused firm and a firm specialising in litigation, insolvency and real estate law. Following its 2005 merger with one of Japan's leading patent litigation boutiques, the 2023 merger with a top-tier Chinese practice boutique, and the addition of partners with diverse professional backgrounds, City-Yuwa has developed into one of Japan's pre-eminent full-service law firms. City-Yuwa's practices cover virtually all aspects of international and domestic business law. Its shipping and

maritime finance practice advises ship-owners, financial institutions, trading houses and investment funds on vessel acquisitions and disposals, shipbuilding and conversion contracts, secured and unsecured ship finance, leasing and fund-based structures, maritime registries, and regulatory and ESG-related matters, including transition and sustainability-linked finance. The firm combines deep sector knowledge with cross-border transactional expertise to deliver practical, commercially focused solutions.

Author



Reiko Yoshida is admitted in Japan and is the first Japanese lawyer admitted in the Republic of the Marshall Islands. She advises on shipping and finance, leading complex multi-jurisdictional vessel

financings as both lead and local counsel. Her experience includes first-of-their-kind cross-border structures, such as ship investment fund platforms

and other asset-backed and fund-based arrangements. Reiko co-ordinates corporate, LLC and limited partnership law issues across jurisdictions and oversees vessel and entity registrations to achieve bankable closings. Her practice spans structuring, documentation and regulatory analysis, delivering clear, commercially focused and actionable advice to global clients.

City-Yuwa Partners

Marunouchi Mitsui Bldg
2-2-2 Marunouchi
Chiyoda-ku
100-0005
Tokyo
Japan

Tel: +81 3 6212 5560
Fax: +81 3 6212 5700
Email: reiko.yoshida@city-yuwa.com
Web: www.city-yuwa.com



Transition-Linked Loans in the Japanese Maritime Industry

International frameworks for greenhouse gas (GHG) reduction in international shipping

Greenhouse gas (GHG) emissions from international shipping consist predominantly of carbon dioxide (CO₂). Against the backdrop of continued global economic growth, demand for maritime transport is expected to increase over the medium to long term, and, correspondingly, CO₂ emissions from international shipping are also projected to rise.

Global efforts to address climate change have been discussed under the framework of the United Nations Framework Convention on Climate Change (UNFCCC). Within this framework, the Paris Agreement was adopted in 2015, establishing a common long-term global temperature goal and a system under which each party sets its nationally determined contribution to greenhouse gas reduction.

By contrast, GHG emissions from international shipping cannot readily be allocated on a country-by-country basis, as shipping activities are conducted across borders and cannot easily be attributed to a single flag state. As a result, international shipping does not fit neatly within the country-based mitigation framework of the UNFCCC. Accordingly, responsibility for addressing GHG emissions from international shipping has been entrusted to the International Maritime Organization (IMO), a specialised agency of the United Nations.

In April 2018, the IMO adopted its initial strategy on the reduction of GHG emissions from ships, setting out the following targets:

- a reduction of at least 40% in carbon intensity per transport work by 2030;
- a reduction of at least 50% in total GHG emissions from international shipping by 2050; and
- the phase-out of GHG emissions from international shipping as soon as possible within this century.

Furthermore, in 2023, the IMO revised its initial GHG reduction strategy and set new targets, measured against 2008 levels, including:

- a reduction of total GHG emissions by 20% to 30% by 2030;
- a reduction of 70% to 80% by 2040; and
- the achievement of net-zero GHG emissions from international shipping by around 2050.

The revised strategy also sets targets to:

- introduce zero-emission fuels and similar energy sources into international shipping at a level of 5% to 10% by 2030; and
- reduce CO₂ emissions per transport work by 40%.

It further clarifies that emissions assessment should take into account not only direct emissions from ships, but also emissions arising from the production, transportation and storage of fuels used by ships, thereby adopting a life cycle-based approach. Discussions are currently ongoing with a view to introducing concrete measures to give effect to these targets, with entry into force envisaged around 2027.

Against this international framework and these targets, the government of Japan and Japanese companies have undertaken various initiatives aimed at contributing to the reduction of GHG emissions from international shipping.

Background to the growing emphasis on GHG reduction targets: regulatory compliance and the enhancement of corporate value

The increasing emphasis on achieving GHG reduction targets in international shipping reflects not only the need to respond to strengthening international regulatory requirements, but also a growing focus on the maintenance and enhancement of corporate value.

At present, corporate value assessment has come to encompass, alongside financial information, a broader evaluation of a company's medium- to long-term sustainability based on non-financial information, including environmental, social and governance (ESG) initiatives. This approach recognises that a company's environmental and social practices, as well as its governance framework, are closely linked to future earning capacity and risk management, while continuing to acknowledge the importance of financial performance. Against this background, investment

practices that systematically incorporate non-financial information into investment decision-making, commonly referred to as ESG investment, have become widely established.

In 2006, the Principles for Responsible Investment (PRI) were launched at the initiative of the United Nations Secretary-General, to encourage investors to integrate environmental, social and governance considerations into their investment processes and adopt a long-term perspective. Since then, the PRI have gained broad international support, particularly among institutional investors, and have become an established reference framework guiding investment behaviour through the incorporation of ESG factors.

In Japan, the signing of the PRI in 2015 by the Government Pension Investment Fund (GPIF), Japan's pension fund and one of the world's largest institutional investors, marked an important step in recognising the significance of non-financial information in investment decisions. In this context, companies have increasingly been expected to provide appropriate disclosure and explanation of ESG-related non-financial information to stakeholders.

Accordingly, efforts to reduce GHG emissions are not limited to compliance with international regulatory requirements, but are also closely linked to the evaluation of corporate value through non-financial information. In the field of international shipping, such efforts have come to be regarded as an important consideration in medium- to long-term management strategies and the enhancement of corporate value.

Against this background, the discussion below introduces transition-linked loans in the maritime sector, proceeding on the premise of the transition finance framework developed in Japan and progressively refined through practical application.

Transition finance in Japan

In Japan, guidelines have been issued setting out the general approach to transition finance in the form of the Basic Guidelines on Climate Transition Finance (the "Guidelines"). The Guidelines were published in May 2021 by the Financial Services Agency, the Ministry of Economy, Trade and Industry, and the Minis-

try of the Environment of Japan, and were revised in March 2025.

According to the Guidelines, transition finance refers to financial instruments intended to support companies addressing climate change through initiatives to reduce GHG emissions in line with long-term strategies aimed at achieving a decarbonised society.

The purpose of transition finance is to provide financial support for transition-related initiatives in sectors where achieving decarbonisation "in one stroke" (that is, in a single step) is difficult from both technological and cost perspectives. Such initiatives include steady efforts such as energy efficiency improvements and fuel switching, as well as long-term research and development facilitating the transition to a low-carbon economy.

The Guidelines are formulated with due regard to consistency with the Climate Transition Finance Handbook published by the International Capital Market Association (ICMA). In this respect, the Guidelines emphasise the importance for issuers and borrowers to address the following key elements, for which enhanced disclosure is encouraged:

- the issuer's climate transition strategy and governance;
- the materiality of climate transition to the issuer's business model;
- a science-based climate transition strategy, including clearly defined targets and pathways; and
- transparency in implementation, including ongoing monitoring and disclosure.

By contrast, at the level of the international financial market as a whole, as noted in the Guide to Transition Loans published in October 2025 by the Loan Market Association (LMA), the Asia Pacific Loan Market Association (APLMA) and the Loan Syndications and Trading Association (LSTA), there remain inconsistent definitions and applications of transition finance.

In light of this international context, this chapter of the guide proceeds on the basis of the transition finance framework developed in Japan and introduces transition-linked loans in the maritime sector.

Relationship between transition-linked loans and sustainability-linked loans

With respect to sustainability-linked loans, the basic concepts and framework are set out in the Green Loan and Sustainability-Linked Loan Guidelines published by the Ministry of the Environment of Japan (the “MOE Guidelines”). Under the MOE Guidelines, a sustainability-linked loan is a financing instrument in which the borrower’s sustainability objectives, as reflected in its overall strategy on sustainability and social responsibility, are linked to sustainability performance targets (SPTs). Improvements in sustainability performance are assessed by reference to predetermined key performance indicators (KPIs), with transparency ensured through post-loan reporting.

KPIs refer to indicators used to measure the achievement of specific objectives, while SPTs denote the target levels to be achieved against those indicators. Sustainability-linked loans are designed to encourage borrowers to pursue ambitious and predefined SPTs.

Transition-linked loans and sustainability-linked loans share certain structural features. In both cases, financial terms such as interest rates are adjusted based on performance against specified indicators, and, unlike green loans, the use of proceeds is not restricted. At the same time, transition-linked loans exhibit distinct characteristics in terms of scope, design philosophy and evaluation focus.

Sustainability-linked loans are characterised by their flexibility, allowing borrowers to set a wide range of sustainability-related indicators, including environmental, social and governance matters. By linking economic incentives to performance against borrower-selected KPIs, such loans promote improvements in overall corporate sustainability.

By contrast, transition-linked loans are primarily designed for sectors in which decarbonisation is technically or economically challenging, commonly referred to as “hard-to-abate” sectors. Transition-linked finance does not focus solely on the use of proceeds or short-term quantitative targets, but places emphasis on the credibility and effectiveness of a borrower’s long-term transition strategy at the corporate level. Evaluation typically centres on indicators

directly related to transition efforts, including GHG emission reductions, investments in energy efficiency and fuel switching, and the adoption of decarbonisation-related technologies. Importantly, these targets are expected to be consistent with binding regulatory requirements and internationally agreed decarbonisation pathways, including those developed by the IMO.

In this sense, while sustainability-linked loans support broad-based improvements in corporate sustainability, transition-linked loans focus more narrowly on progress towards decarbonisation and reflect that progress in financial terms.

Government support measures

Following the formulation of the Guidelines in 2021, the Japanese government has taken the lead in promoting transition finance through initiatives aimed at progressively establishing an enabling market environment.

Since the formulation of the Guidelines, sector-specific technology roadmaps have been developed, in co-operation with the private sector, for ten high-emission sectors, including maritime transport. These sectors are reported to account for more than 80% of Japan’s total GHG emissions.

In the maritime sector, under the leadership of the Ministry of Land, Infrastructure, Transport and Tourism of Japan, a Roadmap towards Zero Emission from International Shipping was formulated in 2020. The roadmap was developed through collaboration among the maritime transport, shipbuilding and marine equipment industries, together with research institutions and public bodies, and organises technological options available over the short, medium and longer term while setting out concrete directions for transition towards decarbonisation.

In considering, at each stage, what types of initiatives may be regarded as eligible for transition, reference to such roadmaps is of practical significance. For borrowers, they serve as guidance in formulating transition strategies aligned with GHG reduction targets adopted by relevant international bodies. For lenders, they provide a useful basis for assessing the credibility

and effectiveness of individual borrowers' transition strategies.

In addition to these policy initiatives, a performance-linked interest subsidy scheme has been introduced pursuant to the Act on Strengthening Industrial Competitiveness of Japan to facilitate the provision of funding for transition finance. The scheme applies to loans extended to businesses that have formulated business adaptation plans with a duration of ten years or more, aimed at reducing CO₂ emissions towards the achievement of carbon neutrality by 2050, and that have obtained approval from the competent minister.

To qualify for application of the scheme, the approved plan must include, in addition to end-of-period targets, at least three interim targets serving as milestones for monitoring progress. Following certification of the plan, an interest rate reduction of up to 0.1% is applied up to the first interim target. Thereafter, where the borrower achieves the interim targets specified in advance during the plan period, additional interest rate reductions of up to a maximum of 0.2% may be applied.

The funds for such interest rate reductions are provided through interest subsidies granted by the government, via the Japan Finance Corporation, to designated financial institutions.

To receive financial support under this performance-linked interest subsidy scheme, the relevant business adaptation plan must satisfy certain criteria, including:

- the setting of ambitious targets;
- the soundness and reasonableness of the transition strategy;
- appropriate monitoring and reporting arrangements; and
- an expectation of enhanced competitiveness.

With respect to target-setting, transition strategy, and monitoring and reporting, external verification is required to confirm consistency with the Guidelines and with the Guidance on Sustainability-Linked Loan Principles published by LMA, APLMA and LSTA,

thereby ensuring alignment with market-based evaluations.

For plan certification, it is essential that the plan be structured in an integrated manner, encompassing not only environmental objectives but also targets relating to productivity improvements and enhanced competitiveness. Designing long-term and interim targets coherently, satisfying the four elements set out in the Guidelines – strategy and governance, materiality, a science-based approach, and transparency – and articulating a concrete pathway for steadily reducing CO₂ emissions consistent with international frameworks constitute key requirements for plan certification and the application of financial support.

Cases in the maritime sector

Within the maritime sector, transition-linked loans have increasingly been adopted by Japanese shipping companies, particularly major operators. The performance-linked interest subsidy scheme has been applied within this framework, under which the following business adaptation plans have been approved.

Case 1

- Implementation period of the business adaptation plan – ten years.
- Environmental objectives – With a view to achieving net-zero emissions by 2050, the company aims, through initiatives in the environmental field, to reduce GHG emissions from transportation by an average of 1.4% per year by 2030 compared with the 2019 level, and by 45% by fiscal year 2035 compared with fiscal year 2019. Through these initiatives to reduce environmental impact, the company seeks to enhance corporate value while simultaneously strengthening its competitiveness.
- Financial performance objective – to improve consolidated adjusted return on assets (ROA) by at least 2% points.
- Actions to be taken to achieve the objectives –
 - (a) introduction of clean energy;
 - (b) further deployment of energy-saving technologies;
 - (c) more efficient operational practices;
 - (d) development of business models enabling net-zero emissions; and

- (e) expansion of low- and zero-carbon businesses through group-wide initiatives.

Case 2

- Implementation period of the business adaptation plan – ten years.
- Environmental objectives – by addressing key issues related to the sustainable development goals (SDGs), namely safety, the environment, and human resources, the company aims to create both corporate and social value and contribute to the achievement of the SDGs. Specifically, through initiatives towards the decarbonisation of vessels, the company seeks to reduce total GHG emissions under Scope 1 and Scope 2 by 45% by fiscal year 2030, and to achieve net-zero emissions by 2050, including Scope 3.
- Financial performance objective – to improve consolidated adjusted ROA by at least 2% points.
- Actions to be taken to achieve the objectives –
 - (a) introduction of LNG-fuelled vessels;
 - (b) development of new propulsion systems;
 - (c) use of ammonia as a marine fuel; and
 - (d) deployment of more efficient vessel operation technologies.

Documentation of transition-linked loans

Transition-linked loans share many conceptual features with sustainability-linked loans in terms of their underlying financial structure. Accordingly, irrespective of the governing law of the relevant loan documentation, when considering loan terms specific to transition-linked loans, it is practically useful to refer to the Draft Provisions for Sustainability-Linked Loans published by the LMA in May 2023.

By way of illustration, such documentation may include, inter alia:

- provisions in the interest clause addressing sustainability margin adjustments;
- provisions in the borrower's undertakings requiring the submission of a framework forming the basis for assessing the achievement of SPTs, together with reports issued by external reviewers evaluating such framework;
- provisions imposing an obligation on the borrower to submit periodic reports to the lenders during the

life of the loan, as well as provisions addressing the consequences where the contents of such reports are deemed insufficient; and

- provisions governing the treatment of material changes to the borrower's climate transition strategy, or situations where relevant principles are determined not to have been complied with.

With respect to the criteria for determining whether an interest rate reduction is applicable, certain transactions incorporating a performance-linked interest subsidy scheme include a mechanism under which the government makes such determination. However, irrespective of whether such a scheme applies, the achievement status of the SPTs in each transaction ultimately requires lenders to conduct their own review and reach a determination.

In this context, in addition to making use of evaluations conducted by independent third-party reviewers, it may also be effective for lenders to incorporate quantitative assessment methods as part of their covenant monitoring practices. For example, where an SPT is established by reference to the Energy Efficiency Operational Indicator (EEOI) as a key performance indicator, the relevant calculation methodology is set out in guidelines issued by the IMO, and the relationship with GHG emission reduction targets is relatively clear. As a result, such an indicator allows for objective, science-based quantitative assessment and is comparatively straightforward for lenders to monitor.

That said, the environment surrounding transition finance continues to evolve rapidly. Owing to technological developments, further regulatory tightening, and changes in social and economic conditions, it cannot be ruled out that indicators determined at the time of structuring a transaction may, over time, cease to contribute meaningfully to the sustainable growth of the relevant company or to broader societal development. In such circumstances, it may become necessary to revisit the applicable KPIs, and there is also a risk of divergence between the originally assumed evaluation criteria and actual circumstances.

On the other hand, having independent third-party reviewers assess whether initiatives aligned with a relevant roadmap are being appropriately implemented

has a certain degree of rationality, particularly given that transition is, by its nature, a gradual and continuous process. Nevertheless, reliance on third-party assessments entails inherent challenges, including the potential influence of evaluative judgment and issues of transparency and fairness.

The practical application of transition-linked loans remains at a developing stage, and a number of issues continue to warrant further consideration, including the reliability of disclosed information and the establishment of robust evaluation methodologies. In particular, with respect to assessing the four elements emphasised in the Guidelines, an appropriate combination of qualitative and quantitative analysis is essential to enhancing credibility. Further accumulation of market practice and continued development of the relevant frameworks are therefore anticipated.

Concluding remarks

The practical application of transition-linked loans remains at an evolving stage, particularly with respect to the assessment of transition strategies, the reliability of disclosed information, and the appropriate combination of qualitative and quantitative evaluation methods. These issues are not unique to individual transactions but reflect broader structural characteristics of transition finance, which is inherently gradual and subject to technological, regulatory and economic change.

In this context, it is appropriate to recall the fundamental role that the maritime industry has long played in supporting socio-economic activity through the provision of stable and reliable transportation services, including the carriage of energy resources. The continued ability of the maritime sector to maintain and enhance such transport capacity remains of central importance to sustainable economic development.

While the use of non-fossil fuels, including renewable energy sources, has been steadily expanding, diversification of energy supply methods is significant not only from the perspective of decarbonisation, but also from the standpoint of ensuring the stability of supply. In this context, the maritime industry is expected to continue contributing to society by addressing both decarbonisation and the maintenance of stable transportation services.

At the same time, efforts towards decarbonisation do not yield economic results in a single step. They must instead proceed incrementally under conditions of uncertainty arising from technological constraints, regulatory developments, geopolitical factors and market volatility. Shipping, in particular, is characterised by a high degree of volatility influenced by factors such as exchange rates and freight markets beyond the control of individual companies. Sustaining continuous efforts towards decarbonisation therefore presupposes a sound medium- to long-term business foundation, supported by stakeholder trust and a virtuous cycle linked to the enhancement of corporate value.

From this perspective, financial support based on a long-term outlook plays an important role, especially where it takes the form of stable debt financing. Greater shared understanding, both domestically and internationally, of the role of transition finance as a means of supporting decarbonisation investment – while underpinning stable supply – is therefore warranted. If companies, market participants, financial institutions and governments each fulfil their respective roles, and if transition finance continues to be developed and applied in a measured and credible manner, it can contribute meaningfully to the sustainable development of the maritime industry and to the continued provision of stable transportation services.



Law and Practice

Contributed by:

Edward Kuznetsov

Marine Legal Bureau

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Marine Legal Bureau is a boutique, independent law firm with experienced and professional staff. MLB has been working in maritime law since 1993. The firm's clients are ship-owners, managers, P&I clubs, marine underwriters, shipping agencies, ship chandlers, bunker suppliers, shipyards, banks and companies operating in other areas related to the marine and shipping business. Effective co-operation with correspondent lawyers all over the world (including

in Africa, Asia and Latin America) gives MLB the opportunity to provide clients with quick and competent legal support. MLB is an active member of an international network of professional law firms operating in ship arrest and supporting services. Clients can expect best practices in ship arrest and release in various jurisdictions, and are guided through procedures, paperwork and time bars under various national law systems related to ship arrest.

Author



Edward Kuznetsov is a practising arbitrator and certified mediator with the experience to decide disputes in the maritime law sphere. He is a member arbitrator of the London Court of International Arbitration

(LCIA), a full member of the German Maritime Arbitrators Association (GMAA), and an arbitrator (supporting member) of the London Maritime Arbitrators Association (LMAA), the Dubai International Arbitration Centre and other international maritime arbitration hubs. Edward is a member of the board of an international network of maritime lawyers (www.Shiparrested.com) and holds the title of "Best Member of Shiparrested.com 2003–2013", reflecting long-standing professional recognition within the international maritime law community.

Marine Legal Bureau

8-50 Hospitalu Street
Riga
LV-1013
Latvia

Tel: +371 29 256 415
Email: office@mlb.lv
Web: www.mlb.lv



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Latvia does not have separate “maritime courts”. Maritime and shipping disputes are heard by the ordinary civil courts under the general court system. The key domestic instruments relevant to court authority and procedure are the Civil Procedure Law and the Maritime Code, supplemented by the Civil Law and Commercial Law where appropriate.

In practice, the most common shipping-related claims brought before Latvian courts include applications for interim relief (most notably ship or cargo arrest), enforcement-related applications (including measures securing claims) and disputes arising from carriage, port services, agency and supply arrangements. Competence is determined by the general jurisdictional rules of civil procedure, typically linked to the defendant’s domicile/seat, the place of performance or (for arrest/security) the location of the asset (eg, the vessel/cargo in port).

1.2 Port State Control

Latvia applies the European port state control framework through its participation in the Paris MoU regime and implementation of relevant EU requirements. Port state control inspections are carried out by the competent maritime authority (in practice, the Maritime Administration of Latvia) and may include documentary checks, physical inspections, verification of certificates and compliance testing.

In cases of marine casualties (including crew casualties, groundings, pollution incidents and wreck-related events), the authorities may initiate enhanced inspections, require reporting and evidence, impose corrective measures, and (where safety or serious deficiencies are identified) detain a vessel. Environmental non-compliance and pollution-related incidents may trigger separate regulatory procedures and co-operation with other competent bodies, depending on the nature of the incident and applicable international/EU rules.

1.3 Domestic Legislation Applicable to Ship Registration

Ship registration in Latvia is primarily governed by the Maritime Code and related implementing regulations. The governmental authority responsible for registration is the competent registry authority operating under the maritime administration framework (in practice, the registration functions are carried out within the system administered by the Maritime Administration of Latvia).

The register records key particulars of the vessel and serves as the basis for the legal effects of registration, including publicity of ownership and registered encumbrances (where applicable).

1.4 Requirements for Ownership of Vessels

Latvian law permits registration of vessels with both domestic and foreign participation, subject to the requirements of the Maritime Code and registration rules concerning the applicant’s status, documentation and the vessel’s eligibility for registration.

Registration of vessels under construction may be possible where the registration framework provides for such entries, and where adequate identification and documentary evidence is available (eg, shipbuilding documentation and proof of title/interest), although the practical availability of such registration depends on the specific category and registration procedure used.

1.5 Temporary Registration of Vessels

Latvian law provides for registration mechanisms that may accommodate temporary registration concepts in limited scenarios (eg, depending on the vessel’s status and intended operations). As a general principle, ship registration is designed to secure legal certainty as to flag and registry status.

Dual registration is typically restricted and would be assessed against Latvian registration rules and the underlying international principles applicable to flag state jurisdiction and registry integrity.

1.6 Registration of Mortgages

Mortgages over Latvian-registered vessels are recorded in the ship ownership and mortgages registry

maintained within the Latvian ship registration system (administered under the maritime administration framework).

Documentary requirements generally include:

- evidence of the underlying secured obligation and mortgage instrument;
- identification of the parties;
- details sufficient to identify the vessel; and
- compliance with formal requirements applicable to documents submitted for registration (including legalisation/translation where required for foreign documents).

1.7 Ship Ownership and Mortgages Registry

The Latvian ship ownership and mortgages registry is maintained as an official register and provides publicity of registered rights and encumbrances. Access and the method of obtaining extracts or viewing entries depend on the applicable registry procedure (eg, requesting an extract or certificate, and satisfying any formal request requirements).

In practice, third parties commonly rely on official registry extracts/certificates to verify ownership and registered security interests.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship financing in Latvia largely follows international market practice. Debt financing is typically documented on the basis of standard facility structures (facility agreement, security documents, representations/warranties, covenants, events of default and enforcement provisions). Equity financing is implemented through shareholder instruments and corporate structuring under Latvian commercial law.

Where the vessel is Latvian-registered, a ship mortgage is a key security element, supplemented in practice by a wider security package such as assignment of earnings and insurances, pledges over accounts and (where available) share pledges over the owning SPV. The most common transactions are conventional bank lending structures and cross-border financings

involving foreign lenders, with Latvian elements mainly arising where a Latvian registry mortgage or Latvian corporate/security law is used.

2.2 Ship Leasing

Latvia is not typically used as a primary hub for ship leasing in the way certain larger maritime jurisdictions are; leasing structures involving Latvian parties are more often driven by cross-border commercial considerations rather than domestic incentives.

From a legal perspective, the lessor/lessee relationship is based on contractual possession and title retention by the lessor, whereas lender/borrower structures typically involve borrower ownership with security granted to the lender (eg, a mortgage). In enforcement, mortgage-related remedies focus on secured creditor enforcement against the vessel, while leasing defaults are addressed through contractual termination and repossession remedies, subject to procedural requirements and (where relevant) interim relief. Sale and leaseback structures may be used in practice where commercially justified, but they are not a dominant feature of Latvia-linked shipping activity.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Latvia applies the principal international conventions governing marine pollution and environmental liability through a combination of international law, EU legislation and domestic implementation. Pollution prevention and liability are primarily regulated via Latvia's participation in the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), as implemented through EU instruments and national legislation, which impose obligations relating to prevention, reporting, clean-up and sanctions for non-compliance.

Liability for pollution damage and related response costs is generally imposed on the ship-owner or other responsible interests, subject to applicable limitation regimes. Wreck-related obligations, including marking and removal of wrecks and recovery of associ-

ated costs, are governed by international conventions as implemented in Latvian law and supplemented by domestic provisions empowering competent authorities to order wreck removal where a wreck poses a hazard to navigation, safety or the environment.

3.2 International Conventions: Collision and Salvage

Collision and salvage matters in Latvia are governed by applicable international conventions as incorporated into domestic law, primarily through the Maritime Code and supplemented by general civil law principles.

Collision liability is assessed on the basis of fault and causation, with apportionment of liability where more than one vessel is at fault. Salvage claims are determined in accordance with internationally recognised principles reflected in Latvian law, taking into account factors such as the value of the salvaged property, the degree of danger, the skill and efforts of the salvors and the success of the operation. Entitlement to salvage remuneration and its assessment are subject to statutory and contractual provisions.

3.3 Convention on Limitation of Liability for Maritime Claims

Latvia applies the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC), as amended by the 1996 Protocol, which has been ratified and implemented into domestic law. The limitation regime is reflected in the Maritime Code, which sets out the right to limit liability, the categories of claims subject to limitation and the procedural framework for invoking limitation.

Limitation amounts are determined in accordance with the international limits as incorporated into Latvian law. The right to limit liability is available to ship-owners and other entitled parties, subject to the conditions and exceptions set out in the Convention and domestic legislation.

3.4 Vienna Convention on the Law of Treaties

Latvia is a party to the Vienna Convention on the Law of Treaties, which forms part of the legal framework applicable to the interpretation of international treaties. Latvian courts may apply the interpretative

principles of the Vienna Convention when construing international conventions incorporated into domestic law, including maritime conventions.

Accordingly, international maritime instruments are interpreted in good faith in accordance with the ordinary meaning of their terms, in their context and in light of their object and purpose, consistent with the approach reflected in the Vienna Convention.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Under Latvian law, the procedure for establishing a limitation fund is governed by the Maritime Code, which implements the LLMC, as amended by the 1996 Protocol.

A limitation fund may be constituted by a ship-owner or any other person entitled to limit liability under the Convention, including charterers, managers, operators and insurers acting on behalf of the liable party. The fund is established by filing an application with the competent civil court, typically in connection with pending proceedings or where claims are expected to be brought in Latvia.

The amount of the limitation fund is calculated strictly in accordance with the applicable LLMC limits, based on the vessel's gross tonnage and the nature of the claims. Latvian courts do not have discretion to vary the limitation amount beyond the Convention limits.

In practice, the fund is constituted by payment of a monetary deposit into the court's account or, where permitted, by providing equivalent financial security acceptable to the court. Once the fund is duly constituted, claimants are required to pursue their claims against the fund, and separate enforcement actions against the ship or other assets in respect of limitable claims are generally barred.

3.6 Seafarers' Safety and Owners' Liability

Latvia is a party to the Maritime Labour Convention, 2006 (MLC), which is fully applicable in the jurisdiction and implemented through domestic legislation and regulatory instruments.

Seafarers' rights and safety are governed primarily by the Maritime Code, together with labour and occupational safety legislation applicable to maritime employment. The regulatory framework covers matters such as minimum working and living conditions, employment agreements, wages, repatriation, medical care, occupational safety and social protection.

Compliance with the MLC is monitored and enforced by the competent maritime and labour authorities, including through flag state and port state control inspections. Ship-owners may incur civil, administrative and, in serious cases, other liabilities for non-compliance with seafarers' safety and welfare requirements, subject to the applicable legal framework.

4. Cargo Claims

4.1 Bills of Lading

Latvia applies the Hague Rules/Hague-Visby Rules regime to carriage evidenced by bills of lading where the relevant connecting factors are satisfied. Latvia is not a party to the Hamburg Rules and has not adopted the Rotterdam Rules.

Where the international regime does not apply, carriage by sea and bills of lading are primarily governed by the Latvian Maritime Code, supplemented (where necessary) by general principles of the Civil Law and procedural aspects under the Civil Procedure Law.

4.2 Title to Sue on a Bill of Lading

The right to sue on a bill of lading generally lies with the lawful holder of the bill (typically the consignee or endorsee in possession), depending on the form of the bill and the underlying contractual structure. Latvian law recognises transfer/assignment of rights: title to sue may pass with the lawful transfer of the bill of lading and/or by assignment under general civil law principles, provided that the requirements for a valid transfer (including notice where relevant) are satisfied.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Liability for cargo loss or damage depends on whether the ship-owner is the contractual carrier under the bill of lading or is involved as the actual/performing car-

rier (eg, via charterparty arrangements). As a matter of principle, claims under a bill of lading are pursued against the contractual carrier identified by the bill and the applicable carriage regime; recourse may then arise upstream under the charterparty chain.

Where the Hague/Hague-Visby regime applies, the carrier's liability is subject to the customary defences and package/unit limitation under that regime. In addition, ship-owners (where entitled and depending on the nature of the claim) may invoke limitation of liability under the LLMC 1976/1996, as implemented in Latvian law, for qualifying claims.

Accordingly, the analysis differs materially where the ship-owner is the contractual carrier (direct bill of lading liability) versus where it is only the actual carrier (exposure primarily through tort/contractual recourse pathways and indemnities).

4.4 Misdeclaration of Cargo

Latvian law recognises carrier claims against shippers for misdeclaration/misdescription of cargo (including incorrect description, quantity, weight, dangerous nature or other material particulars) where the carrier can prove breach of the shipper's duties and causation of loss (eg, fines, delay, damage, clean-up costs, deviation consequences). The legal basis typically arises under the contractual framework (bill of lading/booking note/charterparty), supplemented by general civil law principles on breach, fault and damages.

As to case law, publicly available Latvian judgments in this narrow shipping niche are limited and highly fact-specific; outcomes depend on the evidential record (documentation, knowledge, due diligence, causation) and the contractual allocation of risk (including incorporation of international standard clauses). In practice, these disputes are more frequently resolved through negotiation or foreign arbitration/litigation mechanisms, rather than reported Latvian court decisions.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Where the Hague/Hague-Visby regime applies, the typical time bar for cargo claims is one year, subject to the specific rules of that regime and to any agreed extension.

Outside the scope of the international regime, limitation periods are governed by Latvian domestic law (contract and tort), with the applicable period depending on the legal basis of the claim and the factual matrix.

Time limits may be extended by agreement in accordance with the governing regime and general principles of Latvian law. Suspension/interruption may also arise in limited circumstances under domestic law (eg, procedural steps or acknowledgement), but this is fact-dependent and should be assessed on a case-by-case basis.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

In practice, ship arrests are effected under domestic law, primarily the Maritime Code, read together with the Civil Procedure Law (interim measures/attachment-style relief and enforcement mechanics).

Latvia has not formally denounced the 1952 Convention on the Arrest of Ships – there is no notification of withdrawal in international registers. However, national law and practice predominantly apply the 1999 International Convention on Arrest of Ships, the provisions of which are reflected in the Maritime Code and serve as the basic standard for determining maritime claims and ship arrest mechanisms. The 1952 approach, although not formally repealed, is in fact not used as a basis for arrest in modern Latvian practice. Accordingly, arrest applications are assessed by Latvian courts by reference to the Maritime Code and procedural requirements under the Civil Procedure Law, with reference to the 1999 Arrest Convention.

5.2 Maritime Liens

Latvian law differentiates clearly between maritime liens (rights in rem arising by operation of law and attaching to the vessel) and maritime claims (claims that may ground arrest, but do not necessarily confer lien status). This distinction is reflected in the Maritime Code and is material for priority and (in some cases) survival against change of ownership.

Recognised maritime liens typically include (in substance) the traditional categories:

- crew wages and other seafarers' employment-related claims;
- salvage;
- certain port, pilotage and similar public/operational dues; and
- certain damage claims arising from the operation of the vessel (subject to the Maritime Code's formulation).

Latvia recognises privileged treatment of crew injury/death-related claims within the protective seafarers' regime; whether a particular indemnity for crew injury qualifies as a maritime lien (as opposed to an arrestable maritime claim) is assessed under the Maritime Code's lien provisions and the facts (nature of the claim, basis and claimant).

Latvian law recognises charterparty liabilities (eg, unpaid hire, damages for breach, off-hire disputes) as maritime claims, and therefore such liabilities can provide grounds for arrest, provided the claim falls within the Maritime Code's arrestable categories.

Arrestable maritime claims follow the Maritime Code list, conceptually aligned with the 1999 Arrest Convention and covering, among other things, carriage of goods, charterparties, supply of necessities (including bunkers), salvage, collision/damage, port dues and certain ownership/possession disputes.

Time limits depend on the nature of the underlying claim (eg, cargo claims, collision claims, wage claims) and the relevant limitation regime under Latvian law and applicable conventions. Maritime liens are generally considered valid once the underlying privileged claim arises and remain enforceable against the vessel for the period provided by the Maritime Code (ie, liens are not perpetual; they expire if not enforced within the statutory time).

5.3 Liability in Personam for Owners or Demise Charterers

At the arrest stage, Latvian courts do not require the claimant to prove final in personam liability on the merits. The claimant must show a *prima facie* maritime

claim (or lien) and the statutory connecting factors required by the Maritime Code.

Where the claim constitutes a maritime lien, it attaches to the vessel as a right in rem and may support arrest even if ownership has changed, subject to the Maritime Code rules on lien validity and expiry. For non-lien maritime claims, the claimant typically must demonstrate that the relevant liable party (often the owner or demise charterer at the time the claim arose) has the requisite connection to the vessel under Latvian law.

5.4 Unpaid Bunkers

Unpaid bunkers are treated as an arrestable maritime claim under Latvian law, provided the supply was for the benefit of the vessel and the claim fits within the Maritime Code's arrestable categories.

Latvian courts will look closely at who contracted for the bunkers and the evidence of supply and invoicing. In practice:

- a contractual supplier generally has the clearest standing; and
- an actual/physical supplier may also pursue arrest if it can demonstrate a legally enforceable claim (eg, assignment, direct contractual chain or other recognised basis under the governing law of the supply contract).

Where bunkers were supplied to a chartered vessel and ordered by the charterer, the key issues are (i) whether the charterer had authority (actual or apparent) and (ii) how Latvian law treats the “necessaries” claim in the arrest context. “No lien” clauses may be relevant to the merits/relationship allocation, but they do not automatically prevent an arrest application; Latvian courts tend to decide arrestability by reference to the Maritime Code criteria and *prima facie* evidence.

5.5 Arresting a Vessel

Arrest is obtained by an urgent court application supported by documentary evidence establishing a *prima facie* maritime claim and urgency/risk of dissipation (departure of the vessel).

In practice, Latvian courts typically require:

- evidence of authority to act (often a power of attorney notarised and covered by apostille);
- a structured written application supported by documents (contracts, invoices, bills of lading, correspondence and surveys where relevant); and
- translations into Latvian for key documents (courts are generally strict on language);

Originals are not always required at the filing stage; certified/notarised copies are commonly accepted, and apostille may be requested depending on the document origin and the procedural posture.

Courts have discretion to require the arresting party to provide counter-security (a deposit or other security) to cover potential losses from wrongful arrest. Whether it is ordered, and in what amount, depends on the claim, the evidence and proportionality.

5.6 Arresting Bunkers and Freight

As a matter of interim relief under Latvian procedural law, it is possible to seek attachment measures against assets located within Latvia, including bunkers (where ownership can be identified) and, in appropriate cases, freight or receivables. These measures are typically pursued under the Civil Procedure Law framework, rather than as “ship arrest” under the Maritime Code.

5.7 Sister-Ship Arrest

Sister-ship arrest is available where the statutory conditions are met. The claimant must show that the vessel arrested is owned by the same person who was the owner (and, where relevant, the demise charterer/operator as recognised by Latvian law) of the vessel in respect of which the claim arose, consistent with the Maritime Code approach (aligned with the 1999 Arrest Convention).

5.8 Other Ways of Obtaining Attachment Orders

Latvian law provides a broad toolkit of interim measures under the Civil Procedure Law, including:

- the freezing of bank accounts;
- attachment of receivables and contractual rights;

- prohibitions on disposal of specified assets; and
- attachment of cargo (where the legal conditions are satisfied).

These are often used either as alternatives to ship arrest or in parallel (eg, against charterers or local counterparties).

5.9 Releasing an Arrested Vessel

A vessel is released upon the provision of acceptable security or upon the arrest being set aside by the court. Latvian courts commonly accept:

- cash deposits;
- bank guarantees (including from a foreign bank, subject to court comfort on enforceability); and
- P&I club LOUs, particularly from first-class IG clubs, although acceptance remains discretionary and may depend on the judge, the claim type and the wording/amount of the LOU.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial sale proceeds through court-supervised enforcement/auction mechanisms under Latvian law. The sale is typically conducted as an official auction process, with the purchaser acquiring title free of prior encumbrances, and sale proceeds distributed according to statutory priorities.

Private sale is not the standard route; where considered, it would usually require court involvement/approval and a structure consistent with enforcement rules.

Costs of maintaining the vessel while under arrest (crew, port dues, essential services) are typically treated as custodia legis-type expenses and are paid out of proceeds with high priority, subject to the procedural framework.

Priority ranking generally places maritime liens ahead of registered mortgages, with mortgages then ranking ahead of ordinary unsecured maritime claims, subject to the Maritime Code's detailed ordering. In practice, the exact ranking depends on the nature of the claims (lien versus non-lien) and timing.

5.11 Insolvency Laws Applied by Maritime Courts

Latvia does not have an insolvency regime equivalent to Chapter 11 of the US Bankruptcy Code that would provide for debtor-in-possession restructuring with an automatic stay of enforcement comparable to US practice.

Insolvency proceedings in Latvia are governed by the Insolvency Law of the Republic of Latvia, which applies to ship-owners in the same manner as to other commercial entities. Latvian insolvency law does not, as a matter of principle, prevent maritime courts from ordering ship arrest or judicial sale of a vessel located within Latvia, even where the ship-owner is subject to foreign insolvency or restructuring proceedings, including Chapter 11 proceedings in the United States.

Latvian courts primarily assess jurisdiction, the location of the asset and the nature of the maritime claim. Foreign insolvency proceedings may be taken into account as a matter of comity or under applicable international or EU instruments, but they do not automatically bar arrest or enforcement measures under Latvian law. In practice, ship arrest and judicial sale may proceed unless a recognised legal basis exists to stay enforcement.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Latvian law recognises liability for wrongful arrest of a vessel. Damages or costs may be awarded against the arresting party where the arrest is found to have been unjustified, abusive or pursued in bad faith.

Courts assess wrongful arrest claims on the basis of general civil liability principles, including fault, causation and loss. Key factors include whether the claimant had a prima facie maritime claim, whether procedural requirements were complied with and whether the arresting party acted in good faith.

In practice, Latvian courts can require the arresting party to provide counter-security at the time of arrest. Such security plays an important role in compensating the ship-owner for losses arising from wrongful arrest,

including detention losses and reasonable legal costs, subject to proof.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Passenger claims in Latvia are governed by a combination of international conventions, EU law and the Maritime Code. Latvia applies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as amended by the 2002 Protocol, through EU Regulation (EC) No 392/2009, which establishes a harmonised liability regime for passenger death, personal injury and loss of luggage.

Under this framework, carriers are subject to strict liability for shipping incidents up to the applicable thresholds, with higher limits and potential unlimited liability where fault or neglect is established. Compulsory insurance is required, and passengers are granted a right of direct action against insurers. Latvian courts apply the EU regime directly and are familiar with evidentiary issues relating to causation, quantum and limitation.

Passenger claims most commonly arise in the context of ferry services and cruise traffic calling at Latvian ports. The applicable limitation period is generally two years, calculated in accordance with the Convention and EU law. Interim measures, including ship arrest, may be available where the statutory criteria are met.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Latvian courts recognise and enforce choice of law and jurisdiction clauses contained in bills of lading, subject to applicable mandatory rules. Where jurisdiction clauses designate the courts of an EU member state, enforcement is governed by Regulation (EU) No 1215/2012 (“Brussels I Recast”).

Jurisdiction clauses in bills of lading are generally upheld against lawful holders of the bill, provided that the clause is validly incorporated and does not conflict with overriding mandatory provisions. Latvian courts adopt a pragmatic approach, focusing on whether the bill of lading holder can reasonably be regarded as bound by the contractual terms.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Latvian courts recognise and enforce arbitration and law clauses of a charterparty incorporated into a bill of lading, provided that the incorporation is sufficiently clear and specific.

In line with international practice, a general incorporation clause referring to “all terms and conditions of the charterparty” is normally sufficient to incorporate an arbitration clause, unless the wording or circumstances indicate otherwise. Once valid incorporation is established, Latvian courts will stay court proceedings and refer the parties to arbitration.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Latvia is a contracting state to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention is fully applicable in Latvia and is implemented through the Arbitration Law of the Republic of Latvia and relevant provisions of the Civil Procedure Law.

Foreign arbitral awards are recognised and enforced by Latvian courts in accordance with the Convention. Refusal of recognition or enforcement is limited to the grounds expressly set out in the New York Convention, which are interpreted restrictively.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Latvian courts may order the arrest of a vessel or attachment of assets as a conservatory measure even where the underlying dispute is subject to foreign arbitration or foreign court jurisdiction.

Arrest is treated as a procedural security measure and does not constitute a determination on the merits. The existence of a valid arbitration or jurisdiction clause

does not prevent Latvian courts from granting arrest, provided that the claimant establishes a prima facie maritime claim and the statutory requirements for interim relief are satisfied.

7.5 Domestic Arbitration Institutes

Latvia does not have a domestic arbitration institute that specialises exclusively in maritime arbitration comparable to established international maritime arbitration centres.

Maritime disputes seated in Latvia may nonetheless be referred to arbitration under the general arbitration framework, and Latvian courts adopt a supportive approach to arbitration, including enforcement of arbitration agreements and awards.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Where proceedings are commenced in Latvia in breach of a valid foreign jurisdiction or arbitration clause, the defendant may seek a stay or dismissal of proceedings.

In arbitration cases, Latvian courts will generally decline jurisdiction and refer the parties to arbitration. In jurisdiction clause cases, courts apply EU law or private international law principles, as applicable. Anti-suit injunctions are not granted by Latvian courts, but procedural remedies are available to prevent parallel proceedings and to enforce the agreed dispute resolution mechanism.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Latvia does not operate a tonnage tax regime or any shipping-specific income tax exemption comparable to those available in certain traditional maritime jurisdictions.

Shipping companies incorporated in Latvia are subject to the general corporate income tax regime, under which corporate income tax is levied only upon distribution of profits, rather than on annual accounting

profits. Retained or reinvested profits are not subject to corporate income tax until distribution.

Latvian tax law does not provide shipping-specific accelerated depreciation or other sector-specific tax reliefs applicable exclusively to ship-owners' income. Depreciation of vessels follows the general tax depreciation rules applicable to fixed assets.

As a result, tax planning for shipping businesses in Latvia typically focuses on corporate structuring, financing arrangements and dividend policy, rather than on dedicated shipping tax incentives. Latvia's tax framework may nevertheless be attractive in certain cases due to the deferred taxation of undistributed profits and compliance with EU state aid rules.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under Latvian law, non-performance of contractual obligations is assessed primarily under the Civil Law, which adopts a restrictive approach to force majeure and frustration. Force majeure requires circumstances that are extraordinary, unforeseeable and unavoidable, and which objectively prevent performance.

Typical shipping-related events such as late delivery, slow loading or discharging, or non-arrival of a chartered vessel will not automatically qualify as force majeure or frustration. Each case is assessed on its facts, with significant weight given to the contractual allocation of risk, including express force majeure clauses. Frustration is applied narrowly and only where performance has become legally or physically impossible, rather than merely more onerous or unprofitable.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Latvia has implemented IMO 2020 through EU legislation and domestic enforcement mechanisms. The applicable sulphur limit is 0.50% m/m, with stricter limits applicable in designated emission control areas where relevant.

Enforcement is carried out by the Maritime Administration of Latvia within the framework of port state control. Inspections include verification of bunker documentation, fuel sampling and compliance checks. Non-compliance may result in detention, administrative penalties and other enforcement measures. Latvia applies the EU-wide enforcement approach; publicly reported enforcement actions are consistent with regional practice rather than reflecting a high volume of litigation.

9.3 Trade Sanctions

As an EU member state, Latvia incorporates and enforces EU trade and financial sanctions. Sanctions are directly applicable and are enforced by competent national authorities, with courts co-operating in enforcement and asset-freezing measures.

International events of recent years have had a significant impact on shipping and trade activities in Latvia, particularly in relation to Russian and Belarusian cargoes, vessels and counterparties. Certain entities have been sanctioned and subject to asset restrictions and regulatory scrutiny. Limited exemptions or licences may be granted within the EU framework by competent authorities, strictly in accordance with applicable EU regulations.

9.4 International Conflict

International conflicts primarily affect Latvian shipping through contractual performance risks, insurance coverage and compliance considerations. Issues such as deviation, delays, increased war risk premiums and insurance exclusions are addressed contractually and through insurance arrangements rather than through jurisdiction-specific doctrines.

Latvian courts assess such disputes on a case-by-case basis, focusing on contractual risk allocation, applicable force majeure clauses, insurance terms and the factual impact of the conflict. Constructive total loss and insurance recovery are matters governed by the relevant insurance contracts and applicable international principles rather than by unique domestic rules.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

A notable practical feature of the Latvian maritime legal environment is the frequent use of ship arrest as a security tool, particularly in support of foreign proceedings or arbitration. Latvian courts are experienced in handling urgent interim measures and are receptive to applications that meet statutory requirements.

Additionally, Latvia's role as an EU port state has increased the practical importance of sanctions compliance, environmental controls and port state inspections for vessels calling at its ports. These factors have become central considerations in the planning and execution of shipping operations involving Latvian ports.

LIBERIA



Trends and Developments

Contributed by:

Brad L. Berman
Berman Legal LLC

Berman Legal LLC focuses on providing international corporate and finance expertise with a specialty in business transactions and global shipping. This includes maritime law, ship finance, corporate law, including mergers and acquisitions and private equity, as well as advising owners, operators, investors and lenders on corporate ownership structure, financing

arrangements and vessel registration, representing both sellers and buyers of all types of commercial vessels trading worldwide, including rigs and yachts. After over 30 years spent practising corporate and ship finance law in New York, Berman Legal LLC was formed in Connecticut in the Fall (autumn) of 2018 by Brad L Berman.

Author



Brad L. Berman has over 35 years of experience practising law. He is admitted to the Bars of the US States of Connecticut, New York and Florida, as well as various US Federal Courts and the Court of International Trade.

He started his career in management consulting for Ernst & Young (EY), and was the lead associate drafting the maritime and corporate laws of the RMI in 1990. Brad holds a juris doctorate degree from New York Law School, a master's degree in business administration from the City University of New York, Baruch College, and a bachelor's degree in business administration from The George Washington University, School of Business.

Berman Legal LLC

90 Post Road West
Suite 300
Westport
CT 06880
USA

Tel: +1 212 365 8085
Email: info@berman-legal.com
Web: www.berman-legal.com

Shipping Law Developments in Liberia

Introduction

Citing the motto “All flags are not alike”, Liberia is the flag state administrator in the world. Under the sole management of LISCOR LLC, a Delaware-based limited liability company functioning on behalf of the Liberian government, the ship and corporate registry programmes represent Liberia’s dedication to quality management, safety supervision, and innovative service delivery. The Liberian flag is widely known and has been included to lists of approved flags by international port state regimes.

The corporate register in Liberia has won praise for its commitment to superior business services, cutting-edge technology developments, and legal stability. Liberia has demonstrated its unwavering adherence to these ideals through recent legislative changes.

Changes in Liberian maritime law and regulations

Utilising its vast international network and skilled inspectors, Liberia’s registry responded to the problems presented by the worldwide pandemic. During the crisis, temporary measures were successfully implemented, such as accepting electronically filed register instruments by email. Due to the favourable result, these modifications were codified in the 2022 Amendment, which went into effect on 9 August 2022, permanently removing the requirement for physical document submission and making electronic filing a feature.

In addition to streamlining procedures, the 2022 Amendment made preferred mortgage recording regulations more understandable. In line with traditions in English law jurisdictions, Liberian law now expressly excludes certain sensitive terminology from disclosure in the recorded instrument.

Seafarer Certification Application Portal

The “Seafarer Certification Application Portal”, launched by the Liberian Registry in 2021, allows direct applications for flag state-approved licences and upgrades. For both new and current mariners, this online solution improves and streamlines the certification procedure.

Addressing transparency: beneficial ownership disclosure

In 2018, Liberia ended the use of bearer shares in accordance with international transparency norms that were pushed by the Financial Action Task Force and the OECD Global Forum. The action was taken in an effort to reduce the danger of money laundering, terrorist financing, capital flow, and tax avoidance. In order to promote transparency and adherence to international standards, the amendment required the keeping of beneficial ownership information.

Up-to-date records on registered and beneficial owners

Amendments to the Liberian Associations Law in April 2020 required entities to keep up-to-date records of registered and beneficial owners, further demonstrating Liberia’s commitment to transparency. The need is to file an Annual Declaration of Shareholding, Beneficial Ownership, Management, and Record-Keeping with The LISCOR Trust Company. It went into effect on 31 December 2021. Transparency is ensured by this endeavour without jeopardising jurisdictional public documents.

Compliance and sanctions

Entities are required by the Liberian Associations Law to keep proper records of registered shareholders and beneficial owners. Sanctions for noncompliance with record-keeping obligations might include the resignation of the LISCOR Trust Company, fines for noncompliance, and disruptions to regular business operations. The Registrar has the authority to impose additional penalties on these organisations, underscoring the need of complying with regulatory requirements.



Law and Practice

Contributed by:

Ann Fenech, Adrian Attard, Lara Saguna Axiac and Martina Farrugia
Fenech & Fenech Advocates

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Fenech & Fenech Advocates was established in 1891 and covers diverse areas of expertise, including corporate and commercial law, ICT law, M&A transactions, financial services, tax, banking, trusts and foundations, aviation, intellectual property, employment law and environmental law. It is particularly well known for its extensive maritime practice, with four distinct departments dedicated to the maritime sec-

tor: marine litigation, ship registration, ship finance and yachting. The firm represents major industry players, ranging from the largest ship-owners, tug and salvage operators, and port facilities to bunker operators, charterers and financiers, yacht-builders and yacht-owners. It also regularly assists with the drafting of maritime laws and legislation.

Authors



Ann Fenech is a partner and heads the marine litigation department at Fenech & Fenech Advocates. She has practised maritime law exclusively since 1986, and was managing partner between 2008 and 2020. Ann

was elected President of the Comité Maritime International (CMI) in 2022. She was the President of the Malta Maritime Law Association from 2008 to 2022, and is a founding member of the Malta Maritime Forum and a council member of the European Maritime Law Organisation. She was also the CMI co-ordinator at the UNCITRAL Working Group V1. In December 2023, she was listed in Lloyd's List's One Hundred People, comprising the shipping industry's most influential people, for the second consecutive year.



Adrian Attard is a partner in the marine litigation department and ship finance department at Fenech & Fenech Advocates. He graduated from the University of Malta in 2009 and was admitted to the Maltese Bar

that same year. His main areas of practice are maritime law and dispute resolution. Adrian has a wealth of experience in most types of wet and dry shipping disputes. He regularly advises financiers on ship arrests, mortgage enforcements and judicial sales. Adrian sits on the Executive Committee of the Malta Maritime Law Association and serves as its Treasurer. He is also a member of the Maltese Chamber of Advocates and a lecturer at the University of Malta.



Lara Saguna Axiag is a director of Fenech & Fenech Marine Services Ltd and heads the ship registration department. She is also a member of the Malta Chamber of Advocates and the Malta Maritime Law Association.

Lara has practised in the areas of ship finance, ship registration, and ship sale and purchase since 2007, focusing on registration of vessels, ship sales/acquisitions, transfers of ownership and all matters relating to registration under the Maltese flag. She has also advised and assisted ship-owners and leading financial institutions with ship finance matters.



Martina Farrugia is a senior associate in Fenech & Fenech Advocates' marine litigation department. Martina was admitted to the Bar in 2016. Her areas of focus include debt recovery and the arrests of vessels, the sale

and purchase of vessels, collisions, recognition and enforcement of judgments and arbitral awards, and contract-drafting and dispute resolution in matters concerning seafarers' employment and personal injury claims. Martina is a member of the Chamber of Advocates and the Malta Maritime Law Association, a guest lecturer at the University of Malta and the Vice-President of WISTA Malta.

Fenech & Fenech Advocates

198, Old Bakery Street
Valletta
VLT1455
Malta

Tel: +356 2124 1232
Fax: +356 2599 0640
Email: info@fenechlaw.com
Web: www.fenechlaw.com

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ADVOCATES

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Maltese court system is regulated by virtue of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta (COCP). The COCP provides that the Courts of Justice of Civil Jurisdiction in Malta are either superior or inferior. The superior courts are the Civil Court, the Court of Appeal and the Constitutional Court, while the inferior courts are the Court of Magistrates (Malta) and the Court of Magistrates (Gozo).

There is no designated maritime or shipping court, and all maritime cases are heard by the Civil Court (First Hall). In practice, cases with a maritime flavour are assigned to specific judges who, over the years, have garnered a great deal of expertise on the subject. The jurisdiction of the courts to hear cases in rem is regulated by Article 742 (B) of the COCP, introduced into the COCP in 2006; previously, the courts' jurisdiction in rem was still regulated by the Victorian Admiralty Court Acts of 1840 and 1861. This Article lists all the maritime claims which can be heard by the Maltese courts against vessels in rem. The grounds contained in Article 742 (B) are based on Article 21 of the English Supreme Court Act, and the list of maritime claims in the International Convention Relating to the Arrest of Sea-Going Ships, 1952 and the International Convention on Arrest of Ships, 1999.

1.2 Port State Control

Transport Malta, through its Merchant Shipping Directorate, has the responsibility of monitoring and ensuring that its fleet, as well as ships entering Maltese waters, are compliant with international standards regarding safety, pollution prevention, and onboard living and working conditions. A memorandum of understanding for the Mediterranean region was signed in Malta in 1997, and Transport Malta has also been a member of the Paris Memorandum of Understanding on Port State Control since July 2006.

If port state control officers notice deficiencies in the course of an inspection, actions may vary, from recording a deficiency to be rectified within a certain period of time to issuing a detention order if that deficiency poses a hazard to safety, health or the environment. The detention order may only be lifted if the deficiency has been rectified to the satisfaction of the authority. The Ports Directorate within Transport Malta is responsible for the prevention of pollution occurring in the waters within its jurisdiction. Through the assistance of the Pollution and Incidence Response Unit, the Ports Directorate thus deals with any incidence of pollution occurring within its jurisdiction.

The Directorate also participates in the Western Mediterranean Region Marine Oil and HNS (hazardous and noxious substances) Pollution Co-operation (West MoPoCo) project, which aims to provide assistance and share expertise to strengthen the co-operation of preparedness between participating countries for any response to marine pollution. The Ports Directorate also releases periodic Notices to Mariners, which con-

tain updated navigational information, including the location of any wrecks or groundings of vessels.

Malta ratified the Nairobi International Convention on the Removal of Wrecks 2007, which has been transposed into Maltese law and applies to all Maltese ships, wherever they may be, and to all other ships, regardless of flag, while located within the territorial waters of Malta. If a wreck is located in Maltese waters and may pose a hazard, the Authority for Transport in Malta is given the power to issue a Wreck-Removal Notice, informing the registered owner of the deadline within which the wreck is to be removed. Should the registered owner fail to remove the wreck, the Authority may do so itself at the registered owner's expense.

In the case of a marine accident involving or occurring on board a Maltese ship and involving a death, a marine safety investigation may be carried out under SL 234.49, titled the Merchant Shipping (Accident and Incident Safety Investigation) Regulations. The purpose is not to apportion blame or determine civil and criminal liabilities, but to prevent future maritime accidents and incidents.

In the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers, or for deficiencies which constitute a serious or repeated breach of the Merchant Shipping (Maritime Labour Convention) Rules, the Authority for Transport in Malta can hear complaints and detain the ship until such time as these are rectified. Where the vessel is not Malta-flagged, the Authority shall immediately inform the flag state administration in writing, or, where unavailable, the consul or nearest diplomatic representative of that state, and may request that the flag state reply within a prescribed deadline.

1.3 Domestic Legislation Applicable to Ship Registration

The Merchant Shipping Act, Chapter 234, Laws of Malta (MSA) is the primary legislation governing ship registration. The Act is supplemented by several subsidiary regulations which handle all ship-registration matters. The authority responsible for the registration of vessels is the Merchant Shipping Directorate

within the Authority for Transport in Malta, referred to as Transport Malta.

1.4 Requirements for Ownership of Vessels

The registered owner of a vessel under the Maltese flag may be a Maltese or non-Maltese entity or be an individual (provided that such individual holds a valid EEA, EU, Swiss or UK passport). In the case of a non-Maltese entity or individual, a resident agent must be appointed in Malta to act as a channel of communication between the Maltese authorities and the non-Maltese owner. The MSA also caters for the possibility of registering a vessel still under construction.

1.5 Temporary Registration of Vessels

Under Maltese law, a vessel is initially registered provisionally for a period of six months. During this period, mortgages may be registered securely. The provisional registration may be extended for additional periods of up to a maximum of one year, during which time proof of ownership documentation, together with certain technical documents, needs to be filed with the ship registry for the purposes of obtaining permanent registration.

The MSA provides for various registration options:

- straight;
- bareboat-out;
- bareboat-in; and
- dual registration.

In the case of dual registration, the interests of the owner are registered with the Malta Ship Registry, while charterers also operate the vessel under the Maltese flag. Charterers may apply to obtain vessel certificates in their name, provided that the owner and any registered mortgagees provide their written consent to such an arrangement, and charterers pay registration fees equal to those due by owners.

1.6 Registration of Mortgages

The Malta Ship Registry within Transport Malta is responsible for the registration of Maltese mortgages over Malta-flagged vessels. The registration of a mortgage over a Malta-flagged vessel takes place by means of a statutory mortgage instrument, which is produced to the Registrar of Ships for registration and

recorded in the register of the relevant vessel. This registration determines the exact date and time that the mortgage becomes effective vis-à-vis third parties, and consequently also determines its ranking. The mortgage instrument is generally executed locally by a local representative of the mortgagor acting pursuant to a power of attorney, which would also need to be presented to the Registrar of Ships together with the mortgage instrument.

1.7 Ship Ownership and Mortgages Registry

The Maltese Ship Registry, which is responsible for the registration of ships and mortgages, is a public registry distinct from the Government Public Registry. It is accessible to the general public, who may physically attend the registry to carry out searches on Malta-flagged vessels. A transcript of the register of any registered vessel, which will reflect the publicly available information, may also be ordered from the Ship Registry.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Typically, the Malta nexus in ship finance transactions arises where either the collateral vessel is registered under the Maltese flag or the borrower is a company incorporated in Malta.

Perhaps the most common ship finance transaction involving a Malta-flagged vessel entails a loan facility being granted to the ship-owner for the purpose of, inter alia, financing or refinancing the acquisition of that vessel. The borrower in turn offers the vessel as collateral by registering a ship mortgage in favour of the lender.

Financial institutions involved in bank-backed ship finance generally regard Malta as a favourable flag state jurisdiction owing to its robust, creditor-friendly legislative framework and, in particular, the preferential status and protections afforded to holders of ship mortgages under Maltese law.

A ship mortgage is executed to secure the rights of the mortgagee against the vessel owner, being the mortgagor – namely, the payment of a principal sum and

interest, a current account, as well as the performance of any other obligation, including a future obligation due by the debtor to the creditor. A current account would capture any indebtedness of the mortgagor towards the mortgagee as arising and determinable in accordance with the underlying secured obligations.

Although not mandatory for the validity of the mortgage, it is common practice for the mortgage to be supplemented by a deed of covenants entered between the mortgagor and the mortgagee. This deed further regulates the parties' relationship, particularly in relation to the day-to-day operation, maintenance and preservation of the vessel, as well as compliance with the terms of the mortgage.

Apart from the mortgage, and in those financings where a borrower or a guarantor is a Maltese entity, financiers often also require a pledge of shares over all the shares in that Maltese company. A pledge of shares grants the financier a security interest over the company's shares to secure the performance of the entity's obligations. The pledge offers additional comfort in the event of default, as the agreement may regulate matters such as restrictions on voting, the power to remove and appoint directors, and the transfer of the company's shares.

As explained further in **2.2 Ship Leasing**, the last decade has seen a rise in alternative models of financing, including ship sale-and-leaseback transactions and other finance lease structures.

Last year, a novel security package was introduced into Maltese law to protect the rights of a finance lessor. The finance charter instrument (FCI) is a statutory charge registered over a Maltese vessel to preserve the lessor's rights under a finance charter. The FCI ranks below the mortgage in the hierarchy of claims, thus ensuring that the mortgagee's position remains fully safeguarded. This FCI addresses an identified gap in the range of pre-existing security measures available to lessors by conferring a ship-related security in the form of a recognised charge over the vessel, comparable to other maritime security interests.

2.2 Ship Leasing

Over the last ten to 15 years, as many major banks adopted more conservative lending policies aimed at reducing exposure to non-performing loans, the shipping industry has witnessed a shift away from traditional lending towards alternative financing structures. The advantages of alternative capital funding include, inter alia:

- greater flexibility and speed;
- lighter regulatory requirements compared to banks;
- the ability to provide substantial funding;
- access to new types and forms of finance; and
- in certain cases, more competitive pricing.

The sale-and-leaseback transaction typically funded by non-traditional leasing houses (particularly those in Asian markets) has emerged as one of the most attractive funding solutions for Maltese ship-owners. These structures allow owners to unlock capital while retaining use of the vessel. Leasing is often described as providing access to the asset without transferring title.

Such transactions are generally structured to have minimal impact on the day-to-day shipping operations of the ship, while the financier retains ownership as security and recovers its investment through amortised lease payments over the agreed term, together with the negotiated return.

A fundamental distinction between sale-and-leaseback structures and traditional loan financing lies in the nature of the underlying legal relationships. Lenders finance ownership, relying on security interests and contractual covenants; on the other hand, lessors monetise ownership, relying primarily on title and the right of repossession. As a result, enforcement mechanisms differ materially. A lender may accelerate the loan, enforce its mortgage, arrest the vessel, and sell it privately or through judicial auction. A lessor, by contrast, may terminate the lease, repossess the vessel, re-charter or sell it, and pursue the lessee for unpaid hire and other contractual damages.

The enforcement of mortgage and lease defaults also differs in terms of the nature of the right being exercised. As discussed previously, under Maltese law

a mortgage constitutes an executive title, meaning that once the mortgagee has issued written notice of default to the mortgagor it may proceed directly to enforce its rights. Conversely, a lease default is a contractual dispute between the parties, requiring litigation before, and determination by, a court of law.

Apart from traditional bank financing, the sale-and-leaseback transaction is arguably the most prevalent form of alternative financing involving Maltese vessels. Malta's strong position as a maritime flag, its flexibility for owners (allowing for non-Maltese ownership of Maltese vessels) and charterers, including the statutory option to issue operational flag certificates in the name of the charterer (as disponent owner) and the ability to register a finance charter instrument in favour of the financier have collectively contributed to Malta attracting a considerable volume of sale-and-leaseback activity.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Malta is a party to the following:

- the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter;
- the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997;
- the 1992 Protocol of the International Convention on Civil Liability for Oil Pollution Damage 1969, and the Protocol of 1992 to Amend the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC);
- the 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (the "OPRC-HNS Protocol");

- the 2001 International Convention on the Control of Harmful Anti-fouling Systems on Ships;
- the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments; and
- the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships.

Malta is also party to the 2007 International Convention on the Removal of Wrecks.

In 2021, the Oil and Hazardous and Noxious Substances Pollution Preparedness, Response and Co-Operation Regulations, 2020 (SL 234.59) came into force, transposing the provisions of the OPRC Convention and the OPRC-HNS Protocol, and providing for a national contingency plan.

3.2 International Conventions: Collision and Salvage

Malta is not a signatory to any of the Salvage Conventions. The law relating to salvage is contained in Articles 342 to 346 of the MSA, which provides for the payment of a salvage award when services are rendered that save lives or property from any vessel in Maltese territorial waters or from any Maltese vessel, wherever it may be. The salvage payable must be limited to the value of the property salvaged. The obligation to pay salvage is not limited to the owner of the vessel but is an obligation of the person whose property has been saved.

The award is based on the following:

- the measure of success obtained;
- the efforts of the salvors;
- the danger run by the vessel saved, and by her passengers, crew and cargo;
- the danger run by the salvor and the salvaging vessel;
- the time expended;
- the expenses incurred and the losses suffered;
- the risks of liability and other risks run by the salvors;
- the value of the property exposed to such risks, having due regard to the special appropriation of

- any of the salvor's vessels for salvage purposes; and
- the value of the property saved.

Collisions

The liability for damages arising out of a collision is established by reference to the general law of tort, in Article 1031 of the Civil Code. Founded on fault-based liability, every person is liable for the damage that occurs as a result of their fault. A person is deemed to be at fault if, in their own acts, they do not use the prudence, diligence and attention of a bonus paterfamilias – the standard of the “reasonable man”.

In determining fault, consideration will be given to the Collision Regulations. These became part and parcel of Maltese law by virtue of Legal Notice 87 of 1978, titled the Merchant Shipping (Prevention of Collisions) Regulations, 1978, which effectively laid out the International Regulations for Preventing Collisions at Sea, 1972 as a Schedule to that Legal Notice.

Collisions are regulated further under domestic law, where, under the MSA, a ship-owner shall be liable for any damages caused by acts or omissions in the navigation or management of the ship. Furthermore, damages and interest due to another vessel or to her cargo in cases of collision of vessels attract a special privilege on the ship in terms of Article 50 of the MSA.

3.3 Convention on Limitation of Liability for Maritime Claims

Malta is a signatory to the 1996 Protocol of the 1976 Convention on Limitation of Liability for Maritime Claims, which has been transposed into Maltese domestic legislation by means of the 2003 Limitation of Liability for Maritime Claims Regulations, Subsidiary Legislation 234.16 of the Laws of Malta.

3.4 Vienna Convention on the Law of Treaties

For a Maltese court to be able to enforce an international treaty, said treaty must first be ratified, and the obligations and rights therein must be transposed into Maltese domestic law, since Malta largely follows a dualist approach. This was confirmed on multiple occasions by the Constitutional Court, which has held that the provisions of an international treaty to which Malta is a party must first be transposed into national

legislation through the appropriate legislative instruments in order to be directly applicable in the relationship between the Maltese State and its citizens.

Nevertheless, the original treaty text may still serve as guidance to the courts when interpreting the provisions of the transposing municipal laws. That said, while Malta acceded to the 1969 Vienna Convention on 26 September 2012, Malta has not yet transposed this into national law.

3.5 Procedure and Requirements for Establishing a Limitation Fund

The establishment of a limitation fund is set out in the previously mentioned regulations, which stipulate that limitation funds are to be constituted with the Civil Court, First Hall. To constitute a limitation fund, one may pay into court the equivalent in euros of the number of Special Drawing Rights (SDRs) being claimed, in order to be able to limit liability in terms of the regulations, together with interest from the date of occurrence giving rise to that liability to the date of payment into court at the rate of 8%. A person may adjust this figure by topping up funds in court if these were not sufficient, or by filing an application to request a refund if they have overpaid.

A person effecting payment must give notice thereof in writing to every person making a claim against them, specifying:

- the date of payment;
- the amount paid;
- the amount of interest included therein; and
- the period to which it related.

Funds can be constituted by paying a deposit of money into court or by providing a bank guarantee issued by a local bank. It is to be noted that (to date, and as far as is known) there have been no limitation funds set up in Malta.

3.6 Seafarers' Safety and Owners' Liability

The 2006 Maritime Labour Convention came into force on 20 August 2013, and its provisions were largely incorporated into Maltese domestic law by means of Subsidiary Legislation 234.51, titled the Merchant Shipping (Maritime Labour Convention) Rules.

That said, seafarers' rights and safety are not addressed only under the Rules. These rules must be read and construed together with the Convention, relevant EU legislation and other pieces of local legislation. With regard to the latter, these include (inter alia):

- the Merchant Shipping Act (Chapter 234 of the Laws of Malta);
- the general principles on tortious liability and on quantification of damages found under the Civil Code (Chapter 16 of the Laws of Malta); and
- the Occupational Health and Safety Act (Chapter 424 of the Laws of Malta).

The above recognises a vessel as a place of work if it is in a port in Malta or in the internal or territorial waters thereof, or in any dockyard, harbour or other similar installation in Malta, and sets out certain health and safety standards that must be adhered to.

The Seamen Wages Council Wage Regulation Order (Subsidiary Legislation 452.51) should also be noted; however, this only applies to employees on board ships regularly operating within the territorial waters of Malta. Persons working on board fishing vessels or foreign-going ships are excluded from the scope of this Order.

4. Cargo Claims

4.1 Bills of Lading

Malta is not a signatory to the Hague Rules, the Hague-Visby Rules, the Hamburg Rules or the Rotterdam Rules. The Hague Rules, however, apply in limited circumstances, because the text of these rules has been incorporated by virtue of the Carriage of Goods by Sea Act of 1954, by way of a Schedule to the Act. The Hague Rules have effect in relation to and in connection with the carriage of goods by sea in any vessel used for that purpose and carrying goods from Malta to any other port, but not if that vessel is carrying goods within the limits of Malta, transporting them from one island to another. Thus, the Hague Rules are not applicable as a matter of law in relation to carried cargo that was loaded on board a vessel in a foreign port and discharged in Malta.

In the case of disputes arising under a bill of lading related to goods discharged in Malta covered by a bill of lading containing a Clause Paramount, Maltese courts will apply the liability regime indicated in the Clause Paramount. Therefore, in practice, the courts tend to apply the Hague Rules, or the Hague-Visby Rules where indicated, which are the most commonly applicable liability regimes. There is no known case in which a Maltese court has applied the Hamburg Rules. The Rotterdam Rules are not yet in force. If the bill of lading does not contain a Clause Paramount incorporating the Hague Rules or the Hague-Visby Rules, the laws which govern the dispute would be the Maltese Civil Code and the Commercial Code.

4.2 Title to Sue on a Bill of Lading

Maltese law on bills of lading is contained in Articles 321 to 327 of the Commercial Code, which are quite archaic, and merit being revised. While they do not deal with title to sue directly, they imply that (by and large) the parties to the bill who would be entitled to sue on the bill would be the shipper, consignee and any subsequent endorsee who is a subsequent holder of the bill of lading.

Maltese law provides that the bill of lading may be drawn to order or to bearer, or in favour of a specified named party, and thus any such holder of the bill of lading would have title to sue. Maltese law expressly allows for the endorsement of the bill of lading, and thus title to sue may be assigned. It is important to note that parties to a dispute frequently refer to English case law on the matter. Although Maltese courts are not obliged to follow English case law, English jurisprudence has substantial persuasive value.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Where the bill of lading contains a Clause Paramount applying the Hague Rules or the Hague-Visby Rules, the courts will apply the liability regime, including the limitation provisions found in those Rules. It is not known whether the Maltese courts have ever had to consider applying the liability regime in the Hamburg Rules or Rotterdam Rules. However, if there is no Clause Paramount indicating the liability regime to be applied, Maltese law itself does not provide the ship-owner with any rights to limit their liability for cargo

damage along the lines found in the various Rules. The only rights of limitation available would be those limits found under the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims.

4.4 Misdeclaration of Cargo

Maltese law is silent on the issue of misdeclaration, and consequently a carrier's right to commence an action against the shipper for misdeclaration or misdescription would be governed by the general law of contract. Much would depend on the stage at which the carrier discovered the misdescription and what the carrier claimed. If the misdeclaration is discovered at the beginning of the voyage and prior to the departure of the vessel, it would be pertinent to establish whether that misdescription was of sufficient gravity to give the carrier the right to rescind the contract; alternatively, if the misdescription is discovered during or at the end of the voyage, the carrier would have to establish that the misdescription has actually caused damage to the carrier.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The courts would apply the time limits for filing claims for damaged or lost cargo in terms of the liability regime indicated in the Clause Paramount. If there is no Clause Paramount, the position is less clear.

Regarding lost or undelivered cargo, Article 544I of the Commercial Code states that actions for the delivery of goods are time-barred by the lapse of one year from the arrival of the vessel. With respect to damaged cargo, there is no particular provision; consequently, if the claim is based in contract, it would attract a five-year time limit, and if the claim is based in tort, it would attract a two-year time limit.

The extension of time bars is not a straightforward issue. Some time bars can be interrupted, allowing time to start to run again, while others cannot be interrupted, even if the parties agree that these should be extended. The latter time bars are referred to as being "peremptory". An example of a peremptory time limit is that previously referred to relating to lost or undelivered cargo. Such a time limit may not be extended, even if by mutual agreement of the parties.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Malta is not a party to any Arrest Convention, with ship arrests being governed solely by Maltese domestic law. Up until 2005, the grounds upon which a creditor could arrest a ship in rem were the grounds upon which the courts in Malta could exercise jurisdiction in rem, as reflected in the UK Admiralty Court Acts of 1840 and 1861, which applied in Malta.

In 2006, statutory amendments were enacted to revamp the grounds upon which the courts could exercise jurisdiction in rem and therefore arrest vessels as security in actions in rem. A new article was introduced into the COCP, which exhaustively listed all the maritime claims for which a creditor could seek to arrest a ship in rem in Malta. This list, found in Article 742B of the COCP, is based on the English Supreme Court Act of 1981 and the Arrest of Ships Conventions of 1952 and 1999.

Under Maltese law, a creditor may seek to obtain a precautionary or an executive arrest. In the latter case, the creditor must already hold a judgment or other similar enforceable title. Conversely, a precautionary arrest is issued when a creditor wishes to obtain security for a claim which has not yet been decided. An arresting party has a statutory timeframe of 20 consecutive days from the date of the issuance of a precautionary arrest within which to institute proceedings on the merits before a competent court or tribunal.

A creditor is also permitted to arrest a ship in Malta, either to secure a claim in personam or alternatively a claim in rem. In the former case, the vessel would be regarded in the same way as any other asset forming part of the debtor's estate. In such circumstances, the arresting party would need to ensure that the Maltese courts would be vested with jurisdiction over the debtor, as enshrined in Article 742 (1) of the COCP, which requires a direct connection or proximity to the territory of Malta or Maltese persons.

When an arrest is obtained to secure a claim in rem, the vessel is considered as being separate and distinct from the rest of the debtor's patrimony. Nonetheless, the arresting party would still need to ensure that

the Maltese courts are vested with jurisdiction in rem. The creditor's claim must fall under one of the headings of maritime claims listed in Article 742B of the COCP. Furthermore, unless the claim is a special maritime privilege, the creditor would generally also need to satisfy the "relevant person test", as prescribed in Article 742D of the COCP, in order to make an arrest in rem.

5.2 Maritime Liens

Maritime liens are alien to the Maltese legal system. The closest equivalents are those claims listed in Section 50 of the MSA, referred to as special maritime privileges. There are 16 special privileges, which include:

- any judicial costs incurred in respect of the sale of the ship, salvage costs, crew wages and remuneration;
- expenses incurred for the preservation of the ship after her last entry into port; and
- moneys due to creditors for provisions, victuals, outfit and apparel, incurred prior to the departure of the ship on her last voyage.

There is a special privilege for damages and interest due to any seaman for death or personal injury, and regarding expenses attendant on the illness, hurt or injury of any seaman. There is also a privilege for wages and "other sums due" to the crew in respect of their employment on the vessel.

Section 50 of the MSA also serves to help competing creditors establish the ranking of their respective claims, as the list is organised in a hierarchical order according to the priority of the nature of those claims.

There are two fundamental differences between ordinary maritime claims and special maritime privileges under Maltese law.

First, special maritime privileges attach to a vessel and will survive any voluntary sale of a vessel for up to a year. Conversely, ordinary maritime claims do not follow the vessel and an arrest in rem would only be possible where those claims satisfy the "relevant person test".

The second cardinal difference relates to ranking. All the special maritime privileges enjoy a higher ranking than ordinary maritime claims. Liabilities resulting from a charterparty could provide a ground for a maritime claim, provided those claims satisfy the “relevant person test” envisaged under Article 742D of the COCP.

Maltese law recognises that certain creditors may retain a possessory lien over a vessel. Any ship-repairer, ship-builder or creditor, into whose care and authority a ship has been placed for the execution of works or any other purpose, is entitled to retain possession over the ship until the debts for any such work or repairs are settled. However, a possessory lien is extinguished upon the voluntary release of the ship from the custody of the creditor.

5.3 Liability in Personam for Owners or Demise Charterers

Generally, a vessel may not be arrested in rem unless the “relevant person test” has also been satisfied. Article 742D of the COCP dictates that an arrest in rem for a maritime claim is only possible where the party who would be liable for the claim in an action in personam (the relevant person) was, when the cause of action arose, an owner or charterer of, or in possession or in control of, the ship or vessel, and that same relevant person is either the owner, beneficial owner or bareboat charterer of the ship at the time of the arrest.

There are several exceptions to this rule. Where the claim attracts a special maritime privilege, the creditor may arrest the ship, irrespective of who incurred the debt. Likewise, there is no need to satisfy the “relevant person test” when the underlying claim relates to:

- the possession, ownership or title of a ship;
- any issue arising between co-owners of a ship in so far as the ownership, possession, employment or earnings of that ship are concerned; or
- a claim in respect of a mortgage, hypothec or charge registered over the ship.

5.4 Unpaid Bunkers

Article 742B(o) of the COCP provides that a claim “in respect of goods, materials, provisions, bunkers, supplies and necessities supplied, or services rendered to a ship for her operation, management, preservation

or maintenance” would be classified as a maritime claim. Accordingly, a bunker supplier would be able to arrest a ship in rem to secure a claim for unpaid bunkers. Maltese law does not differentiate between contractual suppliers and physical suppliers. Both may arrest a vessel in rem for unpaid bunkers.

However, any supplier seeking to secure an arrest for such a claim must satisfy the “relevant person test”. Accordingly, a contractual supplier or a physical supplier may only arrest the vessel where the owner or the bareboat charterer of the vessel is the party liable in personam for the unpaid debt.

Following the collapse of the OW Bunkers Group, several court cases were filed where local bunker suppliers relied on stipulations in their bunker delivery notes (which incorporate their standard terms and conditions) in order to try to satisfy the “relevant person test” by holding the owners liable for the unpaid debt, even where the fuel products were ordered by a charterer or an intermediary bunker trader. Maltese jurisprudence has been largely inconsistent on this matter; however, the more recent judgments on the subject have taken the position that a supplier cannot rely on the wording of the bunker delivery note to arrest a ship where the owner or bareboat charterer was not the party who contracted to purchase the bunkers.

Nonetheless, there may be cases where a claim for unpaid bunker supplies would be classified as a special maritime privilege and, thus, an arrest may be issued against the vessel, irrespective of who contracted to purchase the bunkers. Claims relating to bunkers furnished to a ship after the vessel’s last entry into port, or prior to her departure on her last voyage, would classify as special maritime privileges. All other bunker supplies would, however, be classified as ordinary maritime claims.

Under Maltese law, a charterer does not have the authority to bind the vessel. However, a vessel may be held liable in rem for bunkers ordered by a charterer provided the “relevant person test” is satisfied or the bunker supply in question would classify as a special privilege.

5.5 Arresting a Vessel

Formalities

A creditor seeking to arrest a vessel in Malta must submit an arrest application, including all the relevant details about the parties, the vessel and the nature of the claim, as well as the amount being claimed (which must be in excess of EUR7,000). Where the arresting party is not Maltese, it would need to provide a power of attorney, notarised and legalised/apostilled, empowering its appointed local legal counsel to file the arrest on its behalf.

It is advisable that the arresting creditor also include any documents to substantiate its claim, such as copies of the relevant contract or invoices, or even a statement of facts. Documents must be submitted in English or Maltese, or in any other language accompanied by a certified translation into Maltese or English.

The arrest procedure in Malta is extremely expeditious, with arrests usually being issued within a matter of hours from filing. Moreover, it is also possible to arrest a ship outside normal court hours.

Security for an Arrest

The Maltese courts will never require an arresting creditor to put up any security prior to the issuance of an arrest. However, the owner of the arrested vessel may request security pursuant to Article 838A of the COCP. The court will only order the arresting party to put up security if the owner of the vessel can prove there is a “good cause” for such a demand. This is not defined; however, jurisprudence suggests that the owner would need to show that it may have a legitimate claim for statutory penalties, interests and damages caused by the arrest. Failure to put up security would lead to the release of the arrest.

5.6 Arresting Bunkers and Freight

It is possible for a creditor to arrest bunkers on board a ship by means of a warrant of seizure over those bunkers, which must necessarily be the property of its debtor. Nevertheless, there are several associated practical difficulties, which make this remedy less attractive.

First, the creditor would need to arrange and pay for the de-bunkering of the fuel from on board the vessel.

Second, the creditor would need to find available storage in Malta where the bunkers must be kept, until there is a final outcome on the merits of the claim. Malta is a relatively small country, with limited storage-tank facilities and a high market demand for available storage space.

Third, the creditor would need to engage the storage facility-operator holding the product as its legal co-signatory, as required by law. The respective operator may not be willing to accept this role, as it confers several obligations and responsibilities.

In this regard, Maltese law offers additional protections to suppliers wishing to arrest those bunkers for which they have not yet been paid. Article 2009 (d) of the Civil Code would afford the unpaid supplier a privilege over the bunkers. Moreover, should the bunker supplier have included a retention of title clause in its terms of sale, that would be deemed enforceable in Malta, pursuant to the relatively new provisions under Article 26H of the Commercial Code. Accordingly, a bunker supplier with a claim for unpaid bunkers may retain title and take back possession of the bunkers, which would still be deemed to be its property.

Maltese law does not specifically provide for the arrest of freight. Nonetheless, it would be possible (for instance) for a consignee with a claim against a ship-owner under a bill of lading to issue a garnishee order to seize freight that was due to that ship-owner. Under normal circumstances, a garnishee order is used in the context of seizing any funds belonging to a debtor in bank accounts held with local banks. The creditor names the banks as garnishees in their application, and consequently the banks would be obliged to seize any of the debtor's funds in their possession. That said, the law allows a creditor to name any third party as a garnishee.

There is, therefore, nothing precluding a consignee from issuing a garnishee order against the ship-owner and listing the charterer as a garnishee. Once the charterer is served with the garnishee order, it would be legally obliged to deposit into court any moneys

belonging to the carrier which may be, or may come to be, in its possession. Thus, whenever freight is due from the charterer to the owner, the former would be prohibited from paying it directly to the owner but instead would need to deposit the amount in court as security for the consignee's claim.

5.7 Sister-Ship Arrest

Maltese law permits sister-ship arrests under certain circumstances. Article 742D of the COCP provides that, where a creditor has a claim in rem (which is one of the maritime claims listed in Article 742B) in relation to a particular ship, it may arrest any other ship that is owned or beneficially owned by the party who is liable in personam for the claim.

5.8 Other Ways of Obtaining Attachment Orders

Maltese law offers creditors the possibility of applying for a flag injunction, which is another pragmatic tool used to obtain security for maritime claims. Section 37 of the MSA affords a creditor the right to request that the Maltese courts issue an injunction over any vessel flying the Maltese flag, prohibiting it from being sold, transferred or deregistered from the Maltese Ship Registry. In addition, such an injunction would also prohibit the affected ship-owner from registering any further mortgages over the ship in question.

A Section 37 injunction may, however, only be issued where the creditor has a "right in or over a ship or a part", which is defined under Section 37 (10) of the MSA as being a claim based on one of the following:

- a right of ownership;
- secured by a mortgage;
- secured by a registered encumbrance;
- secured by a privilege or a lien over the ship arising by operation of Maltese law or the law applicable to the claim; or
- any other maritime claim which gives rise to a claim in rem under Maltese law.

Furthermore, the flag injunction is a precautionary measure and, accordingly, the creditor will also need to open an action on the merits before a competent court or tribunal.

Once the injunction is issued by the courts, it will be recorded in the ship's register at the Maltese Ship Registry, where it will remain until it is removed by court order, preventing the sale, transfer or deletion of the vessel until that time.

Unlike a ship arrest, which must occur within Maltese territorial waters, a Section 37 injunction may be requested wherever the vessel is situated. A vessel may continue trading while under a Section 37 injunction, which is advantageous to creditors dealing with a debtor who may have liquidity issues. By allowing the vessel to operate commercially, the ship can continue to generate revenue and, hopefully, the debtor could eventually be able to pay its dues. Nonetheless, the creditor issuing the Section 37 injunction will continue to maintain its security, as the ship cannot be sold or transferred.

A creditor may also resort to using other attachment mechanisms available under Maltese law, which are not exclusive to maritime claims. For instance, a creditor may file for a garnishee order (which is similar in nature to a freezing order) to seize any funds which the debtor may have in accounts held with Maltese banks. It is also possible to apply for a warrant of seizure of any other movables or immovables which a debtor may have in Malta.

5.9 Releasing an Arrested Vessel

For a ship-owner or any interested party to secure the immediate release of an arrested ship, they would need to put up adequate security in court to cover the alleged claim amount. Strictly speaking, Maltese procedural law only allows two forms of security:

- the deposit of the money in court; or
- the presentation of an original bank guarantee (which must be drawn by a Maltese bank) in court.

That said, a Maltese court would generally allow a Club Letter of Undertaking (LOU) to be granted as alternative security for a claim, provided that the arresting creditor does not object.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial Sales of Ships

A creditor with a final and non-appealable enforceable title may apply to the Maltese courts to have an arrested ship sold judicially, either by means of a court auction or by means of a court-approved private sale. In both cases, the vessel is always sold free and unencumbered.

In the case of a judicial sale by auction, the creditor presents an application requesting the courts to schedule an auction date and appoint an auctioneer to preside over the auction. The registration of bidders is normally carried out on the day of the auction itself. Bidders fill a registration form and are required to present all the necessary bidding documentation shortly before the auction commences. The auction is public, and the vessel is sold to the highest bidder, who must deposit the purchase price in court within seven days, running from the auction date. There is no minimum reserve price and thus the market value of the vessel is not guaranteed.

Alternatively, a court-approved private sale allows the creditor to take a more proactive approach, as it may actively source the market for potential buyers (usually through ship-brokers). Once the best offer is identified, the creditor would normally conclude a memorandum of agreement with that prospective buyer, to be approved by court. The creditor would then file a court application to request that the presiding judge approve the private sale. The creditor is required to submit two independent appraisals of the vessel. These need to be survey valuations, rather than “desktop” estimates.

The creditor must prove to the court that the proposed private sale is in the interest of all known creditors and that the price offered is reasonable in the given circumstances. The application is served on all interested parties, and a hearing date is appointed for the judge to decide whether to accept the sale. Once approved, the purchaser has seven days, running from the date of the completion of the sale, to deposit the purchase price in court.

Maintenance Expenses

Generally, it is the ship-owner who remains responsible for the maintenance of its vessel while under arrest. Nonetheless, Article 857 (4) of the COCP states that any expenses necessary for the preservation of an arrested ship should be borne by the party issuing the arrest warrant. In such cases, the law provides the arresting party with the right to recover any such expenses and costs, together with its claim against the owner. These expenses would enjoy a relatively high ranking. This provision in the law was originally enacted to ensure that the Maltese port authorities are not left exposed when a ship-owner has abandoned the vessel. However, a recent judgment has allowed the owners of an arrested vessel allegedly in dire financial difficulty to rely on this article.

Ranking

Following a judicial sale of a vessel, and the deposit of the purchase price, competing creditors must participate in distribution proceedings in order to be paid according to the established rankings of their respective claims. Article 54A of the MSA sets out the ranking of all maritime claims in a clear and hierarchical order. Under Maltese law, a mortgagee would enjoy a relatively high ranking. Only possessory liens and a limited number of special maritime privileges would pre-rank a mortgage claim. All ordinary maritime claims under Article 742B would rank after a mortgagee's claim.

5.11 Insolvency Laws Applied by Maritime Courts

Under Maltese general corporate law, a company in financial distress may file for a company recovery procedure under Article 329B of the Companies Act, seeking judicial protection, for a specific period of time, in order to be able to attempt to revive the company's business. Under this protection, a creditor would not be permitted to seize any assets or enforce any judgment against the debtor company in Malta without first obtaining leave of the courts.

That said, shipping companies are not regulated by the Companies Act and are governed by the provisions of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, Subsidiary Legislation 234.42, which do not have an equivalent company recovery procedure. It is therefore ques-

tionable whether Maltese shipping companies are afforded protections akin to those granted within the context of US Chapter 11 Bankruptcy proceedings, such as an automatic stay order. To the best of the authors' knowledge, this question has never arisen before a Maltese court.

Maltese entities may also apply for similar protections under the provisions of the Pre-Insolvency Act. That said, the law provides that inter alia action in rem claims against ships as well as any warrants of arrest of a ship would be excluded from the stay order prohibiting the execution of other claims against the debtor. In this respect, it is prudent to note that a Maltese court will also not necessarily consider itself bound by any stay order issued by a foreign bankruptcy or insolvency court. This issue was touched upon in the *B Ladybug* case. After the arrest of the vessel, proceedings were commenced to have her sold judicially. The owners tried to interrupt the judicial sale proceedings, arguing that the beneficial owners of the vessel were subject to ongoing US bankruptcy proceedings where a stay order had been given, and thus the Maltese courts were obliged to suspend the ongoing judicial sale proceedings. The presiding judge disagreed, finding that Maltese courts should not be bound by the extraterritorial effects of such a stay.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The grounds upon which an arrested party can legitimately claim damages and penalties from an arresting party due to a wrongful arrest are explicitly provided for in Article 836 (8) of the COCP. Should a court set aside an arrest, the owners would generally only be entitled to claim damages in the following four circumstances:

- where, following the arrest, the arresting party failed to commence proceedings on the merits within the statutory 20-day timeframe;
- where the creditor failed to make a demand for payment from the debtor within the 15 days preceding the arrest – this, however, does not apply when there is an urgent need for the issuance of the warrant;

- where the arresting creditor had knowledge of the ship-owner's solvency and its clear financial ability to pay the claims; and
- where the arrest was filed maliciously, frivolously or vexatiously.

There is no statutory limit on the amounts of damages which a court may award; however, the ship-owner must prove a causal link, proving that the damages it suffered were a result of the wrongful arrest.

The aforementioned four grounds also give rise to the owner's right to claim statutory penalties from the arresting parties, which are limited to a sum of between EUR1,164.69 and EUR6,988.12. However, should the court conclude that the arrest was filed maliciously, the penalties to be imposed would be of no less than EUR11,600. It should be noted, however, that traditionally the Maltese courts have been extremely reluctant to impose statutory penalties, and jurisprudence in this regard is quite consistent.

However, a recent Court of Appeal decision delivered in December 2025 has cast uncertainty in this regard, widening the above scope for damages, and accepting in theory that the provisions of Article 836 (8)–(9) of the Code of Organisation and Civil Procedure do not exclude the right of the arrested party to sue for damages under the general provisions of tort law found under Article 1031–1032 of the Civil Code. Therefore, if fault – defined as a lack of prudence, diligence and care expected of a reasonable man – can be proven, in theory damages can be claimed.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Malta is a party to the Athens Convention on the Carriage of Passengers and their Luggage by Sea, 1974, incorporated by means of the Merchant Shipping (Carriage of Passengers by Sea) Regulation, Subsidiary Legislation 234.52 of the Laws of Malta. The resolution of maritime passenger claims is also dealt with under the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol (the "1996 LLMC Protocol"), which

was transposed into Maltese domestic legislation by means of the 2003 Limitation of Liability for Maritime Claims Regulations, Subsidiary Legislation 234.16 of the Laws of Malta.

Malta is further bound by Regulation (EC) No 392 of 2009 on the liability of carriers of passengers by sea in the event of accidents, which incorporated the 2002 Protocol to the Athens Convention, and Regulation (EC) No 1177/2010 on the rights of passengers when travelling by sea and inland waterways.

Time Limit for Filing a Claim

Any action for damages arising out of the death of or personal injury to a passenger or for loss or damage to luggage shall be time-barred by the lapsing of two years. The two years begin to run as follows:

- personal injury – from the date of disembarkation;
- death – from the date when the passenger should have disembarked, or, if a personal injury resulting in death, from the date of death, if occurring within three years from disembarkation; and
- loss or damage to luggage – from the date of disembarkation or from the date when disembarkation should have occurred, whichever is later.

Limitation of Liability in Respect of a Passenger's Claims

Under Subsidiary Legislation 234.16 of the Laws of Malta, a ship-owner may limit their liability in respect of a passenger's claims to claims for loss of life or personal injury, in addition to property claims, which mirror those found in the 1996 LLMC Protocol.

Malta has exercised its discretion allowed under the Convention and has determined that, for a ship with a tonnage not exceeding 300 tons, the limitation will be 500,000 Units of Account.

Maritime Lien or Maritime Claim

A claim for indemnity for a personal injury of a passenger would not attract a special privilege under Maltese law; however, it may qualify as a maritime claim in cases where the “relevant person test” is satisfied in accordance with Article 742D of the COCP.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The Maltese courts will largely recognise and enforce a law and jurisdiction clause stated in bills of lading. However, if it is shown that there is a closer connection with Malta, and where the law and jurisdiction clause is included in a document that has not been negotiated by the parties and/or is presented post facto, the court may be swayed to deviate from the clauses in the bills of lading in favour of Maltese jurisdiction (naturally, provided that the Maltese courts would have jurisdiction to determine the matter).

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

A law and arbitration clause in a charterparty that has been incorporated into the relevant bill of lading will not automatically be recognised by the Maltese courts unless it satisfies certain criteria. In *Northeastern Breeze*, the court held that a generic clause incorporating the terms of the charterparty would not suffice, and that the arbitration clause would have to be specifically incorporated into the bill of lading for this to be given effect, or specific reference to its applicability to the bill of lading would have to be made in the charterparty. This is a position borne out of common law and commercial practice.

This is also evident from the Arbitration Act, Chapter 387, of the Laws of Malta, which provides in Article 2 (c) that “an arbitration agreement is also concluded by the issuance of a bill of lading, if the latter contains an express reference to an arbitration clause in a charterparty”.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Malta. The process by which a foreign arbitral award can be registered in Malta is set out in the Arbitration Rules, Subsidiary Legislation 387.01.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

As previously explained, a vessel may be arrested in rem in Malta by means of a warrant of arrest issued on any of the grounds listed in Article 742B of the COCP if the vessel concerned is physically present within the territorial jurisdiction of the Maltese courts or as security of an in personam claim where the ship-owner is subject to the ordinary jurisdiction of the Maltese courts under Article 742 of the COCP. However, the matter is not straightforward, and much will depend on whether one is dealing with an arbitration clause or a jurisdiction clause.

Regarding arbitration clauses, Article 742 (4) of the COCP provides that any person who is party to an arbitration agreement may demand a precautionary act (including a precautionary arrest warrant) to be issued; and, where the party has not brought forward their claim before an arbitrator, they shall have 20 days from the date of issuance of the precautionary act to commence the arbitration proceedings.

With respect to a jurisdiction clause, however, the decision of the court will in turn depend on whether the clause points towards a jurisdiction established within the European Union (EU) or otherwise. If the jurisdiction clause refers a dispute to a court within an EU member state, then, pursuant to the provisions of Article 35 of Regulation 1215/2012 (the “Brussels I Recast Regulation”), a party may apply for a provisional arrest warrant, including protective measures in Malta, in order to secure their claim on the merits being pursued before the courts in another EU member state.

If the jurisdiction clause directs disputes to a court outside the EU, jurisprudence is varied. Some case law suggests that the issuance of precautionary warrants to secure a claim, such as an arrest of a vessel, will only be valid if the Maltese courts would have notional jurisdiction in terms of Article 742 of the COCP. There is, however, other case law which suggests that an arrest in support of an action heard before a foreign court would not be permitted, even if the Maltese court has notional jurisdiction.

Nonetheless, and in all cases, it is commonly held (even when the merits are not to be heard in Malta) that an arrest of a vessel in rem must satisfy the grounds of jurisdiction provided for under Article 742B of the COCP, together with the “relevant person test” requirement under Article 742D of the COCP.

7.5 Domestic Arbitration Institutes

Malta does not have a domestic arbitration institute that specialises in maritime claims. Nonetheless, where parties opt for arbitration proceedings in Malta, which would be conducted in accordance with the rules found under the Arbitration Act, they can nominate a panel of arbitrators who are specialised in maritime disputes. This helps to ensure that the matter is handled with the necessary expertise.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Where proceedings are commenced in breach of a foreign jurisdiction or arbitration clause, a defendant may challenge those proceedings and request that a preliminary decision be given, limited to the point of jurisdiction. Where the court finds that the proceedings have been commenced wrongly, it will declare that it does not have jurisdiction to hear the matter and may order court costs to be paid by the plaintiff. The defendant would also retain a right to institute an action to recover any damages suffered.

8. Ship-Owners’ Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners’ Companies

Maltese companies (as well as those established under the laws of any EU state) which own, operate, administer or manage a tonnage tax ship are exempt from:

- income tax which would otherwise be payable on income arising from shipping activities;
- any income, profits or gains derived from the sale or other transfer of a tonnage tax ship which had been acquired and sold while under the tonnage tax system, or from the disposal of any rights to

- acquire a ship which, when delivered or completed, would qualify as a tonnage tax ship; and
- the distribution of profits derived from shipping activities or from other transactions previously referred to.

A tonnage tax ship is a ship of any net tonnage engaged in shipping activities. “Shipping activities” comprise the international carriage of goods or passengers by sea, or the provision of other services to or by a ship as may be ancillary thereto or associated therewith, including the ownership, chartering or any other operation of a ship, as well as ship-management activities of a ship manager. A company which benefits from the tonnage tax system will be required to pay an annual fixed tonnage tax to the Registrar of Ships, which is calculated in accordance with the net tonnage and age of the vessel.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Force majeure is generally considered a defence for the non-performance or the delay of a contractual obligation under the Civil Code, Chapter 12 of the Laws of Malta if certain criteria can be satisfied. Under Maltese law, a debtor will generally be exempt from liability for damages where they prove that the non-performance or late delivery, non-arrival, etc, was due to an extraneous cause not imputable to them. Moreover, a debtor will also not be liable for damages if they were prevented from fulfilling their obligation/s in consequence of an irresistible force or a fortuitous event. Malta has also incorporated the Convention on the Contract for International Carriage of Goods by Road (CMR) which makes similar provision for force majeure under Article 17 (2).

Maltese courts interpret force majeure provisions strictly in order to ensure that they are not used unscrupulously by a party to evade responsibility. Recent case law has seen the COVID-19 pandemic recognised as a force majeure event qualifying under the definition of “epidemics” in the terms and conditions governing the parties. Nonetheless, the exist-

ence of COVID-19 or other such pandemic does not in itself create an automatic force majeure event, and therefore parties will not necessarily be able to claim protection or relief should their contracts be disrupted due to a similar pandemic.

According to Maltese jurisprudence on the subject, force majeure has been described as an irresistible force; one that could not be avoided by the exercise of due diligence. Furthermore, Maltese courts have consistently held that force majeure cannot be invoked by a party which by its actions or inactions has contributed to the damage or loss. Therefore, in order for an event to be classified as force majeure, the event, or force of nature, must be inevitable, in that it could not have been avoided through the exercise of due diligence of a bonus pater familias (ie, of a reasonable person). This also entails that the event was not or should not have been foreseeable.

Therefore, recent case law has indicated that collisions arising out of strong winds, within a micro-climate could not be considered as force majeure as the weather was forecasted and was not unusual for the time of the year.

Moreover, the event must be causative and directly impede the performance of the obligation.

For the defence of force majeure to apply, the impossibility of performance must be absolute, and it will not be sufficient that the performance of the obligation has become more burdensome or is suddenly more expensive to fulfil. The burden of proving the impossibility of performance rests on the person alleging it. Given the requirement of “inevitability”, persons who entered into a contract after the occurrence of a force majeure event might have a hard time proving that the non-performance of their obligation was unavoidable. This has resulted in the inclusion of specific contract variations to account for events that remain disruptive but may no longer qualify as force majeure.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Malta has transposed various EU Directives in line with the revised Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973

(MARPOL) by means of Subsidiary Legislation 545.18, titled the Quality of Fuels Regulations (the “Regulations”). The Regulations regulate the sulphur content of marine fuel and the capping of that sulphur content (mass by mass (m/m)) by all ships, irrespective of flag, when calling in Maltese ports and traversing Maltese internal waters, territorial waters and Malta’s exclusive economic zone.

The Regulator for Energy and Water Services (REWS) established by the Regulator for Energy and Water Services Act is the competent authority responsible for the enforcement of sulphur-content limitation in Malta. The Authority for Transport in Malta is also empowered to carry out certain enforcement procedures.

Since 1 January 2020, the use of marine fuels with a sulphur content exceeding 0.1% m/m by ships at berth in ports in Malta is prohibited. This prohibition will be extended to the entirety of Maltese waters in 2025, when the Mediterranean basin will be classified as a MARPOL Emission Control Area. Until implementation of these new regulations, in all other areas falling outside Maltese ports, but within the Maltese territorial sea, internal waters, exclusive economic zone and any pollution-control zones, the sulphur content of marine fuels (bar a few exceptions) cannot exceed 0.5% m/m.

As part of the enforcement of sulphur-content limitation, the REWS has an inspection and monitoring programme in place for vessels which operate for national maritime transport, and for larger vessels which fall under the MARPOL Convention and travel to Malta from other EU and non-EU ports. Monitoring as part of the programme (which is in line with the detailed requirements as defined by Commission Implementing Decision (CID) EU 2015/253) includes analysing the sulphur content in the samples lifted and the vetting of documents related to fuel purchase, storage and use by the vessel.

The latest available data shows that, during 2020, the REWS carried out inspections of documents on 107 vessels and collected 32 samples as part of its monitoring requirements. Through these inspections, the REWS identified two vessels that were burning marine

gasoil (MGO), which had an excess of 0.1% sulphur content while at berth. In both cases, the REWS performed an investigation and fines were issued according to the established REWS Decision No 14/2019.

By Decision No 5 of 26 October 2021, the REWS established certain fines applicable to any person in charge of a vessel in the event of absent MARPOL samples and/or absent documentation, with respect to the marine fuel of the vessel.

9.3 Trade Sanctions

All United Nations (UN) sanctions, in addition to EU sanctions, are directly applicable in Malta and are binding in their entirety as part of domestic law, pursuant to the provisions of the National Interest (Enabling Powers) Act, Chapter 365 of the Laws of Malta. Conversely, Office of Foreign Assets Control (OFAC) sanctions are not directly enforceable in Malta, as observed by the Civil Court (First Hall) in its judgment in *World Water Fisheries Limited v Bank of Valletta plc*, delivered on 29 September 2020. Nevertheless, most local authorities and regulators do recommend that economic operators, as well as the public in general, exercise caution in this regard.

Undeniably, the international sanctions landscape has changed significantly in the last few years. The war in Ukraine has brought with it unprecedented waves of new domestic, regional and international sanctions. As a member state of the EU, Malta has implemented the nine sanctions packages adopted by the EU in response to Russia’s invasion of Ukraine. These sanctions have naturally had a significant effect on trade in general and, in particular, in the shipping and energy sectors.

The Sanctions Monitoring Board is the competent local authority responsible for the implementation of all UN and EU sanctions in the Republic of Malta. The Board is composed of representatives from various relevant government ministries, governmental authorities, regulators and enforcement bodies. In the exercise of its functions, the Board is empowered to refer to other relevant authorities (including the Malta Police Force) for action, assistance or information. In practice, Maltese authorities do tend to co-operate extensively when enforcing applicable trade sanc-

tions. The National Interest (Enabling Powers) Act also outlines the punishments applicable for sanction breaches, which could include hefty penalties and criminal charges.

Under EU sanctions law, there are generally two types of permissible exceptions:

- exemptions – where particular activities or goods are expressly carved out from an applicable sanction(s); or
- derogations – where specific authorisations would be required from the competent authority in a member state.

The Sanction Monitoring Board would also be the competent authority to give guidance on exemptions as well as the authority in Malta empowered to grant any authorisation for any derogations envisaged under the EU sanctions framework.

From a shipping perspective, it is also worth mentioning that the Authority for Transport in Malta issued a Merchant Shipping Notice (No 175) in October 2021 to inform that the use of Maltese ships in violation of any applicable sanctions “...may be considered as being against the interest of Malta and of Maltese shipping and may lead, inter alia, to closure of registry”.

It is known that there are Maltese persons, both natural and legal, presently subject to OFAC sanctions. However, as previously stated, these sanctions are not directly enforceable in Malta and no legal proceedings are known to have been commenced in Maltese jurisdiction in this regard. That said, there are certainly known ongoing local criminal proceedings that have been instituted against Maltese economic operators for alleged breaches of UN and/or EU sanctions.

9.4 International Conflict

International conflicts such as the war in Ukraine and the more recent attacks of merchant vessels traversing towards the Red Sea inevitably tend to have a ripple effect on shipping and bring with them a myriad of legal and commercial consequences. For instance, given Malta’s geographical position in the heart of the Mediterranean Sea, any conflict adversely affecting the passage of shipping through the Mediterranean

region inevitably has commercial implications such as the soaring of shipping costs and a dip in the volume of ship calls.

From a legal perspective, it is admittedly unusual to find Maltese case law touching upon these matters. The principal reason for this is because it is uncommon to find contracts of carriage or charterparties subject to Maltese jurisdiction and governed by Maltese law. However, the statutory definition of force majeure under Maltese law, and the judicial interpretation thereof, is wide enough to allow a party to rely on this defence whenever it becomes impossible to perform any contractual obligations due to any “irresistible force” which could not have been avoided, which was unforeseen, and which could not have been avoided by the exercise of reasonable due diligence. That said, this may only be availed of when performance is made impossible and not simply made more onerous or more costly. Moreover, Article 1134 of the Civil Code dictates that no liability ensues for non-performance of obligations due to an irresistible force or a fortuitous event.

As a direct ramification of the war in Ukraine, the EU has imposed 16 sanction packages against Russia, all of which are applicable in Malta. Consequently, these restrictions have also meant that several parties found themselves unable to perform pre-existing obligations as these would have otherwise fallen foul of the Russian sanctions. While arguably the non-performance of obligations due to such sanctions could also fall within the ambits of Maltese statutory provisions of force majeure – as Maltese law also provides that no liability ensues when a party is forbidden from performing an obligation due to an “irresistible force” – the matter has yet to be tested.

However, in the recent decision in *North by Northwest GmbH v Vessel MSC Bilboa* (Rik 2038/2023), the court hinted that a party cannot use sanctions as an excuse to avoid performance of their obligations when that party could resort to obtaining a derogation in terms of the relevant EU sanctions regulations, in order to comply. This would suggest that, where a derogation could be applied for, it should be pursued before a court would consider the performance of that obligation as being impossible.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

It should be noted that judges in Malta are not bound by the law of precedent. Thus, a judge is not bound to interpret a law in the same manner as another judge. That said, parties often cite case law to support their respective positions, as this does have a great deal of persuasive value.

Finally, and particularly as regards maritime matters, if there is a lacuna under Maltese law, Maltese courts very frequently refer to English judgments for guidance.

Trends and Developments

Contributed by:

Ann Fenech, Adrian Attard and Daniel-Luc Farrugia
Fenech & Fenech Advocates

Fenech & Fenech Advocates was established in 1891 and covers diverse areas of expertise, including corporate and commercial law, ICT law, M&A transactions, financial services, tax, banking, trusts and foundations, aviation, intellectual property, employment law and environmental law. It is particularly well known for its extensive maritime practice, with four distinct departments dedicated to the maritime sec-

tor: marine litigation, ship registration, ship finance and yachting. The firm represents major industry players, ranging from the largest ship-owners, tug and salvage operators, and port facilities to bunker operators, charterers and financiers, yacht-builders and yacht-owners. It also regularly assists with the drafting of maritime laws and legislation.

Authors



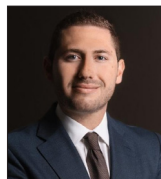
Ann Fenech is a partner and heads the marine litigation department at Fenech & Fenech Advocates. She has practised maritime law exclusively since 1986, and was managing partner between 2008 and 2020. Ann

was elected President of the Comité Maritime International (CMI) in 2022. She was the President of the Malta Maritime Law Association from 2008 to 2022, and is a founding member of the Malta Maritime Forum and a council member of the European Maritime Law Organisation. She was also the CMI co-ordinator at the UNCITRAL Working Group V1. In December 2023, she was listed in Lloyd's List's One Hundred People, comprising the shipping industry's most influential people, for the second consecutive year.



Adrian Attard is a partner in the marine litigation department and ship finance department at Fenech & Fenech Advocates. He graduated from the University of Malta in 2009 and was admitted to the Maltese Bar

that same year. His main areas of practice are maritime law and dispute resolution. Adrian has a wealth of experience in most types of wet and dry shipping disputes. He regularly advises financiers on ship arrests, mortgage enforcements and judicial sales. Adrian sits on the Executive Committee of the Malta Maritime Law Association and serves as its Treasurer. He is also a member of the Maltese Chamber of Advocates and a lecturer at the University of Malta.



Daniel-Luc Farrugia is an associate in the marine litigation department at Fenech & Fenech Advocates. Daniel-Luc specialises in marine litigation and focuses on both dry and wet work. He is also well versed in

matters of decarbonisation and green shipping. Daniel-Luc was admitted to the Maltese Bar in 2022 and is a member of the Chamber of Advocates, the Malta Maritime Law Association and the Franco-British Legal Society. He currently forms part of the International Working Group on Decarbonisation at the Comité Maritime International.

Fenech & Fenech Advocates

198, Old Bakery Street
Valletta
VLT1455
Malta

Tel: +356 2124 1232
Fax: +356 2599 0640
Email: info@fenechlaw.com
Web: www.fenechlaw.com

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Introduction

Located in the heart of the Mediterranean Sea, Malta enjoys a long-standing tradition as a maritime nation of repute, going back centuries. Its geographical position on the rum line between Gibraltar and Suez, and the shores of the southern European mainland and North Africa, has enabled Malta to successfully develop and nurture every facet of its maritime activity, including but not limited to ship repair, pilotage, towage, bunkering, cruise line operations, trans-shipment, cargo operations, bunkering and yachting.

Malta has also established itself as a prominent leading flag of choice for the registration of vessels. Today, the Maltese flag boasts being the largest in Europe and ranks among the top ten registries worldwide. The Maltese flag also enjoys “white list” status under the Paris and Tokyo Memoranda of Understanding (MoUs), which serves as a testament to the high standards maintained by the flag in ensuring that its fleet abides by the requirements of almost all the major international maritime law conventions and treaties, which Malta has adopted.

Malta maintains its status as a go-to jurisdiction for ship-owners, charterers and financiers alike, as it offers the global shipping community a reputable ship registry within the European Union (EU), regulated by an efficient and robust legal system.

Over recent years, Malta has also made significant inroads in the superyacht sector, attracting some of the world’s largest and most luxurious yachts. Malta is today regarded as a world leader in the registra-

tion of superyachts. This success is supported by the legal protection afforded to financiers, effective tax structuring options and a sound legal system, and streamlined importation procedures which the Maltese jurisdiction has to offer. The superyacht sector in Malta has grown exponentially over the last decade or so, with the number of yachts (of over 24 m) flying the Maltese flag increasing from 100 in 2007 to over 1,100.

This article will focus on recent trends and developments affecting the Maltese maritime sector, which the authors believe will continue to shape the industry in the next 12 months.

The IMO’s Net Zero Framework and the EU’s Fit for 55 Package

While the International Maritime Organization’s (IMO) Net-Zero Framework (NZF) was agreed in principle in April 2025, its formal adoption has since been postponed, with entry into force now expected no earlier than 1 January 2029. In practical terms, this means that global alignment on maritime decarbonisation will develop more gradually, with regional regulatory institutions and bodies likely to remain the primary drivers of compliance in this sector in the near to medium term.

Against this backdrop, the authors expect that regulatory fragmentation will continue to characterise the decarbonisation landscape over the next couple of years. In the absence of global standards, the EU’s Fit for 55 Package remains the dominant regulatory framework.

Obligations under the EU Emissions Trading System (“EU ETS”) Directive – a core pillar which affects commercial ships calling in EU ports – are intensifying, as the scheme is fast approaching full application to maritime transport. In fact, from 1 January 2026, shipping companies were required to surrender allowances covering 100% of verified CO₂-equivalent emissions falling within the scope of the Directive.

In this context, Malta has actively positioned itself as a proactive jurisdiction, offering practical support to shipping companies through the establishment of Holding and Trading Accounts under the EU ETS.

Over the last couple of years, the Maltese National Administrator has also strengthened its administrative capacities by allocating additional resources, enhancing the Registry’s ability to process account applications more efficiently. This administrative support has become increasingly important for ship-owners, managers, brokers and other stakeholders seeking to comply with EU ETS obligations.

Stakeholders who have already established and are operating Holding Accounts are therefore well placed to manage their compliance requirements, including the purchasing and surrendering of allowances in line with the Directive.

In the authors’ view, the delayed implementation of the IMO’s NZF or any other global standard will for the time being reinforce, rather than diminish, the strategic importance of well-prepared EU maritime hubs such as Malta during this transitional phase of the energy transition, particularly for stakeholders whose vessels call at any EU ports.

FuelEU: Malta’s Onshore Power Supply Capabilities

The FuelEU Maritime Regulation, which has effectively been in force since 1 January 2025, introduced stringent measures to reduce the maritime industry’s greenhouse gas (GHG) emissions. As part of the EU’s Fit for 55 agenda, the Regulation aims to cut fuel carbon intensity by 55% by 2030, comparable to 1990 levels. It mandates the adoption of renewable and low-carbon fuels, with a “well-to-wake” approach, accounting for emissions throughout the fuel life cycle.

Ships must progressively reduce GHG intensity per unit of energy consumed, beginning with a reference value of 91.16 grams of CO₂-equivalent per megajoule, reduced incrementally over time.

Another key requirement mandates vessels moored at TEN-T Ports for over two hours to connect to onshore power supplies (OPS) or equivalent zero-emission technologies. The Regulation also introduces flexibility mechanisms, enabling companies to bank surplus reductions, borrow future credits (with penalties), or pool excess compliance for trade. These tools provide pathways for efficient compliance management.

Malta has been making several inroads to strengthen its position as a leader in maritime decarbonisation by investing in shore-to-ship infrastructure, positioning itself as a jurisdiction promoting compliance with the FuelEU Regulation.

The inauguration of Malta’s first shore power facility within the Grand Harbour, a natural port that accommodates some of the largest cruise liners in the world year-round, marked the Mediterranean’s first operational shore-to-ship facility. This commitment to sustainability has also been echoed at the Malta Freeport, a leading trans-shipment hub within the Mediterranean region, where construction of a new OPS facility is ongoing.

Malta’s proactive efforts towards achieving this goal could undoubtedly assist and support shipping companies in meeting some of their FuelEU obligations. In the authors’ view, Malta’s approach so far could position Maltese ports as an attractive option (in the Mediterranean region) for owners seeking to mitigate the high costs associated with the Regulation.

Sanctions Outlook: More Restrictions Likely to Impact Shipping

The shipping sector remains highly sensitive to geopolitical developments. Given that the start of the year has already been marked by an exceptional level of volatility with direct implications for global maritime trade, it is not unreasonable to expect that 2026 may bring further unexpected challenges in this respect.

From a sanctions perspective, and as the war in Ukraine continues, it is also reasonable to assume that existing sanctions will remain in force in the months ahead and that, at least at EU level, further restrictive measures will likely be introduced. It is expected that a wider range of restrictions and prohibitions will be introduced that will inevitably affect, either directly or indirectly, both the shipping and energy sectors.

At the time of writing, the European Commission has in fact already proposed an extensive new sanctions package which seeks to introduce a full maritime services ban on Russian crude oil across the EU. Such a measure would effectively end any Russian oil trade within the Union, irrespective of price of the product, and would undoubtedly have significant ancillary repercussions for a broad range of stakeholders within shipping. In addition, the proposed 20th sanctions package purportedly targets a further 40+ vessels forming part of the so-called Russian shadow fleet.

While it remains to be seen whether these measures will be adopted in their current form, it is reasonable to expect that 2026 will see an increase in sanctions-related responsibilities and obligations imposed on economic operators in the shipping sector. That said, it also remains to be seen whether all other G7 partners will adopt a similar approach to that being proposed at EU level.

Given Malta's sizeable shipping fleet, ship-owners and operators will need to exercise continued vigilance when it comes to sanctions compliance. This includes ensuring full awareness of their ever-evolving obligations, confirming that contractual documentation adequately addresses sanctions-related contingencies, and, most importantly, maintaining robust compliance and screening procedures to avoid breaching any sanctions.

Judicial Sales: Malta Committed to Ratifying the Beijing Convention

One of Malta's recognised strengths is the comfort its robust legislation offers financiers. In situations where owners regrettably default on their finance arrangements, enforcement of the financiers' rights is paramount. Thus, Malta retains its position as a favourable jurisdiction for the arrest of ships; consequently,

it continues to be a very popular jurisdiction for the holding of judicial sales through which financiers and other creditors very frequently successfully enforce their rights.

In terms of Maltese law, a judicial sale may either be conducted by means of a public auction or carried out through private sales with the approval of the court. In both cases, the new purchasers would acquire a free and unencumbered title. Thus, Malta remains a forum of choice for enforcement for many ship financiers and mortgagees. This legislative robustness makes it easier for ship-owners to obtain financing when vessels are registered under the Maltese flag, since Maltese law grants financiers a significant degree of security. 2025 saw several judicial sales by auctions taking place, as well as several court-approved applications being heard by courts. This robustness does not simply exist on paper but translates itself into real-time effectiveness whenever a mortgagee needs to take that enforcement step by arresting the vessel and having her sold in a judicial sale.

The ratification of the Convention on the International Effects of Judicial Sales remains an important deliverable for Malta during 2026. This Convention has registered great successes in a very short period of time, underlining its importance to the maritime industry and international trade in general. In the few years since its adoption by the General Assembly of the United Nations in December 2022, it has garnered 34 signatories and has been ratified by three state parties; therefore, in terms of Article 21 of the Convention, it will now come into force on 17 February 2026. Malta signed the Convention on 19 June 2024 in a special and unique signing ceremony held in Malta, under the auspices of the President of the Republic of Malta. For this, the United Nations Treaty Book was flown specially from New York to Malta, enabling a second signing ceremony to take place in Malta, during which Spain, Italy, Cyprus, Croatia, Cote d'Ivoire and Antigua Barbuda also signed the Convention.

Malta is now in the process of drafting the necessary amendments to the Code of Organisation and Civil Procedure as well as to the Merchant Shipping Act to accommodate the terms of the Convention. This process is in the hands of a committee headed by a

member of the authors' firm, and is a combined effort between the maritime regulator, justice department and maritime legal practitioners. This also explains why Malta retains its prominence in the international maritime sphere since it has recognised the importance of including all stakeholders in all processes, with a view to taking the industry forward. At the same time, Malta awaits the finalisation of all EU consent processes enabling EU member states to ratify the Convention. This process is expected to be completed in the first quarter of 2026. Malta hopes to ratify the Convention as soon as possible thereafter. It will be of great benefit to Malta's already robust and creditor-friendly laws for its courts to be able to provide a Certificate of Judicial Sale evidencing the free and unencumbered title of a purchaser, which would have to be honoured by all state parties, including the judiciary and registrars of ships in such state parties.

The Convention is currently considered as one of the most important current international legal instruments in view of the stability and certainty it offers international trade. It ensures that when purchasers of vessels in judicial sales purchase ships free and unencumbered, they are able to trade their vessels without fear of rearrest by the vessels previous creditors.

The Merchant Shipping Act: the Novel Finance Charter Instrument

A previous edition of this guide noted that the Merchant Shipping (Amendment) Bill had been tabled before parliament and indicated the authors' expectation that the new law would be enacted in 2025.

The authors also highlighted that the Bill sought to introduce novel provisions aimed at further protecting the interests of ship financiers, most notably through the creation of a new security interest, the Finance Charter Instrument (FCI). At the time, the authors expected that this development would most likely generate significant interest among finance lessors looking for a flag jurisdiction, offering them robust protection in ship lease financing transactions.

The legislation was enacted in 2025 as anticipated, with Act I of 2025 coming into force a few months later, in early April. Just a couple of months later, in June 2025, the authors' firm assisted lessors with the

registration of the first two FCIs over Maltese-flagged vessels. Since then, interest in this innovative security mechanism has continued to grow, with many more finance lessors opting to secure their interest through an FCI over Malta-flagged vessels.

In practical terms, the newly introduced Article 49B of the Merchant Shipping Act grants a finance lessor the ability to secure its rights over a chartered vessel by registering a charge over a Maltese-flagged vessel, which is enforceable against third parties.

From a ranking perspective, a lessor's rights under an FCI rank immediately after those of any registered mortgagee. In the authors' view, the subordinate position of the FCI vis-à-vis a registered mortgage underscores the legislature's intention to preserve the primacy of the mortgagee's position under Maltese law. Indeed, the new law expressly stipulates that the registration of any FCI shall not affect any mortgage registered over that vessel, irrespective of whether such mortgage registration is affected prior or after the recordation of an FCI, and any rights of the mortgagee shall in no way be prejudiced by the registration of any FCI. This essentially also means that, under Maltese law, it is permissible to have the concurrent registration of both a mortgage and an FCI over the same vessel.

This framework affords finance lessors considerable flexibility, as it enables them to formally record their rights as lessors while simultaneously allows the vessel to be leveraged as collateral through the granting of a mortgage in favour of a third-party lender – provided naturally that this is not expressly prohibited under the bareboat charterparty terms. As a result, Maltese law offers a notably versatile platform for structuring more complex ship leasing and financing arrangements.

Looking ahead, the authors expect that the FCI will continue to gain traction over the coming year and is likely to become a more standard security feature in typical finance lease transactions involving Maltese-flagged vessels. At the same time, the continued primacy of the mortgagee's position under Maltese law, and the flexibility afforded by the concurrent registration regime, will continue to bolster and reinforce Malta's standing as a financier-friendly flag jurisdiction.

MARSHALL ISLANDS



Trends and Developments

Contributed by:

Brad L. Berman
Berman Legal LLC

Berman Legal LLC focuses on providing international corporate and finance expertise with a specialty in business transactions and global shipping. This includes maritime law, ship finance, corporate law, including mergers and acquisitions and private equity, as well as advising owners, operators, investors and lenders on corporate ownership structure, financing

arrangements and vessel registration, representing both sellers and buyers of all types of commercial vessels trading worldwide, including rigs and yachts. After over 30 years spent practising corporate and ship finance law in New York, Berman Legal LLC was formed in Connecticut in the Fall (autumn) of 2018 by Brad L Berman.

Author



Brad L. Berman has over 35 years of experience practising law. He is admitted to the Bars of the US States of Connecticut, New York and Florida, as well as various US Federal Courts and the Court of International Trade.

He started his career in management consulting for Ernst & Young (EY), and was the lead associate drafting the maritime and corporate laws of the RMI in 1990. Brad holds a juris doctorate degree from New York Law School, a master's degree in business administration from the City University of New York, Baruch College, and a bachelor's degree in business administration from The George Washington University, School of Business.

Berman Legal LLC

90 Post Road West
Suite 300
Westport
CT 06880
USA

Tel: +1 212 365 8085
Email: info@berman-legal.com
Web: www.berman-legal.com

Current Developments in Shipping Law in the Marshall Islands

The Republic of the Marshall Islands (RMI) continues to be at the forefront of international ship and corporate registries with one of the largest white flag administrations with all international port state control regimes. Most importantly the jurisdiction is a leader for use by publicly traded shipping companies.

With effect from 10 April 2023, the Nitijela (Congress) approved significant changes to the RMI Maritime Act with adoption of the Preferred Ship Mortgage and Maritime Liens Act, to reflect the expanded role of flag state legislation in international commercial shipping. These modifications, as described below, represent a significant turn in the direction of efficiency and modernisation of the ship registration business and the worldwide maritime industry. The following sections of the RMI Maritime Act were amended.

Section 119

The section represents a significant modification to the law detailing adoption of provisions to permit the electronic filing of documentation to effect the registration of RMI flag ships. This includes filing of documents such as bill of sale, mortgage deed or mortgage discharge which can now be accepted for filing by the Marshall Islands ships registry via electronic means. The expanded statutory language permitted flexibility and the ability to accept manual, electronic and digital signatures. This amendment gives users of the RMI registry the ability to electronically submit instruments and documents to the RMI Maritime Administrator. Therefore, it no longer was necessary to send physical original executed documents to the RMI Administrator. This change further brought the MI registry into the digital age permitting the submission of a single electronic or digital copy.

In furtherance of this new provision, the Republic of the Marshall Islands passed the Digital Signature Regulations, 2024 (the “Digital Regulation”), which came into effect on 15 February 2024. The new legislation goes to show the Marshall Islands’ commitment to a fully digitalised documentation process with the aim of fast-tracking transactions and removing bottlenecks in the registration of RMI flag ships.

The Digital Regulation made clarification to the meaning of “electronic transmitted signature” in Section 3, which provides that, “for the avoidance of doubt, “electronically transmitted signature” as used in the Associations Law 1 includes a digital signature. “Digital signature” means a signature that is attached to a document by a person with the intent to sign the document where the signature is generated by software using a digital certificate issued by a Trust Service Provider or similar authority.” It is now settled that signing documents with software such as Adobe and DocuSign is now recognised under the Digital Regulation.

Section 302

The amendment contains additional wording which now clarifies that a mortgagor may execute a mortgage prior to its filing date even though at that point of time, the mortgagor does not yet hold the title to the vessel, provided that the mortgage contains a provision that it shall only become valid and effective upon its recordation. The modification makes it clear that a predated properly executed and acknowledged mortgage can be legitimate and effective upon recording. Additionally, the updated section guarantees that only instruments that satisfy all recording requirements will be allowed, with careful documentation of the date and time of recording. This change will surely assist in transactions, specifically in the case of sale and purchase of a second-hand tonnage or taking delivery of a newbuild where the new owner or the buyer needs to secure the relating financing by way of a mortgage over the purchased vessel.

Section 304

If a vessel is subject to a validly recorded ship mortgage, it has never been possible for the Maritime Administrator to delete her from the Register unless she has been lost, destroyed or transferred to another registry following a court sale. The Maritime Administrator is always required to notify the mortgagee prior to deleting the vessel in this case. The amendment to Section 304, grants the RMI Administrator the authority to immediately strike and withdraw the ability for a shipowner to fly the MI flag, if its vessel is engaged in illegal activity or actions against the interests of the RMI. The amendment seeks to provide the Maritime Administrator with a discretion to immediately strike

due to a wide range of situations, such as economic sanctions, sub-standard shipping practices or failure to comply with the requirements of the international maritime conventions.

Section 306

The amended language removes the requirement to attach a copy to the Bill of Sale to the Certificate of Registry in connection with a vessel deletion from the MI ship registry and transfer to another ship registry administration. This amendment is in line with the amendments to Section 225 of the RMI Maritime Act; for reference, below is the old provision in Section 225:

“Whenever a documented vessel is sold or transferred wholly or partly without change of flag, or is altered in form or burden, by being lengthened or built upon, or from one denomination to another, by the mode or method of rigging or fitting, she shall be documented anew. Every such sale or transfer shall be evidenced by a written instrument in the nature of a bill of sale. Otherwise the vessel shall not be documented anew...”

Section 307

The Maritime Act was amended to clarify what may constitute written proof or evidence of the amounts and dates of any documents or evidence of mortgage debt to be submitted with or included in vessel mortgages, among other amendments affecting vessel registration and operation. The amendment states that such requirement may be satisfied by attaching to the mortgage the documents evidencing such debt, either in whole or in part and either with or without redactions, or by simply including a description of the debt terms (including the total amount) directly in the mortgage.

Section 309

This amendment clarifies how to treat advances or other value provided in accordance with an agreement. This means that, once a mortgage has been executed and registered by a shipowner, it is regarded as validly securing the loan amount stated in the mortgage, even when in reality, the loan has not been disbursed by the lender.

Section 314

This statutory amendment eliminated the existing law’s requirement to place a certified copy of a preferred mortgage instrument (Mortgages, Amendments, Assignments, Subordination Agreements, etc) on board the vessel. It is sufficient that a Notice of the Mortgage be posted on the vessel. Industry has accepted that this revision is in line with the wider movement in the maritime industry to streamline and digitise vessel documentation processes.

Summary

These changes demonstrate the RMI’s dedication to adopting new technologies and keeping up with global maritime standards. Digital signature rules, faster documentation procedures, and increased regulatory authority for the RMI Marine Administrator in instances of illicit activity are all examples of the forward-thinking approach to developing a robust and adaptable maritime legal system. The modifications not only show how the RMI’s maritime laws have evolved globally, but they also present the Marshall Islands as a leader in responding to the ever-changing needs of the maritime sector.

MOZAMBIQUE



Law and Practice

Contributed by:

José Miguel Oliveira, Kenny Laisse and Caio de Mello Ferreira
VdA

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Authors



José Miguel Oliveira joined VdA in 2015. He is a partner of the oil and gas practice, and responsible for the shipping practice. With over 15 years of international experience in African jurisdictions, including Angola and

Mozambique, José has been involved in projects and operations across the oil and gas industry's value chains and has provided advice regarding regulatory issues, contractual matters, corporate and commercial, restructuring, M&A, foreign direct investment, foreign exchange, and shipping and maritime matters. He has acted for the full spectrum of those involved in the shipping industry in all sorts of wet and dry shipping matters, including ship-owners and charterers, cargo interests, P&I clubs, banks, shipyards, port operators, brokers and agents.



Caio de Mello Ferreira joined VdA in 2023. He is an associate in the oil and gas practice group, where he has been involved in projects and operations across the African oil and gas industry value chain, with a

particular focus on shipping and maritime matters. In this context, he has served as a member of a working group of the International Seabed Authority responsible for drafting exploitation regulations for the area. Additionally, Caio has gained one year of experience in the information and communication technologies practice and completed a secondment in the shipping, transportation and offshore practice area at a leading firm in Copenhagen.



Kenny Laisse joined GDA Advogados, which is part of the VdA Legal Partners network, in 2018. He is a senior associate focused on, among other things, litigation, labour, real estate, corporate and natural

resources. Kenny also advises on many legal matters related to the shipping industry, including the bunkering sector and maritime litigation, and has a postgraduate qualification in Maritime Law at the Faculty of Law of the Portuguese Catholic University.

VdA (with GDA Advogados)

Rua Dom Luís, 28
1200 151
Lisboa
Portugal

Av. Marginal, n° 141, Edifício Torres Rani, 10th Floor
Maputo
Moçambique

Tel: +351 21 311 3400
Fax: +351 21 354 0325
Email: jmo@vda.pt
Web: www.vda.pt



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic law establishing the authorities of maritime courts in Mozambique is Law No 10/2022 of 7 July 2022 (“Law 10/2022”), which formally establishes the legal framework for the organisation, composition, operation and authorities of maritime courts. This law provides that the maritime courts have maritime, river, lake and port jurisdiction in civil, criminal, commercial, misdemeanour and international maritime law matters. By an order dated 6 April 2023, the Supreme Court inaugurated the Maritime Courts of Maputo City, Sofala and Nampula Provinces – all currently fully functional and operating. It is noteworthy that the Maritime Court of Maputo City has jurisdiction over the provinces of Maputo, Gaza and Inhambane, while the Maritime Court of Nampula covers the provinces of Cabo Delgado, Niassa and Zambézia. The extension of the jurisdictional authority of these courts has been implemented by the Supreme Court and will remain in place until dedicated maritime courts are established in each of the aforementioned provinces.

The most common maritime and shipping claims filed with the competent courts relate to collisions and disputes concerning cargo and maritime claims (ship arrests).

1.2 Port State Control

In Mozambique, port state control is exercised by the National Sea Institute (*Instituto Nacional do Mar, IP*, or INAMAR), a public entity that has competence over all maritime matters in the country, as provided for in Decree No 88/2021 of 28 October 2021 and Resolution No 15/2022 of 19 September 2022, which approved INAMAR’s Organic Statute.

In general, INAMAR is responsible for the following:

- the exercise of maritime authority in the areas of maritime, lake, fluvial jurisdiction and coastal zones, as well as in the domain of maritime administration, safety and protection;
- the planning of maritime space and the public maritime domain of the coastal zone;
- the supervision of activities in maritime, fluvial and lake areas, and the public maritime domain of the coastal zone, as well as compliance with standards regarding the protection of marine and coastal ecosystems and the conditions of conservation and exploitation of marine conservation areas;
- the development and implementation of measures ensuring the sustainable exploitation, conservation and preservation of aquatic ecosystems; and
- the conducting and/or co-ordinating of search and rescue activities, as well as saving assets, in maritime, fluvial and lake areas, with the involvement of other relevant entities.

Regarding marine casualties such as seafarers' casualties and fatalities, grounding, pollution or wreck removal, INAMAR is responsible for the following, among others:

- monitoring and supervising vessels and fixed and mobile platforms, in order to prevent and detect any pollution activities in the marine environment and inland waters, in co-ordination with other relevant entities;
- co-ordinating maritime search and rescue activities and the saving of property in maritime, river and lake areas;
- participating in the investigation of marine casualties and incidents as well as maritime infringement procedures;
- inspecting and monitoring the handling of dangerous cargo, in co-ordination with other competent entities;
- adopting measures for the prevention, control and combating of pollution of the marine environment from ships or other floating media at sea, in co-ordination with other relevant entities;
- ensuring compliance with international and regional standards, and best practices and procedures, for preventing, reducing, controlling and combating pollution of the marine environment;
- preventing and combating pollution of the sea, rivers, lakes and their ecosystems from all sources that may cause damage to the aquatic and coastal environment, in co-ordination with other relevant entities;
- preventing, controlling and acting on actions that result in the intentional or unintentional discharge of waste into the sea, inland waters and coastal areas; and
- licensing, among others, the exercise of assistance and maritime salvage activities, and the recovery of objects or cargo on the seabed and inland waters.

1.3 Domestic Legislation Applicable to Ship Registration

The key domestic pieces of legislation applicable to ship registration are Decree-Law No 42644 and Decree No 42645, both of 14 November 1959 (as amended), which establish the rules on commercial registration.

In Mozambique, the registration of ships is a two-tiered system, involving a flag/administrative registration with the port and maritime authorities (ie, INAMAR) and a commercial registration with the Legal Entities Registry Office (*Conservatória do Registo de Entidades Legais*, or CREL).

1.4 Requirements for Ownership of Vessels

Registration of ships in Mozambique may be obtained by any natural or legal persons that have their permanent domicile or head office in the country. Under certain conditions, natural or legal persons domiciled or having their head offices abroad may also apply for registration of their ships in Mozambique, provided that they have a local representative in the country. It is important to highlight, however, that domestic law may impose nationality requirements relating to vessels and/or ship-owners (*armadores*) as a condition for carrying out certain activities, such as in cabotage and local traffic, as provided for in Decree No 35/2007 of 14 August 2007 and Decree No 35/2016 of 31 August 2016. Vessels under construction may also be registered, even though their registration will remain provisional until completion of the relevant works and carrying out of the applicable inspections and clearances.

1.5 Temporary Registration of Vessels

Temporary registration is permitted in certain cases, namely for Mozambican ship-owners that have a bareboat charter in a foreign vessel for the carrying out of cabotage activities.

According to Decree No 35/2016 of 31 August 2016, which authorises the special registration of foreign vessels to engage in maritime cabotage operations, a Mozambican company (ie, a company incorporated and organised under the laws of Mozambique and at least 35% owned by Mozambican citizens or Mozambican companies majority owned by Mozambicans) is entitled to a bareboat charter in a foreign vessel and to employ her in the carrying out of cabotage operations in Mozambique. While operating in Mozambique, the vessel (under a bareboat charter) is required to secure and exclusively fly the Mozambican flag (the original flag must be suspended). While under a bareboat charter, the ownership of the vessel will not be

changed/impaired – ie, for the relevant legal purposes, her foreign owners will remain holding full legal title.

1.6 Registration of Mortgages

The creation of rights in rem (including possession, ownership and security) or of any security interests (including mortgages) in respect of, or related to, vessels sailing under the Mozambican flag is subject to mandatory registration with the CREL and the Central Registration Office for Securities Guarantees (*Central de Registo de Garantias Mobiliárias*, or CRGM).

On the basis of the foregoing, mortgages over vessels registered (or to be registered) in Mozambique and sailing (or to be sailing) the Mozambican flag must always be governed by the laws of Mozambique and registered in Mozambique as a condition of their effectiveness and enforceability against third parties (*erga omnes*).

Notary Deeds

Prior to – and as a condition for – registration, mortgages encumbering Mozambican vessels must be executed by means of a notary deed before a local notary public or a consular office. The documents required for the execution of the notary deed include:

- a commercial registry certificate or equivalent document of the borrower;
- a power of attorney issued to the benefit of the representative(s) of the lender attending and signing the notary deed, on the assumption that the lender is not going to be represented by any of its legal representatives/directors;
- a power of attorney issued to the benefit of the representative(s) of the borrower attending and signing the notary deed, on the assumption that the borrower is not going to be represented at the notary deed by any of its legal representatives/directors;
- identification documents of the representatives of the parties signing the notary deed;
- certified copies of the loan agreements and/or resolution issued by the relevant corporate body of the lender approving the loans and the underlying terms and conditions of the mortgage, notably the amount of principal plus the amount equivalent to five years of interest;

- a copy of the minutes of the resolution passed by the relevant corporate body of the borrower approving the granting of the mortgages to the benefit of the lender and the underlying terms and conditions, notably the amount of the principal plus the amount corresponding to five years of interest; and
- certificates of ownership of the vessels issued by INAMAR and the CREL.

All documents executed or issued outside Mozambique must have previously been legalised before the Ministry of Foreign Affairs (or equivalent), translated into Portuguese and then consularised before the Mozambican consulate with jurisdiction over the country where the documents were issued, as a precondition for being deemed valid, acceptable and enforceable in Mozambique.

The CRGM

Once executed, the notary deed must be registered with the CREL and the CRGM. In this respect, the following must be stressed.

- Registration with the CREL is a condition precedent for the effectiveness of mortgages; in other words, pending said registration, mortgages remain ineffective for all legal purposes.
- Mortgages registered with the CREL remain valid and enforceable for an indefinite period of time, unless:
 - (a) the obligation secured is extinguished by performance;
 - (b) the mortgaged assets (vessel) are transferred to a third party (in which case, termination of the mortgage will occur 20 years after registration of the transfer of title and five years after the final maturity of the secured obligation); or
 - (c) cancellation is authorised by the mortgagee.
- The ranking of security interests or privileges over ships is linked to the order by which said interests or privileges were registered (prior in tempore, potior in iure).

Registrations with the CREL and the CRGM are made by means of:

- the filing of an official form; and

- submission of the relevant supporting documents, including a certified copy of the notary deed.

In addition to this, constitutional documents (reads, commercial extracts or equivalent documents) of both the mortgagor and mortgagee are usually required by the registrar, although such disclosure is not legally grounded.

Registrations before the CREL and the CRGM may be requested by a legal representative or duly appointed attorney of the mortgagor or the mortgagee, within 90 days of the execution of the notary deed. Failure to file the relevant application within that period may lead to the application of fines, although such fines do not undermine the validity of the registration.

In this respect, it is worth mentioning that the law sets forth the possibility of securing a provisional registration of a mortgage over a vessel before execution of the notary deed. To that end, the mortgagor must file an application with the CREL authorising registration of a mortgage over a given ship in favour of the mortgagee. This (provisional) registration is valid for a term of three months, which is renewable. The priority of the prospective mortgage over other security interests, once the definitive mortgage is created, is ensured by provisional registration, which protects a mortgagee against concurrent mortgagees and allows the execution of a mortgage without the pressure of priority being given in the register to another mortgage, even where created later on.

Upon registration with the CREL, the mortgages must be endorsed in the passports of the vessel(s) (reads, ownership certificate issued by INAMAR). Such endorsement is made for publicity purposes – ie, it is not a condition of the effectiveness/validity of the underlying mortgage or of its enforcement.

1.7 Ship Ownership and Mortgages Registry

The registration of ownership and mortgage of a vessel are available for public perusal. The registration can be seen through the content of the certificates issued by the CREL and the CRGM, at the request of any interested party.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Mozambique's ship finance market is relatively limited, and the few transactions that do occur are typically cross-border bank loans governed by foreign law and aligned with international market standards. The local nexus arises at the level of the Mozambican-law ship mortgage and the related publicity and registration requirements (including for forex purposes). The creation of security interests over Mozambique-flagged vessels is mandatorily governed by Mozambican law and requires execution of a notarial deed, followed by registration with the CREL and the CRGM, with priority determined by the order of registration. In addition to mortgages, lenders may rely on Mozambique's movable guarantees regime, under which the CRGM centralises information and publicity concerning movable security, including ships and receivables. This regime allows for alignment with international practice regarding ancillary security, such as receivables and assignments, where appropriate.

2.2 Ship Leasing

Given the still-nascent market, there is no clear shift towards leasing in Mozambique. Deals are few and tend to follow traditional bank lending models secured by Mozambican-law mortgages for local effectiveness and priority.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The following international conventions and domestic laws are enforceable in Mozambique.

Pollution

- The 1973 International Convention for the Prevention of Pollution from Ships, and Annexes I/II, III, IV and V.
- The 1982 United Nations Convention on the Law of the Sea.
- The 1985 Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.

- The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation.
- The 1992 Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage of 1969.
- The 1992 Protocol to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

The following domestic laws should also be taken into account:

- the Environmental Law, approved by Law No 20/97 of 5 December 1997 (as amended by Law No 16/2014);
- the Regulation for Prevention of Pollution and Marine and Coastal Environment Protection, approved by Decree No 45/2006 of 30 November 2006 (as amended by Decree No 97/2020); and
- the Law of the Sea, approved by Law No 20/2019 of 8 November 2019.

Wreck Removals

Wreck removals are governed by domestic law, namely the Environmental Law and ancillary statutes and regulations, as Mozambique is not a signatory of the 2007 Nairobi International Convention on the Removal of Wrecks.

3.2 International Conventions: Collision and Salvage

The following international conventions and domestic laws are enforceable in Mozambique.

Collision

- The 1910 International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels.
- The 1952 International Convention for the Unification of Certain Rules concerning Civil Jurisdiction in Matters of Collision.
- The 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation.
- The 1972 International Regulations for Preventing Collisions at Sea, as amended in 1981.

Collision events are also governed by domestic law, notably Article 664 et seq of the 1888 Commercial Code (a statute which was mostly superseded by the 2005 and 2022 Commercial Codes, excluding its Book III, on maritime trade, which remains in full force and effect today).

Salvage

Salvage is governed by the 1910 Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea and, on a domestic level, by the provisions of the Salvage and Assistance Regime, approved by Legislative Diploma No 96/72 of 12 October 1972, and the 1888 Commercial Code (Article 676 et seq).

3.3 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims has not been ratified by Mozambique. However, Mozambique is a signatory of the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-Going Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (the “1957 Convention”).

Under domestic law, it is worth noting the provisions of the Commercial Code in this regard. For instance, where collision was caused due to fault or wilful misconduct of the crew, damages will be calculated and shared between the owners pro rata to the severity of each crew’s fault. Furthermore, if it is not possible to determine which vessel caused the accident, all intervening vessels shall be jointly liable for damages and losses arising therefrom.

3.4 Vienna Convention on the Law of Treaties

Mozambique formally acceded to the Vienna Convention on the Law of Treaties (“Vienna Convention”) through Resolution No 22/2000 of 19 September 2000. To the best of our knowledge, however, the higher courts have not yet addressed treaty interpretation with direct reference to Articles 31 and 32 of the Vienna Convention. Nevertheless, in light of prevailing legal scholarship, certain conclusions can be drawn regarding the interpretative approach to be adopted.

First, the object of interpretation – namely, the identification of the applicable legal norms – should be both objective (focused on discerning the mens legis) and contemporaneous (considering the norms within their current context).

The elements of interpretation may be both literal (pertaining to the text of the treaty itself) and extra-textual (encompassing instruments that aid in achieving the interpretative objective). Among the extra-textual elements are systematic, teleological and historical considerations.

With regard to the systematic element (Article 31 (2)), the “context” of the treaty must be considered, including, inter alia, the text, preamble, annexes, and any other agreements concluded in relation to the treaty. The teleological element is likewise recognised, requiring interpretation in light of the treaty’s object and purpose (Article 31 (1)). The historical element, which encompasses the *travaux préparatoires* and the circumstances surrounding the treaty’s conclusion, is also relevant, albeit as a supplementary means. The Convention assigns this element a subsidiary role, restricting its use to situations prescribed by Article 32 (a) and (b).

In addition to these elements, general principles must be observed – in particular, the principle of good faith, the principle recognising the implied effects of treaties, and the principle of teleological interpretation.

On this basis, the interpretative method set forth in paragraphs 57 (2), (3) and (4) of the *MSC Mediterranean Shipping Company SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS “MSC Flaminia”* UK Supreme Court decision is closely aligned with the approach that would be undertaken by judicial bodies within the Mozambican legal order. By contrast, points (1) and (5), though relevant, should not be regarded as general constituent elements of the interpretative framework when construed under Mozambican law.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Pursuant to the 1957 Convention, the ship-owner or another entitled person can limit its liability by establishing a limitation fund. The limitation fund can be

established in any way admitted in the law and is dependent on the filing of an application before the competent court. The application must identify:

- the occurrence and damages;
- the amount of the limitation fund;
- how the fund will be established;
- the amount of the reserve; and
- the known creditors and the amounts of their claims.

The application must be filed along with the vessel’s documents (eg, a tonnage certificate) supporting the calculation of the amount of the fund. The calculation of the limitation fund shall be in accordance with Article 3 of the 1957 Convention.

To the best of the authors’ knowledge, limitation funds have not been established in Mozambique. The authors believe that courts would most likely insist on a cash deposit or local bank letter of guarantee.

3.6 Seafarers’ Safety and Owners’ Liability

Mozambique is a State-Party to the Maritime Labour Convention as of the date of its ratification on 25 May 2021. In accordance with Standard A4.5 (2) and (10), the Mozambican government has recognised through Decree No 50/2014 of 23 September 2014 (also known as the Maritime Work Regulation) and Decree No 51/2017 of 9 October 2017 (as amended by Decree No 56/2024 of 30 July 2024) – known as the Mandatory Social Security Regulation – that seafarers benefit from the following protections:

- sickness benefit (Article 16 (1) (f) and (g) and Articles 41 to 44 of the Maritime Work Regulation);
- old-age benefit (Article 65 (d) of the Maritime Work Regulation and Article 29 of the Mandatory Social Security Regulation);
- maternity benefit (Articles 27 and 28 of the Mandatory Social Security Regulation); and
- invalidity benefit and survivors’ benefit (Articles 36 to 39 of the Mandatory Social Security Regulation).

4. Cargo Claims

4.1 Bills of Lading

The provisions of the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the “Hague Rules”) are applicable in Mozambique. Mozambique is not a signatory of the Hague–Visby Rules, the Hamburg Rules or the Rotterdam Rules.

The provisions of the Hague Rules are supplemented by Article 538 et seq of the 1888 Commercial Code and, to a certain extent, by Articles 473 to 491 of the recently enacted Decree-Law No 3/2022 of 25 May 2022 (“Decree-Law 3/2022”), which approved the new Legal Regime of Commercial Contracts (and applies to the carriage of goods by sea). The latter incorporates into domestic law some of the provisions and principles enshrined in the Rotterdam Rules.

4.2 Title to Sue on a Bill of Lading

As a general rule, the right to sue on a bill of lading assists the shipper, the carrier and the consignee.

4.3 Ship-Owners’ Liability and Limitation of Liability for Cargo Damages

In the absence of detailed provisions set out by the parties to the contract, Article 2 of the Hague Rules establishes that the carrier is liable, under every contract of carriage of goods by sea, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods.

Nevertheless, Articles 7 and 8 of the Hague Rules, as well as Articles 1 (1), 2 and 3 of the 1957 Convention, establish that the ship-owner may limit its liability in respect of claims arising under specific circumstances (eg, personal or property claims), unless the occurrence resulted from the actual fault or privity of the owner. Limitation of liability requires that a limitation fund has been constituted, as set out by Articles 2 and 3 of the 1957 Convention.

Carriers may also take advantage of Article 125 of Decree-Law 3/2022 to limit or exclude indemnity payments to third parties.

Decree-Law 3/2022 further provides, in Articles 473 to 487, for different liabilities of the carrier in relation to the cargo, exceptions to such liability, the period of liability and specific obligations of the carrier during the carriage, which, where applicable, may complement the Hague Rules.

4.4 Misdeclaration of Cargo

Pursuant to Article 3 (5) of the Hague Rules (and likewise Article 489 of Decree-Law 3/2022), the shipper should be deemed to have guaranteed the accuracy of the marks, number, quantity and weight to the carrier, and should indemnify the carrier against all loss, damages and expenses arising or resulting from any inaccuracies thereof.

To the best of the authors’ knowledge, no relevant judgments are available in this respect.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

According to the relevant Civil Code provisions, the general time bar for filing contractual claims is 20 years, while the time bar for liability in tort claims is three years. Statutes of limitations cannot be extended, but they can be suspended (Articles 318 to 322 of the Civil Code) or interrupted (Articles 323 to 327) under specific circumstances (eg, execution of an arbitration agreement, recognition of the debt).

Still, it must be noted that by reference to Article 3 (6) of the Hague Rules and Article 445 of Decree-Law 3/2022, the carrier and the ship-owner shall be discharged from all liability in respect of loss or damage of cargo unless a lawsuit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The 1952 International Convention Relating to the Arrest of Sea-Going Ships (the “Brussels Convention”) is applicable to ship arrests. Outside its scope, the claimant must make use of the provisions of Mozambique’s Civil Procedure Code and of Law 10/2022.

5.2 Maritime Liens

Maritime liens are recognised in Article 578 of the 1888 Commercial Code, which specifies the following categories of claims:

- (1) court costs incurred in the common interest of the creditors;
- (2) remuneration for salvage;
- (3) pilotage and towage expenses;
- (4) tonnage, lights, anchorage, public health and other harbour dues;
- (5) expenses incurred in connection with a vessel's maintenance and storage of her appurtenances;
- (6) Master and crew wages;
- (7) costs incurred in connection with the operation and repair of the vessel, her appurtenances and equipment;
- (8) reimbursement of the price of the cargo that the Master was forced to sell;
- (9) insurance premiums;
- (10) any unpaid portion of the price due in connection with the purchase of a vessel;
- (11) costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the past three years;
- (12) unpaid amounts arising from shipbuilding contracts;
- (13) outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances not mentioned in (11); and
- (14) sums due to shippers in respect of loss or damage to cargo.

Liens mentioned in (1) to (9) above are understood to refer to those incurred during, and as a cause of, the last voyage.

The term “last voyage” has been interpreted by legal authors and courts in two ways.

- Under a restrictive interpretation, only claims that arise during and become due in connection with the last voyage benefit from the maritime lien. Earlier claims are treated as ordinary debts, with the burden of proof resting on the creditor.
- Under a broader interpretation, the privilege applies to all claims listed under Article 578, regardless of the voyage during which they arose. In this view, the reference to the last voyage serves only to rank the privileged claims, with priority given to the most recent.

Claims for indemnities for personal injury of a member of the crew or of a passenger would not be recognised as a maritime lien or a maritime claim.

Liabilities resulting from contracts for chartering a vessel will not provide grounds for a maritime claim.

Maritime claims are those set forth in Article 1 (1) of the Brussels Convention (in respect of which, a vessel may be arrested under the terms of the Convention).

5.3 Liability in Personam for Owners or Demise Charterers

It is not required for the owner to be liable in personam for arrest of a vessel to be accepted. Pursuant to Article 3 (4) of the Brussels Convention, if the charterer (and not the registered owner) is liable in respect of a maritime claim relating to a vessel, in the context of a charter by demise, the claimant may arrest such vessel or any other in the ownership of the charterer by demise, even though no other vessel in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The above-mentioned regime shall apply to any case in which a person other than the registered owner is liable in respect of a maritime claim relating to that vessel.

5.4 Unpaid Bunkers

A bunker supplier may arrest a vessel based on a maritime claim, as set out by Article 1 (1)(k) of the Brussels Convention. As set out by Article 3 (4) of the Brussels Convention, a bunker supplier may arrest a vessel in connection with a claim for the price of bunkers supplied under a contract with the charterer, rather than with the owner, of that vessel, despite the added difficulty in enforcing the security where the charterer is not the owner. To the best of the authors' knowledge, there is no case law in Mozambique regarding the interpretation of this Article of the Brussels Convention.

5.5 Arresting a Vessel

Powers of Attorney

The original power of attorney should be provided to the court and attached to the arrest application, unless it is not available. In the latter case, it is possible to request leave from the tribunal to submit the original power of attorney at a later stage (a scanned (colour) copy of the original power of attorney being submitted with the application whenever available).

Where issued abroad, powers of attorney are only accepted and enforceable if previously notarised, legalised, translated into Portuguese and, finally, consularised before Mozambique's embassy or consulate with jurisdiction over the country of their issuance.

Documentation

Regarding the documentation, and even though courts are entitled to the originals, it is common practice to accept scanned copies of these. In addition, documents should be written in Portuguese; otherwise, the parties must submit the documents in their original language, along with their certified Portuguese translation.

Security

Despite the judge being free to decide otherwise, usually no security is required. Whenever the court asks the claimant to provide a security deposit, it will generally correspond to the amount of the claim. The security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

5.6 Arresting Bunkers and Freight

Bunkers and freight may be arrested, as determined by the relevant provisions of the Civil Procedure Code and Law 10/2022. On similar terms as other provisional procedures, the claimant is required to demonstrate the likelihood of its right or credit, and the risk of it losing security for its credit if the arrest is not ordered.

5.7 Sister-Ship Arrest

Articles 2 and 3 of the Brussels Convention establish that the vessel that originated the maritime claim, as well as any other associated vessel or sister ship owned by the same person(s), may be arrested by the claimant. However, in disputes regarding the title to, or ownership of, the ship, and disputes between co-owners as to the ownership, possession, employment, earnings, mortgage or hypothecation of a specific ship, associated vessels cannot be arrested.

Outside the Brussels Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrest, security may only be obtained when the debtor is personally liable for the claim through the attachment of any other property owned by the debtor.

5.9 Releasing an Arrested Vessel

Pursuant to Article 5 of the Brussels Convention, the vessel must be released upon sufficient bail or other security being furnished, save for arrests in respect of any of the maritime claims regarding disputes as to the title or ownership of the ship, or in disputes between co-owners of the ship as to the possession, employment or earnings of any vessel. In such cases, the court may permit the person in possession of the vessel to continue trading it, upon such person furnishing sufficient bail or other security.

Outside the Brussels Convention, the vessel will also be released if security is provided in the form and amount deemed sufficient by the court.

As mentioned, the security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

Both under and outside the Brussels Convention, the vessel shall also be released:

- upon payment of the debt;
- in the event the main claim is not commenced within 30 days – or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered, or the claim has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- where the main claim is definitively dismissed;
- where the main claim is upheld but the debt remains outstanding and the creditor does not initiate the enforcement proceedings within six months from the claim being definitively upheld, or where the claim has had no developments for a period of more than 30 days for reasons imputable to the creditor; or
- where the credit ceases to exist.

Typically, courts are reluctant to accept clubs' letters of indemnity as security.

5.10 Procedure for the Judicial Sale of Arrested Ships

Procedure

Usually, the judicial sale of arrested ships requires that a new enforcement proceeding be initiated by the creditor before the competent court. Once the application is lodged, the court will notify the debtor to settle the claim or offer its opposition, as well as notify any other interested parties, such as secured creditors.

If the sale is ordered, the judge will decide on how it will take place, and then appoint an auctioneer. The vessel is sold "as is and where is" and free from any charges or encumbrances. This notwithstanding, the debtor may still recover the vessel until completion of the judicial sale, provided it deposits the amount being claimed plus court fees and expenses.

Ship Maintenance

Once the vessel is arrested and until it is sold in the enforcement proceedings, an agent appointed by the court will be liable for supervising its maintenance, whenever the Master and their crew are absent or urgent decisions are to be taken.

Claim Priority

The order of priority of claims is established under Article 578 of the 1888 Commercial Code, as mentioned in 5.2 Maritime Liens.

5.11 Insolvency Laws Applied by Maritime Courts

Mozambique's bankruptcy regime is set forth in Decree-Law No 1/2013 of 4 July 2013. The purpose of this law is to regulate:

- the recovery of natural and legal persons in economic distress or "imminent insolvency", provided that the recovery is viable; and
- the legal regime of insolvency proceedings of natural and legal persons.

Pursuant to Decree-Law No 1/2013, acceptance of a request for the debtor's judicial recovery protects the debtor's assets against creditors – ie, once this request is accepted, all suits pending against the debtor are suspended, which means that the maritime court shall be barred from ordering the arrest or judicial sale of a vessel owned by companies undergoing such proceedings. The same applies to proceedings in which the debtor is adjudicated as insolvent by the relevant court of law.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

In the event of wrongful arrest of a vessel or where the arrest is lifted for reasons imputable to the applicant, the applicant is liable for the damages caused to the arrestee, provided that the applicant has not acted with normal prudence or due care, as set out by Article 621 of the Civil Code.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

In addition to the individual terms of the relevant contract, the carriage of passengers is governed in general by Mozambique's Civil Code, the Consumer Protection Law (Law No 22/2009 of 28 September 2009) and Article 434 et seq of Decree-Law 3/2022. Mozambique has not ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

In accordance with domestic laws, a passenger has the right to be compensated for any losses or damages caused by an action attributed to the carrier, regardless of its wilful misconduct, and for any expenses incurred by the passenger deriving from the delay, interruption or change of route undertaken by the carrier.

Claims for indemnities for personal injury of a passenger are not recognised as a maritime lien or a maritime claim.

In accordance with the 1888 Commercial Code and Decree-Law 3/2022, the time bar applicable will vary between one and three years. In addition, under Decree-Law 3/2022, a carrier will also benefit from a time bar of 120 days for loss or damage suffered by the carrier due to inaccurate information on, or false description of, the goods being carried.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Choice of Law Clauses

Notwithstanding the provisions set out by the Brussels Convention or the Hague Rules, the parties may choose the law that governs the obligations arising from a contract (including bills of lading), as established by Article 41 (1) of the Civil Code. However, that choice must correspond to a serious interest of the parties or be connected to a relevant element of the contract (eg, the place where the parties are domiciled

or where the contract shall be performed), as set out by Article 41 (2) of the Civil Code.

Jurisdiction Clauses

As a rule, jurisdiction clauses stated in contracts (including bills of lading) are valid and enforceable as long as they arise from a written agreement in which the competent jurisdiction is expressly mentioned, as established by Article 99 of the Civil Procedure Code.

Article 22 of Law 10/2022 further establishes that Mozambican courts' jurisdiction cannot be excluded in matters of international maritime law that would be within the jurisdiction of Mozambican courts in accordance with Mozambican domestic law, unless the parties are foreigners and if it is a question regarding an obligation that must be performed in a foreign territory and does not relate to assets located, registered or enrolled in Mozambique.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Pursuant to Articles 4 (1) and 5 (2) of Law No 11/99 of 12 July 1999 ("Law 11/99"), an arbitration clause is valid as long as it arises from a written agreement of the parties, and it concerns a claim of rights that can be disposed of or waived and that is not attributed to the exclusive jurisdiction of Mozambican courts.

For choice of law clauses, see 7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Mozambique.

With regard to domestic law, Articles 1094 to 1096 of the Civil Procedure Code are applicable to the review and confirmation of foreign judgments. As a rule, any judgment awarded by a foreign court shall be subject to review and confirmation by the Supreme Court in order to be valid and enforceable in Mozambique.

The following set of requirements must be met for the review and confirmation of a foreign judgment, as set out by Article 1096 of the Civil Procedure Code:

- there are no doubts as to the authenticity of the judgment and the intelligibility of its decision;
- it must have become a final decision (not subject to appeal) according to the law of the country where the judgment was issued;
- it comes from a foreign court whose jurisdiction has not been fraudulently acquired and it does not concern a matter of exclusive jurisdiction of the Mozambican courts;
- there is no case pending or decided before a Mozambican court, unless the foreign court has prevented jurisdiction;
- the defendant has been duly summoned to the proceedings, in accordance with the law of the country of the court of origin, and the principles of adversarial proceedings and equality of the parties have been observed; and
- it does not contain a decision whose recognition would lead to a result manifestly incompatible with the principles of international public policy or international private law of Mozambique.

Under domestic law, the grounds for refusing the enforcement of an arbitral award are the same as those set forth for the enforcement of court decisions, which are wider than those of the New York Convention.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In accordance with Articles 2, 4 and 8 of the Brussels Convention, Mozambican courts may order the arrest of a vessel in respect of any maritime claim. However, pursuant to Article 7 (3) and (4) of the Brussels Convention, if the parties have agreed on submitting the dispute to a different jurisdiction or to arbitration, the Mozambican court may fix the time within which the claimant should commence the main proceedings. If the action or proceedings are not brought within the time so fixed, the defendant may apply for the release of the vessel or of the bail or other security. Outside the scope of the Brussels Convention, Mozambican courts will also accept the arrest in respect of claims

subject to foreign arbitration or jurisdiction clauses where the vessel is within their territorial jurisdiction.

7.5 Domestic Arbitration Institutes

Currently, there is no domestic arbitration institution that specialises in maritime claims active in Mozambique. Hence, in such matters general arbitral bodies will be competent, governed by Law 11/99.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In the event of a breach of foreign jurisdiction or arbitration clauses, the defendant must invoke such before the court that lacks jurisdiction and ask for the claim to be dismissed.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Companies incorporated in Mozambique will be subject to the general taxation regime set forth for other companies incorporated or with a permanent establishment in the country – ie, they will be subject to 32% corporate income tax on their taxable profits. This notwithstanding, according to the Code of Fiscal Benefits, tax benefits and reliefs may be granted to holders of investment projects approved under the Investment Law. Non-resident shipping companies that obtain income from chartering vessels for fishing or cabotage activities are subject to a reduced 10% withholding rate (the general rate is 20%, if a double tax treaty is not applicable).

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

If the parties have not included force majeure or hardship clauses in their contracts, it is particularly important to take into consideration the general Mozambican legislation, namely the provisions of the Civil Code regarding abnormal changes in circumstances

(Articles 437 and 438) or impossibility of performance of contracts (Articles 790 to 793).

Abnormal Changes in Circumstances

Article 437 of the Civil Code applies whenever the circumstances on which the parties based their decision to enter into an agreement have suffered an abnormal change. As a result, the party that has been adversely affected by that change may terminate the agreement or ask for its modification based on equity, provided the party demonstrates that it could not have predicted the event and its consequences and that there is a causal link between the event and the failure to perform.

However, the above-mentioned regime includes very strict requirements in order to be invoked, since it is not enough to demonstrate the difficulty in performing the contract, but rather that the abnormal change is not covered by the risks inherent to the contract, and that requiring the performance of the agreement is contrary to the principles of good faith.

Impossibility of Performance

If the contract becomes impossible to perform, Articles 790 to 793 of the Civil Code are applicable, establishing different consequences based on whether the impossibility is total or partial and definitive or temporary.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

For the time being, Mozambique has not approved specific domestic legislation dealing with the sulphur content of fuel oil used on board ships – with all this implies in terms of enforcement of the international standards on sulphur content limitations. However, there are now some players in the market that have started to provide fuel oil in compliance with the “IMO 2020” regulation.

9.3 Trade Sanctions

Mozambique formally recognised and enforced the international economic sanction against Rhodesia (now Zimbabwe) in 1976, and decided to close all its

borders with said country, in full implementation of the relevant decisions of the United Nations. However, this was part of a political decision and was enforced by means of a Presidential communication to the nation, published in the official gazette on 3 March 1976.

Mozambique has not approved any statute specifically governing the enforcement of international trade sanctions. However, the Bank of Mozambique has approved Notice No 10/GBM/2024 of 30 August 2024 containing the rules and procedures to be adopted by commercial banks in order to conduct proper KYC and risk assessment analysis in relation to all operations requested by their clients, and to ensure compliance with any applicable international sanctions.

Currently, there are sanctions in place against individuals and legal entities in Mozambique, in particular the Islamic State operating in Cabo Delgado Province.

9.4 International Conflict

Mozambique remains neutral on the war in Ukraine. It has called for dialogue and abstained in the UN General Assembly’s resolutions condemning Ukraine’s invasion by Russia. No sanctions on Russian individuals and/or entities by the Mozambican government are currently in place.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

As part of the ongoing legislative reforms, the Mozambican government, through the Institute of Maritime Transport (ITRANSMAR), has launched a tender for the review of the main statutes dealing with maritime and shipping matters, with the aim of codifying the key matters in a single statute, to be complemented by specific regulations on a case-by-case basis. INAMAR also sought an opinion from the private sector, through the CTA – Confederation of Economic Associations of Mozambique – on the proposal for a Regulation on Maritime Cabotage Transport.

Trends and Developments

Contributed by:

José Miguel Oliveira, Kenny Laisse and Caio de Mello Ferreira
VdA

VdA is a leading international law firm with more than 50 years of history, recognised for its impressive track record and innovative approach in corporate legal services. The excellence of its highly specialised legal services, covering several industries and practice areas, enables VdA to overcome the increasingly complex challenges faced by its clients. Recognition of the excellence of its work is shared by the entire team, as well as by clients and stakeholders, and is acknowledged by leading professional associa-

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Authors



José Miguel Oliveira joined VdA in 2015. He is a partner of the oil and gas practice, and responsible for the shipping practice. With over 15 years of international experience in African jurisdictions, including Angola and

Mozambique, José has been involved in projects and operations across the oil and gas industry's value chains and has provided advice regarding regulatory issues, contractual matters, corporate and commercial, restructuring, M&A, foreign direct investment, foreign exchange, and shipping and maritime matters. He has acted for the full spectrum of those involved in the shipping industry in all sorts of wet and dry shipping matters, including ship-owners and charterers, cargo interests, P&I clubs, banks, shipyards, port operators, brokers and agents.



Caio de Mello Ferreira joined VdA in 2023. He is an associate in the oil and gas practice group, where he has been involved in projects and operations across the African oil and gas industry value chain, with a

particular focus on shipping and maritime matters. In this context, he has served as a member of a working group of the International Seabed Authority responsible for drafting exploitation regulations for the area. Additionally, Caio has gained one year of experience in the information and communication technologies practice and completed a secondment in the shipping, transportation and offshore practice area at a leading firm in Copenhagen.



Kenny Laisse joined GDA Advogados, which is part of the VdA Legal Partners network, in 2018. He is a senior associate focused on, among other things, litigation, labour, real estate, corporate and natural

resources. Kenny also advises on many legal matters related to the shipping industry, including the bunkering sector and maritime litigation, and has a postgraduate qualification in Maritime Law at the Faculty of Law of the Portuguese Catholic University.

VdA (with GDA Advogados)

Rua Dom Luís, 28
1200 151
Lisboa
Portugal

Av. Marginal, nº 141, Edifício Torres Rani, 10th Floor
Maputo
Moçambique

Tel: +351 21 311 3400
Fax: +351 21 354 0325
Email: jmo@vda.pt
Web: www.vda.pt



Introduction

The shipping sector in Mozambique plays a critical role in the country's economic development, as it offers a significant means of transportation with access to the international markets. Mozambique has a coastline of approximately 2,500 kilometres, three major ports – Maputo, Beira and Nacala – and several minor ports and harbours.

The Port of Maputo is the largest and busiest port in Mozambique. In 2024, it handled approximately 30.9 million tonnes of cargo. The port offers diverse transit options for cargo, including sea, road and rail, thereby connecting Mozambique to neighbouring Southern African countries.

The Port of Beira also plays a major role in the shipping sector, serving as a vital gateway for landlocked countries such as Zimbabwe, Zambia and Malawi and an essential transit hub for fuel, cargo and containers. In the first seven months of 2024, Beira Port's general cargo terminal recorded a 24% increase compared to the same period in 2023, while the container terminal showed robust growth of 40%, handling 226,000 containers.

The Port of Nacala is located in the northern region of Mozambique and is one of the deepest ports in Southern Africa. It is mainly used for exporting coal from the adjacent Moatize coal mines. The port also serves as an important hub for exporting other com-

modities, including agricultural products. In 2024, the port registered a 7.6% increase in cargo handling, reaching a historic milestone of 1.4 million tonnes, including 100,000 twenty-foot equivalent units (TEU). This growth was made possible by the completion of the port's rehabilitation, expansion and modernisation works.

While Mozambique's shipping industry has recently experienced several challenges, including maritime security issues such as piracy and organised crime (see the section on the Rovuma Project further on in this article), the industry remains a critical sector for Mozambique's economic growth, and the country is increasingly becoming fertile ground for shipping contracts and legal action on maritime liens. The Mozambican government is investing in infrastructure improvements aimed at enhancing the country's connectivity and competitiveness in the regional and international markets, particularly in the development of a transportation corridor that connects the central and northern regions and links the ports to the landlocked countries of Southern Africa.

Overall cargo volumes at Mozambique's ports showed positive momentum in 2024, with national port traffic increasing by approximately 10.7% compared with 2023. Notable growth was reported at ports such as Beira and Nacala, as well as at a number of secondary ports across the country, reflecting improvements in operational capacity and trade flows.

Maritime cabotage services were also strengthened in 2025 with the relaunch of coastal shipping, including the commissioning of new vessels intended to provide regular cargo transport between Mozambique's main ports, such as Maputo, Beira and Nacala, enhancing inter-port connectivity.

Additionally, the ports of Pemba and Palma, located further north in Mozambique, are projected to become crucial servicing and logistics ports for the oil and gas industry. The Government of Mozambique has approved substantial investment and concession arrangements for the Port of Pemba and Logistics Terminal, including infrastructure upgrades such as new quays and floating docks, aimed at enhancing the port's capacity to support hydrocarbon exploration and production operations in Cabo Delgado and the wider Rovuma Basin. The development of these ports aligns with Mozambique's ambitions to become a significant player in the global gas market and attract foreign investment to the sector.

Legislative Developments

In 2022, acknowledging the significance that its maritime ports may have as a result of the above-mentioned facts, Mozambique approved the Maritime Courts Law (Law No 10/2022), which provides for the institution of specialised maritime courts with specific know-how on matters relating to shipping contracts, maritime liens, maritime claims and arrest of ships. At the moment, the Maritime Courts of Maputo City and Sofala and Nampula Provinces are fully operational, in a clear sign of the government's commitment to ensuring adequate responses to the specificities of the shipping sector. In March 2025, the Supreme Court extended the jurisdictional areas of (i) the Maritime Court of Maputo City, encompassing the provinces of Maputo, Gaza and Inhambane; and (ii) the Maritime Court of Nampula, encompassing the provinces of Cabo Delgado, Niassa and Zambézia. This extensive jurisdictional competence is applicable until all the aforementioned provinces inaugurate the respective maritime courts.

In 2024, as a clear sign of its commitment to maritime sector legislation, the government approved the Regulations for the Exercise of Ship Agency Activity, Cargo and Complementary Services through Decree

No 40/2024 of 12 June 2024. Also in the same year, with an impact on the maritime defence sector, a Maritime Defence Co-operation Agreement was signed between the Government of the Republic of Mozambique and the Government of the French Republic.

A Cabotage Maritime Transport Regulation is expected to be approved in the near future. The private sector, through the Confederation of Economic Associations of Mozambique (CTA) recently issued an opinion on its proposal.

The government also approved Decree No 75/2024 of 17 October 2024, which approves the terms of concession of the Port and Logistics Terminal of Pemba in Cabo Delgado Province, granting a 20-year concession to Pemba Bulk Terminal, Limitada (PBT) for the development, financing, construction, operation and maintenance of the port infrastructure. This legal framework is expected to catalyse logistical support for offshore energy projects and regional maritime trade.

Training

In June 2023, the staff of the Ministry of Transport and Communications were trained by the International Maritime Organization's (IMO's) Maritime Security team on the transposition of IMO instruments related to maritime security into national legislation. The workshop aimed to provide support on how to translate measures within the International Convention for the Safety of Life at Sea, 1974 (SOLAS) Chapter XI-2 and the International Ship and Port Facility Security Code ("ISPS Code") into Mozambique's national maritime security legislation. It should be noted that this was the first workshop held in Mozambique under the IMO's Port Security Project, which is funded by the EU.

Building on this initial capacity-building effort, further training and technical assistance activities were carried out in 2025. In September 2025, Mozambique hosted a follow-up legal review workshop supported by the IMO, aimed at strengthening the domestic transposition of maritime security instruments, including SOLAS Chapter XI-2 and the ISPS Code, with participation from multiple ministries, maritime authorities and enforcement agencies.

In addition, in July 2025, national training sessions on harbour security and narcotics checkpoints were held in Maputo with officials from customs, police, maritime authorities, port operators and other enforcement agencies. These sessions focused on risk assessment, counter-narcotics operations, port facility security and the prevention of illicit activities in port areas, contributing to the operational strengthening of maritime and port security in Mozambique.

Moreover, the CTA and the Centre for Judicial and Legal Training of Mozambique (CFJJ) signed a co-operation agreement for training on maritime law and related matters. This will contribute, inter alia, to the training of maritime court judges, bringing legal certainty to the shipping sector that is increasingly consolidated and aligned with the best market practices.

Infrastructure

Recently, the Mozambican government made a positive commitment to the shipping sector by investing around USD1 million to replace the buoys along the access channel to the Port of Maputo. This investment will ensure that the port remains competitive and maintains its position in the region in terms of cargo handling and berthing larger ships. The replacement of buoys will improve navigation conditions along the access channel to the Port of Maputo, thereby supporting the growth of the shipping sector in Mozambique.

The Mozambican government, together with the Maputo Port Development Company (MPDC), has continued to invest in the modernisation and expansion of the Port of Maputo's infrastructure to enhance its operational capacity and regional competitiveness. In May 2025, MPDC, in partnership with DP World and other stakeholders, commenced a substantial expansion of the container terminal, including the extension of quay and deepening of berths to accommodate larger vessels, part of broader efforts to increase throughput and improve efficiency.

Further investment plans announced in late 2025 envisage approximately USD500 million over the coming three years to expand and upgrade port facilities, including dredging the access channel to deepen it to around 16 metres, enabling the port to handle larger

Panamax and post-Panamax vessels and aligning it with some of the largest regional ports. These structural enhancements are expected to support growth in cargo handling, bolster the port's role as a regional trade and logistics hub, and reinforce Mozambique's integration into international shipping networks.

Transport

In March 2024, the province of Cabo Delgado announced the mobilisation of three vessels by the government to improve the safe transport of people and goods from the capital city to the coastal districts and various islands of the province, as announced by the Minister of Transport and Communications in March 2024. One of the vessels will link Cabo Delgado Province (Pemba, Mocimboa da Praia, Afunge and other ports in the province) and the country's main ports (Maputo, Beira, Nacala and Quelimane), upon request by the Cabo Delgado Province authorities.

Since then, broader developments in maritime transport have taken place. In April 2025, the Government of Mozambique, as part of a strategic initiative to revitalise coastal shipping, relaunched maritime cabotage services. Two large vessels acquired by private partners were commissioned to ensure regular transport of goods between key national ports – including Maputo, Beira, Nacala and Pemba – as part of efforts to modernise national logistics, reduce reliance on road freight and strengthen the blue economy.

Rovuma Project

The Rovuma Project, otherwise known as Mozambique LNG (liquefied natural gas), is a project led by TotalEnergies to produce and exploit natural gas in the Rovuma Basin, in northern Mozambique. The onshore project experienced suspension due to terrorist attacks in Cabo Delgado, but as of 2025, force majeure has been lifted, and the project is progressing towards resumption of construction, with first production now expected around mid-2029.

Similarly, ExxonMobil's Rovuma LNG project lifted its force majeure in November 2025, reflecting improved security conditions and active collaboration with the Mozambican government. This project, with a potential annual capacity of 18 million tonnes, is moving

towards a potential final investment decision in the coming year.

The Rovuma Basin's natural gas projects have the potential to significantly impact the shipping industry in Mozambique. The development of LNG production facilities and export terminals requires significant maritime infrastructure, including the construction of port facilities, pipelines and transportation vessels designed to carry LNG safely and efficiently.

Mozambique has already taken steps to improve its port infrastructure – for example, the construction of the deepwater port of Nacala that can accommodate large vessels and enable the export of coal and other bulk goods. Additional investment will be required in port facilities to support the influx of vessels carrying materials and equipment required for the development of the Rovuma Basin's natural gas reserves.

There will also be an increase in the demand for regional shipping services to transport people, equipment and materials required to support the Rovuma Project and other natural gas-related projects. Shipments of natural gas will also necessitate specialised vessels, such as Liquefied Natural Gas Carriers, that can operate in deep waters and carry massive quantities of liquefied gas. This demand for shipping services will generate significant economic activity and job opportunities for workers in Mozambique's shipping sector.

The development of the Rovuma Project may also lead to increased activity in the supply chain, benefiting shipping companies operating in the region. This activity will support local businesses and generate employment opportunities in transportation, logistics and port-related activities, impacting positively on the economy of Mozambique and the shipping industry in the country.

One thing is certain: the opportunities are real. There is great potential, and it is now up to the Mozambican shipping sector to take advantage of them, with the certainty that the legal framework and its application will play a fundamental role in operationalising and monetising the opportunities.



Law and Practice

Contributed by:

Rik van Waasbergen, Sander Metzelaar, Wiebe Wajer, Iris Stielstra and Daan Komen
HerikLegal

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HerikLegal is a Rotterdam-based law firm established on 1 January 2025 following the merger of HerikVerhulst and Borsboom & Hamm. HerikVerhulst was founded in 1936, and Borsboom & Hamm in 1978. The combined firm brings long-standing expertise and specialisation through its corporate/M&A, litigation, restructuring and insolvency, employment, shipping, trade and insurance, and real estate sections. The firm offers added value to clients through legal advice and guidance in matters of restructuring, transactions and litigation. In those fields, HerikLegal

has special expertise in cross-border, complex and urgent matters. Given this long history in Europe's largest port of Rotterdam, HerikLegal is recognised for its deep-rooted specialisation in transport, shipping, logistics and international trade through its shipping, trade and insurance department. Positioned in one of the most significant hubs for both logistics and insurance in Europe, the department, under the direction of Rik van Waasbergen, offers clients a blend of decades of legal experience specific to the logistics sector and up-to-date, no-nonsense insights.

Authors



Rik van Waasbergen has been practising law since 1992. His areas of expertise include maritime and commercial disputes, transport law, insurance law and international trade law. With over three decades'

experience, Rik now leads the shipping, trade and insurance department of HerikLegal. Through that experience, Rik boasts a strong track record in proceedings before the Dutch courts and in arbitration proceedings, including UNUM, GAFTA, NAI, LLMC small claims and ICC arbitrations, and is listed as an UNUM arbitrator. In the capacity of both lawyer and arbitrator, he has been involved in matters including disputes related to vessel collisions, global limitation of liability, ship arrests, salvage and stevedoring, and admiralty law.



Sander Metzelaar specialises in international transport and international trade law. He has a particular interest in and knowledge of maritime transport and maritime law. He also handles cases

concerning road transport (CMR) and logistics. As a lawyer, he acts for insurers, logistics service providers, (ocean) carriers and cargo owners. Additionally, Sander is registered with the Dutch Bar association as a specialist in insurance law and has broad experience acting on behalf of both Dutch and international insurance companies in cross-border matters. Sander has the specialist knowledge needed to decisively handle such cross-border cases in the dynamic transport and trade sector.



Wiebe Wajer practises shipping law, insurance law and international trade. He acts for insurers, logistics service providers, (ocean) carriers, cargo owners, trading houses and manufacturers. Wiebe is accessible

and takes a practical and solution-oriented approach. Before his career in the legal profession, Wiebe worked for several years as a commodity trader in international trade and as a commodity buyer at a large food-producing company. Therefore, he has first-hand experience with the commercial and operational interests at play in companies active in international trade and transport.



Iris Stielstra is part of the shipping, trade and insurance department of HerikLegal. She primarily handles international disputes for (ocean) carriers, freight forwarders, cargo interests, ship-owners, terminal

operators and their insurers. Iris is a dedicated, practical and committed lawyer with a critical eye.



Daan Komen has been in legal practice for nearly 15 years. He is a litigation specialist whose practice primarily focuses on dry and wet shipping matters. Over the course of his career, he has worked at several law firms, gaining broad experience and a strong understanding of the market. He frequently acts for ship-owners, terminal operators, carriers, freight forwarders, cargo interests and their insurers. His

predominantly international clients value his thorough approach and creative, pragmatic solutions.

HerikLegal

Wilhelminaplein 16
3072 DE
Rotterdam
The Netherlands

Tel: +31 10 410 0055
Email: info@heriklegal.nl
Web: www.heriklegal.nl



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The jurisdiction of the maritime and shipping courts is primarily governed by the Dutch Code of Civil Procedure (DCCP), which contains a special procedural regime for maritime cases and provides for their statutory concentration in Rotterdam. Maritime and shipping disputes are thus handled primarily by the maritime chamber of the Court of Rotterdam.

Other transport matters, such as disputes pertaining to road transport, inland waterway transport, rail transport and transport by air, are also dealt with by other courts pursuant to national laws on relative jurisdiction.

1.2 Port State Control

Port state control is exercised as part of the European port state control regime, implemented in accordance with the Paris Memorandum of Understanding and the relevant EU framework, including Directive 2009/16/EC.

The national legal basis for this system is the Port State Control Act (*Wet havenstaatcontrole*), which aims to ensure compliance of both foreign and domestic seagoing vessels with international safety, environmental and labour standards.

Inspections are carried out by the Human Environment and Transport Inspectorate (*Inspectie Leefomgeving en Transport* – ILT), which is an agency of the Ministry of Infrastructure and Water Management. The ILT is authorised to conduct (unannounced) inspections of seagoing vessels in Dutch territorial waters. Where deficiencies are identified, the ILT may impose corrective measures, raise fines and detain vessels. In the event of marine casualties, the ILT has similarly extensive enforcement powers.

Independent safety investigations into very serious maritime casualties are conducted by The Dutch Safety Board (*Onderzoeksraad voor Veiligheid*). Investigations into the conduct of seafarers that may have led to maritime casualties, and the disciplinary proceedings regarding such conduct, are performed by the Maritime Disciplinary Court of the Netherlands (*Tuchtcollege voor de Scheepvaart*).

Wreck removal is governed by the Wrecks Act (*Wrakenwet*) and the implementing legislation for the Nairobi International Convention on the Removal of Wrecks 2007 (the “Wreck Removal Convention”).

1.3 Domestic Legislation Applicable to Ship Registration

Ship registration is governed by a combination of private law and public law legislation. The private law aspects of registration are handled through the public registers maintained by the *Kadaster*, in which vessels are recorded together with ownership and limited

rights such as mortgages. Registration in these public registers provides legal certainty and publicity with regard to title and security interests.

The entitlement to fly the Dutch flag is regulated under public law. Since 1 July 2025, this has been governed by the Kingdom Act on the Nationality of Seagoing Vessels, which introduced a modernised framework and a dedicated flag register. Registration in this register is required for a vessel to lawfully fly the Dutch flag and to obtain a certificate of nationality.

The *Kadaster* is responsible for private law registration, including the registration of ownership and mortgages, while the ILT handles public law registration in the flag register and the issuance of certificates of nationality.

1.4 Requirements for Ownership of Vessels

Ownership of vessels registered in the Netherlands is not restricted to Dutch citizens. Foreign ownership is permitted, provided that the statutory requirements are met. These requirements focus on the existence of a genuine link with the jurisdiction rather than on the nationality of the owner as such. In practice, particular attention is paid to establishment and organisational connections, especially where vessels are operated commercially. This may include requirements relating to the place of establishment of the owner or the appointment of a qualifying ship manager.

The purpose of these requirements is to ensure effective regulatory oversight and enforcement, rather than to impose nationality-based restrictions. Both natural persons and legal entities from outside the Netherlands may therefore own vessels flying the Dutch flag, subject to compliance with the applicable conditions.

Vessels under construction may also be registered. A ship that is still under construction can be entered in the public registers maintained by the *Kadaster*, enabling the registration of ownership and limited rights, including mortgages, prior to completion.

1.5 Temporary Registration of Vessels

The legal framework permits the temporary registration of vessels through the issuance of a provisional certificate of nationality. This provisional certificate is

issued by the ILT and is valid for six months. It allows a vessel to provisionally acquire Dutch nationality while the requirements for full registration are being completed.

As a general principle, dual flagging is not permitted. A vessel that holds the nationality of the Kingdom of the Netherlands is required to fly the Dutch flag exclusively and may not simultaneously fly the flag of another state. An exception exists in the form of bareboat out registration. Under this arrangement, a vessel registered in the Netherlands may temporarily operate under a foreign flag while remaining registered in the Dutch ship register. Although this may resemble dual registration in a functional sense, it does not involve the simultaneous flying of two flags and is expressly regulated by law.

1.6 Registration of Mortgages

Ship mortgages are registered in the public registers maintained by the *Kadaster*. These registers provide publicity and legal certainty with respect to security interests in vessels and form a central element of the maritime financing framework.

The creation of a ship mortgage requires a notarial deed. The mortgage is constituted by execution of the deed before a civil law notary, followed by registration by the notary of a certified copy in the relevant public register. Registration is a constitutive requirement, meaning that the mortgage only comes into existence and becomes enforceable against third parties upon registration.

1.7 Ship Ownership and Mortgages Registry

The ship ownership and mortgages registry is publicly accessible. The public registers maintained by the *Kadaster* contain information on registered vessels, including ownership details and registered rights of mortgages.

Further, in the case of registered property such as vessels flying the Dutch flag, any (conservatory) arrests levied on such Dutch flagged vessels must, in principle, be registered in the public register pursuant to 566 (1) DCCP and Article 728a (1) of the DCCP. There is no time limit for registering the arrest in the public registers. Therefore, not all (conservatory) vessel arrests

may be visible in the public register. As long as the arrest on a vessel flying the Dutch flag has not been registered, it has no blocking effect and the debtor may still dispose of the attached property.

Third parties may obtain this information by requesting official extracts or registration products from the *Kadaster* relating to the relevant vessel. These extracts allow interested parties, such as purchasers, financiers and other creditors, to verify the legal status of a vessel. Public access to the registers promotes transparency and legal certainty and is a key feature of the maritime legal framework.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship loan financing is typically structured as secured debt provided to a special purpose vessel-owning company. The most common transactions involve bilateral or syndicated term loans used for vessel acquisition, refinancing or newbuilding financing. Facilities are generally amortising and often include a balloon repayment at maturity. Interest is usually calculated on a floating rate basis with an agreed margin. Depending on the operational profile of the borrower, ancillary or working capital facilities may also be included.

Equity is normally injected at the level of the vessel owning company and may consist of share capital and subordinated shareholder loans. Financing documentation commonly includes restrictions on distributions, subordination provisions and, where applicable, equity cure mechanisms that allow shareholders to remedy financial covenant breaches. Group support may be provided in the form of guarantees or similar arrangements, depending on the ownership structure and credit assessment.

Loan financing is secured by a comprehensive security package. In addition to a ship mortgage, lenders typically require pledges over the shares in the vessel-owning company, pledges or assignments of receivables such as charter hire and earnings, assignments of insurances and, where relevant, account pledges. In

syndicated financings, security is commonly held by a security agent for the benefit of the lending group.

Enforcement depends on the nature of the security exercised. Mortgage enforcement follows established judicial procedures and may be preceded by arrest as a protective measure, ultimately resulting in a foreclosure sale of the vessel. Enforcement of share pledges focuses on control or disposal of the owning company, while receivables and account security is enforced through notification and cash flow control. Lenders may pursue these routes in parallel or sequentially, subject to contractual arrangements and applicable law.

2.2 Ship Leasing

Ship leasing transactions have increased in recent years. This trend is driven by reduced appetite among traditional banks for shipping exposure, stricter regulatory capital requirements and ship-owners' need for alternative sources of liquidity and longer tenors. As a result, private equity-backed credit providers have become prominent participants in the shipping finance market.

The legal relationship in a leasing structure differs fundamentally from that in a loan financing. Under a lease, ownership of the vessel remains with the lessor, and the lessee pays hire for the use of the vessel. Risk allocation is largely governed by contractual provisions on maintenance, insurance, redelivery and termination. By contrast, under a loan structure the borrower owns the vessel and grants security to the lender, who is a secured creditor rather than the owner of the asset.

These differences are also reflected in enforcement. Enforcement of a ship mortgage is based on proprietary security rights and follows established judicial procedures, including arrest and executorial sale of the vessel. Lease default enforcement is contractual in nature and typically focuses on termination of the lease and repossession or return of the vessel, with the practical approach depending on the location of the vessel and the applicable forum. Sale and lease-back transactions are common and are used as a tool to release capital while retaining operational control.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The Netherlands is a party to the following international conventions on pollution.

- The International Convention on Civil Liability for Oil Pollution Damage 1992 (the "CLC 1992"): Establishing strict liability of the registered owner of a tanker for pollution damage caused by persistent oil, subject to limitation of liability and compulsory insurance.
- The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the "Fund Convention"): Providing additional compensation where the liability limits under the CLC 1992 are insufficient or where the ship-owner is financially incapable of meeting its obligations.
- The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the "Bunker Convention"): Imposing strict liability on ship-owners for pollution damage caused by bunker oil from seagoing vessels other than tankers – requires mandatory insurance or other financial security.
- The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the "HNS Convention").

Establishing a comprehensive liability and compensation regime for pollution and damage caused by hazardous and noxious substances. The convention has been ratified and implemented in Dutch national law but is not yet in force internationally.

The Netherlands is also party to an international convention on wreck removal, namely, the Nairobi International Convention on the Removal of Wrecks 2007. This establishes a regime of strict liability for the registered owner in respect of the locating, marking and removal of hazardous wrecks. The Convention provides public authorities with the right to intervene where a wreck poses a hazard to navigation or the marine environment and introduces compulsory insurance, including a direct right of action against

the insurer. The Convention applies in the exclusive economic zone and also extends to Dutch territorial waters. The Convention applies both directly in the Dutch legal system as well as through its implementation in the Wrecks Act (*Wrakkenwet*),

3.2 International Conventions: Collision and Salvage

Maritime Incidents

Liability in cases of vessel collision and allision is governed by the following international conventions and related rules.

- The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 (the "Collision Convention"):
 - (a) establishing fault-based liability for collisions between sea-going vessels, or between sea-going vessels and vessels of inland navigation;
 - (b) provides rules for apportionment of liability where two or more vessels are at fault; and
 - (c) implemented in Dutch law and applied by Dutch courts.
- The International Regulations for Preventing Collisions at Sea 1972 ("COLREGs"):
 - (a) setting out internationally binding navigational rules; and
 - (b) used by courts to assess compliance with navigational duties and determine fault in collision cases.

Incidents on Inland Waterways

Liability in incidents in inland waterways is governed by the following.

- The Geneva Convention of 15 March 1960 relating to the Unification of Certain Rules concerning Collisions in Inland Navigation (the "Geneva Collision Convention"):
 - (a) establishing fault-based liability for collisions between vessels of inland navigation;
 - (b) provides rules for the apportionment of liability where two or more vessels are at fault; and
 - (c) implemented in Dutch law and applied by Dutch courts.
- The Strasbourg Convention on the Limitation of Liability in Inland Navigation of 4 November 1988, as amended by the Protocol of 27 September 2012

(CLNI), including regular increases through indexation of the limits of liability per Article 20 CLNI – the latest indexation of the limits of liability, dated 1 June 2024, was implemented on the Dutch jurisdiction on 1 March 2025.

Note that the distinction between the concepts of collision and allision prevalent in common law legal systems does not exist pursuant to Dutch law, and that the foregoing Conventions apply to both kinds of incidents.

Salvage

Salvage liability and remuneration are governed by the International Convention on Salvage 1989 (the “International Salvage Convention”), which:

- regulates entitlement to salvage remuneration and the criteria for fixing salvage awards;
- introduces special compensation for salvors who prevent or minimise environmental damage; and
- is implemented in Dutch law and applied to salvage operations involving vessels and property in navigable waters.

National Law

Pertinent legislation includes the following.

- Book 8, Chapter II, Titles 6 and 7 of the Dutch Civil Code (DCC) apply to (liability) for maritime incidents with respect to sea-going vessels and the global limitation thereof.
- Book 8, Chapter III, Titles 11 and 12 of the DCC apply to (liability) for maritime incidents with respect to vessels of inland navigation and the global limitation thereof.
- The Inland Navigation Police Regulations (*Binnenvaartpolitiereglement*):
 - (a) set out rules on navigation, signals and right of way on the majority of Dutch inland waterways; and
 - (b) used by courts to assess compliance with navigational duties and determine fault in collision cases.
- The Rhine Navigation Police Regulations (*Rijnvaartpolitiereglement*):

- (a) set out rules on navigation, signals and right of way on the River Rhine and waterways connected thereto; and
- (b) used by courts to assess compliance with navigational duties and determine fault in collision cases.

3.3 Convention on Limitation of Liability for Maritime Claims

The Netherlands applies the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol (LLMC), including the increased limits introduced by the 2012 International Maritime Organization (IMO) amendments. These international rules are fully incorporated into Dutch law both through direct application of the Convention as well as through implementation in Book 3, Title 1 of the DCC. This implementation allows ship-owners and certain other “ship operating parties” (defined as “owners” in the LLMC) to limit their liability for collision-related claims, subject to the convention’s conditions.

The LLMC and its Dutch implementation apply to personal injury, property damage and other claims for damages arising out of maritime incidents.

3.4 Vienna Convention on the Law of Treaties

The Netherlands is a party to the Vienna Convention on the Law of Treaties. Its interpretative rules are applied when construing international conventions.

Regarding the concept of “owner”, central in the *MSC Flaminia* decision and its interpretation under the LLMC, the Dutch courts had a similarly broad interpretation as the UK Supreme Court.

3.5 Procedure and Requirements for Establishing a Limitation Fund Procedure and Competent Court

Under Dutch law, which applies the international conventions discussed in this section of the guide, a ship-owner may limit liability by constituting one or more limitation funds in accordance with Article 642c of the DCCP. The substantive right to limitation is therefore governed by the implementation of the LLMC in the DCC, while the procedure for constituting a limitation fund, including court involvement, is governed by the

DCCP. The maritime chamber of the Court of Rotterdam exclusively handles such matters in first instance.

Who May Constitute a Limitation Fund?

The right to constitute a limitation fund extends to the ship-owner, defined as the person or entity in whose name the vessel is registered. However, for this purpose the right to constitute a fund also extends to charterers, lessees and other users entrusted with the operation of the vessel (Article 8:750 (2) DCC). Persons for whose acts the ship-owner is liable may invoke limitation to the same extent. Liability insurers are likewise entitled to rely on limitation in the same manner as their insured (Article 8:751 DCC).

Calculation of the Fund

The categories of claims subject to limitation are exhaustively listed in Article 8:752 of the DCC, subject to the exclusions set out in Article 8:753 of the DCC. The amount of the limitation fund is determined by reference to the LLMC, as amended by the 1996 Protocol and subsequent amendments, as incorporated into Dutch law through Article 8:755 of the DCC. The applicable limits are calculated based on the vessel's gross tonnage and apply globally to all claims arising out of the same incident.

Deposit and Form of Security

The actual constitution of the limitation fund requires the provision of security in accordance with Article 642c of the DCCP, typically by way of a cash deposit or a bank or insurer's guarantee acceptable to the court.

Where the fund is constituted by a cash deposit, statutory interest ceases to accrue upon deposit. Where the fund is constituted by a guarantee, statutory interest continues to accrue until the guarantee is provided in the form and amount ordered by the court. Therefore, the prevailing interest rate will be the crucial criterion for determining whether security is to be put up through cash deposit or a guarantee.

Another aspect to take into account is that the Court of Rotterdam no longer offers the possibility to use the Court's bank account to put up security through a cash deposit. Therefore, other arrangements with

financial or escrow institutions would have to be explored before such a deposit is possible.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention 2006 (MLC) is fully applicable in the Netherlands. The Netherlands ratified the convention in 2011. The Convention applies to Dutch-flagged vessels, and, through port state control, to foreign vessels calling at Dutch ports. Compliance is ensured through certification and inspection. Enforcement is carried out by the ILT through flag state and port state control.

The MLC is implemented partly through the Law on the Crewing of Seagoing Vessels (*Wet Bemanning Zeeschepen*), which entered into force on 1 July 2025 and replaced the former Law on Seafarers (*Wet Zeevarenden*). The Law on Seafarers regulates seafarers' rights and crew requirements, including manning, certification, medical fitness, hours of work and rest.

Part of the MLC is also implemented in Book 7 of the DCC. In this legislation, seafarers' rights are stipulated, such as payment during sickness, repatriation rights and holidays. It is important to note that this part of the law is also applicable to non-Dutch-flagged vessels in case Dutch employment law is applicable.

Occupational health and safety is governed by the Working Conditions Act (*Arbeidsomstandighedenwet*), while operational safety is addressed in maritime safety and navigation legislation, including the Shipping Traffic Act (*Scheepvaartverkeerswet*).

4. Cargo Claims

4.1 Bills of Lading

The Netherlands is a signatory to The Hague-Visby Rules (HVR). Therefore, the HVR apply in the Dutch jurisdiction if they are applicable pursuant to Article 10 of the HVR.

The Netherlands has signed but not yet ratified the Rotterdam Rules. Therefore, they do not (yet) apply in the Dutch jurisdiction.

4.2 Title to Sue on a Bill of Lading

Pursuant to Article 8:441 of the DCC, only the lawful holder of the bill of lading has title to sue the carrier under the bill of lading for cargo damages.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

If it concerns transport under a bill of lading or similar document of title, or if the HVR have been declared applicable to the contract of carriage, the liability of the ocean carrier is governed by the HVR. Therefore, in such cases the liability is, in principle, limited to 2 Special Drawing Rights (SDR)/kg or 667 SDR/package.

If it does not concern transport under a bill of lading, the liability of the ocean carrier is governed by the contractual liability regime. In such cases, freedom of contract applies.

4.4 Misdeclaration of Cargo

Under Dutch law, a carrier may in principle establish a claim against the shipper for misdeclaration of cargo. Such claims are expressly recognised in Article 8:394 (1) of the DCC and Article 3 (5) of the HVR. Under these provisions, the shipper is obliged to provide the carrier, in due time, with all information concerning the goods and their handling, which the shipper knows or ought to know to be of importance to the carrier. The shipper must in principle indemnify the carrier for all loss, damage and expenses resulting from inaccuracies in those particulars. These rules are of particular relevance to the carriage of dangerous goods.

Dutch law applies this duty to inform using objective standards. A freight forwarder acting as shipper is expected to possess the knowledge of a reasonably diligent cargo-interested party. The information does not necessarily have to be included in a transport document. In certain cases, oral notification may suffice. The shipper must ensure the correctness of the cargo particulars at the time the goods are taken into the carrier's charge.

Recent case law has reaffirmed these principles. In an appeal between cargo insurers, acting as subrogated claimants, and a carrier, before the Hague Court of Appeal, the court confirmed that, save in special cir-

cumstances, a carrier is entitled to rely on the accuracy of the cargo description provided by the shipper (*Hof Den Haag*, 21-09-2021, ECLI:NL:GHDHA:2021:2872, S&S 2022/33). This judgment confirms that, save in special circumstances, a carrier is entitled to rely on the cargo description provided by the shipper, thereby reflecting the principle laid down in Article 8:394 (2) of the DCC.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar for cargo claims is one year. In case of carriage under a bill of lading, the one-year time bar of the HVR cannot be interrupted but can only be extended by or on behalf of the carrier. In the case of carriage other than under a bill of lading, the time bar can, in principle, be interrupted unilaterally through a notice of liability in which the claimant explicitly preserves his or her right of recourse.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The International Convention relating to the arrest of seagoing ships 1952 (the "Arrest Convention") applies in the Dutch jurisdiction to the arrest of seagoing vessels flying the flag of a signatory of that convention. Pursuant to Article 10 of the Arrest Convention, the Netherlands has reserved the right not to apply the provisions of Article 1, subparagraphs (o) and (p) (disputes as to the title to or ownership of any vessel, and disputes between co-owners of any vessel as to the ownership or operation of the vessel, respectively). Instead, the Netherlands opted to apply Dutch law to such claims, and not to apply the sister-ship arrest provision of Article 3, subparagraph 1 of the Arrest Convention for claims set out in Article 1, subparagraph (q) of the Arrest Convention (the mortgage or hypothecation of any ship).

For arrests of seagoing vessels in respect of claims as per Article 1, subparagraphs (o)–(q) of the Arrest Convention on seagoing vessels flying the flag of a state that is not a party to the Arrest Convention, the Dutch national arrest regime of Book 3, Title 4 of the DCCP applies.

5.2 Maritime Liens

The concept of a general maritime lien does not exist under Dutch law. However, Dutch law does contain statutory privileged claim rights against the owners for certain claims in relation to the vessel. Such statutory privileges are set out in Book 8, Chapter II, Title 3, Section 3 of the DCC. Examples of such privileged claims are:

- claims for the costs of wreck removal;
- claims under a maritime employment contract;
- general average claims; and
- salvage claims.

The privilege aspect provides that (i) the claimant can enforce his or her claim by an arrest on the vessel even when the owner of the vessel is not the (contractual) debtor of the claim, and (ii) the claim has a higher rank than mortgages on the vessel and ordinary claims against the owner.

Foreign maritime liens can be accepted in the Dutch jurisdiction provided that they are valid under both the law that governs the legal relationship on which the lien is established and the law of the flag state. Therefore, such foreign maritime liens can, in principle, be enforced in the Dutch jurisdiction.

5.3 Liability in Personam for Owners or Demise Charterers

To enforce a claim on a vessel and thus to arrest the vessel, the owner of the vessel or the demise charterer must be liable in personam. This is only different in case of the situation described in **5.2 Maritime Liens**.

5.4 Unpaid Bunkers

As per **5.3 Liability in Personam for Owners or Demise Charterers**, a vessel can only be arrested if the owner or demise charterer thereof is the debtor of the claim. Therefore, a bunker supplier can only arrest a vessel for bunkers supplied to the vessel if he or she has sold the bunkers to the owner or to the demise charterer.

5.5 Arresting a Vessel

The Netherlands is regarded as an arrest-friendly jurisdiction. Under Dutch law, conservatory ship arrest is governed by general principles of property law and

civil procedure, supplemented by specific maritime provisions. For seagoing vessels, the 1952 Arrest Convention – where applicable – limits arrest to maritime claims as defined therein. This limitation does not apply to inland navigation vessels, which may in principle be arrested in respect of any type of claim.

There is in principle no material distinction between the arrest of an inland vessel and that of a seagoing vessel, save for the potential applicability of the 1952 Arrest Convention. Dutch law also recognises circumstances in which recourse may be taken against a vessel owned by a third party.

A conservatory ship arrest commences with an ex parte application to the interim relief judge, supported by documentary evidence substantiating the claim. Power of attorney and/or notarised and apostilled copies of documents are not required. Documents drafted in English, French, German or Dutch are not, as a matter of course, required to be translated. The court may, however, order a translation where this is necessary for the proper assessment of the matter.

The applicant must present all relevant facts fully and truthfully; failure to comply with this duty of full disclosure may result in the arrest being lifted. The court generally grants permission swiftly, including outside office hours and during weekends in urgent cases. The court retains the discretion to require counter-security in exceptional circumstances. The arresting party bears strict liability for any loss arising from a wrongful arrest.

5.6 Arresting Bunkers and Freight

A claimant may in principle arrest any and all assets of his or her debtor. Therefore, if freight is due to the debtor or bunkers are owned by the debtor, such assets can in principle be arrested. Obviously, the Arrest Convention does not then play a role.

It should be emphasised that, in principle, only assets of the debtor can be arrested. Therefore, cargo can only be arrested if the cargo is owned by the debtor. Cargo of a third-party merchant cannot be subject to arrest as security for the debts of a carrier. On the other hand, it is possible to arrest assets owned by the debtor that are (temporarily) held by a third party.

Freight payable but not yet transferred by a merchant to a debtor, and cargo owned by a debtor held by a logistic service provider, are obvious examples of this.

5.7 Sister-Ship Arrest

If the sister-ship is flying the flag of a state that is a party to the Arrest Convention, then the arrest is subject to Article 3 of the Arrest Convention (with the exception of arrests for claims as per Article 1, subparagraphs (o)–(q); see **5.1 Ship Arrests**). If the Arrest Convention is not applicable, the principle that a claimant may enforce his or her claim on all assets of his or her debtor provides that he or she may also arrest a sister-ship owned by his or her debtor.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, one can arrest, in principle, all assets of the debtor. For instance, one can arrest bunkers (if owned by the debtor). Alternatively, one can arrest the positive balance (if any) held by the debtor on a bank account. Further, one can arrest assets of the debtor held by third parties, including debts owed by those third parties to the debtor.

In short, the Dutch legal system provides for broad and accessible means of obtaining security for claims against debtors. It should also be noted that the legal threshold and costs for obtaining such security are relatively low compared to other jurisdictions.

5.9 Releasing an Arrested Vessel

Arrest may be lifted voluntarily upon payment of the claim or upon provision of adequate security, such as a guarantee on the basis of the NVB form (*Nederlandse Vereniging van Banken*) or the Rotterdam Guarantee Form 2008. Failing an agreement on the release of the vessel, the arrested party may seek judicial release, usually by way of summary proceedings. Grounds for release include procedural errors, a *prima facie* lack of a valid claim, unnecessary arrest due to sufficient security having been offered, breach of the duty of full disclosure or a balancing of interests.

Pursuant to Article 6:51 (2) of the DCC, “adequate security” means that the security offered must be of such a kind (nature and volume) that the debt claim and, if need be, the costs and interests are covered

sufficiently, and that the creditor is able to recover his or her debt claim from it effortlessly.

For these purposes, a recognised first-class Dutch banking institution, or an independent insurer or P&I club providing guarantees in the context of an insurance relationship, is deemed to be financially sound. Moreover, the creditor must be able to recover his or her debt claim from it effortlessly. A guarantee that can only be enforced outside Europe is, as a rule, not considered to meet this requirement.

5.10 Procedure for the Judicial Sale of Arrested Ships

The foreclosure of an arrested vessel is done via a court sale. The arrestor who has obtained an enforceable title against the owner of the vessel can file an application for the court sale. He or she will then have to advertise the court sale of the vessel in a number of newspapers published in the country in which the vessel is registered, and in a Dutch newspaper.

The arrestor will have to inform all other parties who have arrested the ship. The ship will then be sold during an auction overseen by the court. The proceeds of the foreclosure sale will first be applied to the costs of maintaining the vessel from the date of the arrest until the date of the court sale, and to the costs of the court sale proceedings. The in-principle remaining balance will be distributed between the creditors who have arrested the vessel pro rata to their claims. In this distribution, the statutory privileges and the ranking of the claims of the creditors will be taken into account.

5.11 Insolvency Laws Applied by Maritime Courts

The Dutch Insolvency code (*Faillissementswet* – FW) applies to Dutch insolvency proceedings. Moreover, in the Netherlands, Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings applies.

Pursuant to the Insolvency Code, the assets of the bankrupt person will be sold, and the proceeds will be used to settle the claims of his or her creditors based on their privileged rights and pro rata to the amounts of their claims. Via the aforementioned EU Regulation, the insolvency proceedings against debtors in other EU member states are recognised in the Netherlands.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

As stated in 5.1 Ship Arrests, the arrestor will bear strict liability for damages caused by a wrongful arrest. The arrest is deemed wrongful if the owner of the arrested asset is not the debtor of the claim for which the arrest was made and/or none of the claims for which the arrest was made will be awarded in the proceedings on the merits between the claimant and the debtor against whom the arrest was made.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

In the Netherlands, liability for the carriage of passengers by sea in the event of accidents is primarily governed by Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (“EU Regulation 392/2009”), which incorporates the 1974 Athens Convention as amended by the 2002 Protocol (the “Athens Convention”). The Regulation applies beyond purely international carriage and harmonises the passenger liability regime within the EU. In addition, Dutch domestic law applies, specifically Book 8 of the DCC, Title 5, Section 3.

Actions for passenger death, personal injury, or luggage loss or damage are determined by the passenger liability regime of the Athens Convention and are subject to a two-year limitation period. This period generally runs from disembarkation, with specific rules for death cases and luggage claims. While national law governs suspension and interruption, claims are subject to absolute long-stop periods of five years from disembarkation or three years from the claimant’s knowledge, whichever expires first. The limitation period may be extended only by a written agreement or declaration after the claim has arisen.

The Athens convention passenger liability regime determines the limitation of liabilities available to owners. The carrier’s liability for death or personal injury of a passenger is capped at 400,000 SDR per passenger per incident, including where compensation is

awarded as an annuity. States may set a national limit, provided it is not lower than this amount.

For luggage and vehicles, liability is limited to 2,250 SDR for cabin luggage per passenger, 12,700 SDR per vehicle including its contents and 3,375 SDR for other luggage per passenger. The parties may agree on limited deductibles within specified maximum amounts.

The carrier and passenger may expressly agree in writing on higher liability limits than those set out for personal injury, luggage and vehicles. Statutory interest and legal costs are excluded from the applicable liability caps. The carrier loses the right to limit liability if the damage resulted from an act or omission committed intentionally or recklessly with knowledge that such damage would probably result. The same loss of right to limitation applies to the carrier’s servants or agents if the damage was caused by their intentional or reckless conduct.

Notwithstanding the foregoing, Article 5 of EU Regulation 392/2009 clarifies that the application of the Athens Passenger Liability Regime does not prejudice the carrier’s right to limit liability under the LLMC 1976, as amended by the 1996 Protocol. Accordingly, passenger-specific liability limits apply alongside and do not exclude the possibility of global limitation of liability under the LLMC.

Liability for the carriage of passengers by inland waterways in the event of accidents is governed by Dutch domestic law, specifically Book 8 of the DCC, Title 10, Section 3 for inland navigation, supplemented by general rules of obligations and Dutch civil procedural law governing matters such as evidence, limitation, interim measures and security.

Lastly, EU Regulation No 1177/2010 governs the rights of passengers travelling by sea and by inland waterways. It focuses on passenger protection in cases of delay, cancellation and denied boarding, including rights to information, assistance and, in certain cases, compensation. The Regulation also contains specific provisions aimed at safeguarding the rights of persons with disabilities or reduced mobility and operates separately from the carrier’s liability regime for personal injury or death.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Duly agreed law and jurisdiction clauses are recognised by the Dutch courts. The criteria for choice of law clauses are set out in Rome I, Article 3 (Regulation (EU) 593/2009). The criteria for choice of jurisdiction clauses opting for a court in an EU member state are set out in Article 25, Brussels I bis Regulation (Regulation (EU) 1215/2012).

The criteria for choice of jurisdiction clauses opting for a court of a state that is party to the Convention of Lugano on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the “EVEX Convention”) are set out in Article 17 of the EVEX Convention.

The criteria for choice of jurisdiction clauses in a bill of lading opting for a court of a state that is not an EU member state nor a state that is party to the EVEX Convention are laid down in Article 8, subparagraph 2 of the DCCP and Article 629 of the DCCP. The criteria for such jurisdiction clause are as follows.

- The jurisdiction clause should be proven to exist and to have been agreed (Article 8, subparagraph 2 DCCP).
- Specifically for claims of a consignee under a bill of lading for damage to or loss of cargo to be delivered in the Netherlands, the jurisdiction clause should:
 - (a) provide for the exclusive jurisdiction of the court in the place of domicile/establishment of the carrier or of the consignee; and
 - (b) be explicitly laid down in writing and not merely in general conditions (Article 629 DCCP).

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In the Netherlands, a law and arbitration clause of a charterparty that has validly been incorporated into a bill of lading is recognised and enforced by the Dutch courts. The main criterion is that the clause is clear based on the text inserted in the bill of lading.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Arbitration Convention”) applies in the Netherlands. Book 4 of the DCCP applies to Dutch arbitration proceedings.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In the Dutch jurisdiction, one can arrest a vessel as security for the claim that is to be decided in proceedings on the merits in foreign arbitration or foreign court proceedings.

7.5 Domestic Arbitration Institutes

Parties often agree to declare the UNUM Arbitration rules applicable. [UNUM](#) is a Dutch arbitration and mediation institute that specialises in maritime, logistics and transport related matters.

Further, maritime matters are overseen by the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut* – NAI). The NAI does not specialise exclusively in maritime matters; it also handles matters of a more general commercial and civil nature. However, the NAI provides a professional and efficient way of conducting proceedings in maritime-related matters.

Additionally, the Netherlands Association for Forwarding and Logistics (*Nederlandse Organisatie voor Expeditie en Logistiek* – FENEX) has its own dispute resolution mechanism and arbitration regulations. FENEX arbitration mainly concerns matters of freight forwarding, transport and logistic services.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

The defendant will have to appear in the court proceedings and will have to raise an appeal contesting jurisdiction before submitting a defence on the merits of the dispute. In such a motion, the defendant argues that the Dutch court lacks jurisdiction to hear the claim. In that case, the court will first – in incidental proceedings – decide on its jurisdiction before making any decision on the merits of the case.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The Dutch fiscal system has an elective profit determination system for owners' companies called the tonnage tax (the "tonnage regime"). Instead of being taxed on the actual commercial profit, owners can opt to be taxed a lump sum based on the net tonnage of the ships operated by them and the number of operating days. The statutory basis is found in Articles 3.22–3.24 of *Wet inkomstenbelasting 2001* ("Wet IB 2001"). For many owners of vessels and fleets, this option results in a lower tax rate compared to both regular Dutch profit taxes and even some open-register states.

The owner must request application of this elective regime in the first year in which it generates profits from the operation or exploitation of ships intended for (among other things) international sea transport of goods or passengers. Once granted, the regime applies for a ten-year period before it must be renewed.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under Dutch law, non-performance of a shipping contract (eg, late delivery, non-arrival of a chartered vessel or slow loading/discharging) is assessed primarily under the doctrines of force majeure (*overmacht*), based on Article 6:75 of the DCC, and unforeseen circumstances (*onvoorziene omstandigheden*), based on Article 6:258 of the DCC. The common law concept of "frustration" does not exist as such in the Netherlands.

Non-performance qualifies as force majeure if it is not attributable to the debtor because it is not due to fault, or because it is not the debtor's responsibility under law, legal act (contract) or generally accepted standards. This is a strict test. Force majeure may only be accepted in exceptional circumstances. Increased costs, longer voyage times (eg, rerouting), congestion

at ports or shortages of crew, containers or capacity will generally not qualify as force majeure.

The doctrine of unforeseen circumstances is the closest Dutch equivalent to "frustration", but it does not automatically terminate the contract. Courts apply this doctrine very sparingly, especially in commercial shipping contracts. It may be considered where the contractual equilibrium is fundamentally disrupted, the risk clearly falls outside normal commercial risk allocation, or the event was genuinely unforeseeable at the time of contracting. Mere delay, increased costs or market disruption will rarely suffice.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

IMO 2020 limits the sulphur in fuel oil used on board ships operating outside designated emission control areas to 0.50% m/m (mass by mass). IMO 2020 is implemented through national legislation. In emission control areas, the regulations are even stricter, as they limit the sulphur content to 0.1%. These environmental areas currently cover Northern Europe, the Baltic Sea area, USA, Canada and parts of Asia. Vessel operators have three options to ensure their vessels comply with these regulations:

- place scrubbers on ships;
- switch to very-low-sulphur fuel oil (VLSFO); or
- switch to alternative fuels such as liquefied petroleum gas (LPG) or liquefied natural gas (LNG).

The ILT is the competent authority responsible for monitoring and enforcing compliance.

9.3 Trade Sanctions

The Netherlands implements sanctions adopted by the EU and the United Nations within the EU sanctions framework. EU decisions are transposed into Dutch law through sanctions orders issued pursuant to the Sanctions Act 1977, while EU regulations are directly applicable and prevail over conflicting national legislation.

Dutch sanctions apply to designated countries, individuals and entities, and are binding on all persons and entities operating in or from the Netherlands, including international companies with a Dutch presence. The

Sanctions Act 1977 has extraterritorial effect, extending to Dutch nationals acting abroad.

The Central Import and Export Office (CDIU) is responsible for licensing and authorising the import, export and transit of designated strategic goods and services, and issues the relevant licences.

The Customs Authority (*Team Precursoren, Oorsprong, Strategische goederen en Sanctiewetgeving* – Team POSS) organises customs controls and checks the compliance of companies to sanctions legislation.

9.4 International Conflict

The Houthi attacks in the Red Sea have led to large-scale rerouting of commercial vessels via the Cape of Good Hope, resulting in significantly longer transit times (an additional 10–14 days) and increased costs for shipping companies (due to higher fuel consumption and insurance premiums). These developments have caused disruptions to global supply chains, contributed to container shortages and created a risk of overcapacity once the original shipping routes are reopened.

In addition, the situation entails serious safety risks for seafarers, including fatal casualties and incidents of hijacking, as well as environmental damage caused by the sinking of vessels. Against this backdrop, the debate as to whether the deployment of armed security personnel on board Dutch-flagged vessels should be permitted continues to resurface periodically.

There is also growing concern about the presence of the shadow fleet, especially in the ports of Rotterdam and Flushing. The shadow fleet comprises aging and often uninsured vessels engaged in the transport of Russian crude oil and oil products to jurisdictions where sanctions do not apply. These vessels frequently change flag, name and ownership and deliberately obscure their movements, including by disabling automatic identification systems (AISs), thereby complicating monitoring and increasing safety risks. In addition to port operations, shadow vessels conduct high-risk ship-to-ship transfers at sea, where any incident may result in significant environmental harm.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

A declaratory judgment based on Article 3:302 of the DCC is a judicial decision that definitively and bindingly determines the legal relationship or the rights and obligations between parties, without ordering any specific performance (such as payment).

Declaratory proceedings are frequently used as a procedural tool to ensure that Dutch courts, as the first seized courts, have jurisdiction in an international context in which courts in multiple jurisdictions could potentially be seized. The use of declaratory actions is well known – and sometimes controversial – in cases relating to the carriage of goods by road, but they may also be employed in many other situations.

Parties often opt for declaratory proceedings because certain procedural and/or substantive rules under Dutch law, or the interpretation of a treaty, may be advantageous to the claimant. Declaratory proceedings can be instituted at short notice, which makes it a highly effective legal instrument.

NIGERIA



Law and Practice

Contributed by:

Adedoyin Afun and Michael Abilba
Bloomfield LP

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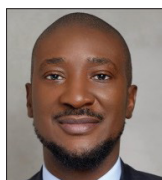
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Bloomfield LP is a specialist commercial and dispute resolution law firm that operates out of Lagos and other littoral Nigerian cities, including Port Harcourt and Warri. The firm offers comprehensive legal solutions to meet clients' expectations. Bloomfield's lawyers include leading shipping experts (in contentious and non-contentious as well as dry and wet shipping matters) who continue to influence the industry and shipping jurisprudence in Nigeria. The firm's clientele spans ship-owners, charterers, managers, shipyards, financiers, brokers, insurers (including P&I members

of the International Group of Protection and Indemnity Clubs (IGP&I), as well as fixed-premium marine insurers), oil-servicing companies, port and terminal operators/promoters, petroleum marketing and distribution companies and commodity trading houses. Bloomfield's lawyers have contributed to, or authored, leading texts within many key sectors, and are often called upon to attend Nigerian and international seminars/workshops and to serve as public and private-sector officeholders, advisers and consultants.

Authors



Adedoyin Afun is a partner at Bloomfield LP and a thought leader on Nigerian shipping laws and practice. He has authored articles and papers in both Nigerian and international publications. He has

advised extensively on issues in the integrated shipping/oil services sectors, including the structure/implementation of complex, multimillion-dollar transactions and projects, registration of ships, mortgages and other interests, port concessions, corporate restructuring, maritime claims/casualties, litigation, arbitration, and regulatory compliance. Adedoyin is a Fellow of the Chartered Institute of Arbitrator and a Fellow of the Business Recovery and Insolvency Practitioners Association of Nigeria. He was previously chairperson of the Maritime Committee Section on Business Law of the Nigerian Bar Association, publicity secretary of the Nigerian Maritime Law Association, and an officer at the Maritime and Transport Law Committee of the International Bar Association.



Michael Abiiba is a new partner at Bloomfield LP. He specialises in dispute resolution and shipping matters and has appeared in landmark proceedings before superior courts, and domestic and

international dispute resolution tribunals. He represents local and international clients, government departments and non-governmental organisations. Michael played a key role in the firm's successful representation of Sea Trucks Group Limited (in liquidation) in relation to the restructuring of its operations, including the repossession of vessels chartered in Nigeria and the amicable resolution of protracted litigation before the superior and appellate courts in Nigeria. This matter remains the largest Nigerian shipping and oil services dispute to date. Michael is a Fellow of the Chartered Institute of Arbitrators and a member of the Nigerian Maritime Law Association, among other professional affiliations.

Bloomfield LP

15, Agodogba Avenue
Parkview
Ikoyi
Lagos
Nigeria

Tel: +234 706 4379 421
Web: www.bloomfield-law.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic laws establishing the authority of the admiralty courts in Nigeria are the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “Constitution”), the Admiralty Jurisdiction Act (AJA) and the Federal High Court (FHC) Act, which vests the FHC with exclusive jurisdiction over first-instance maritime and shipping matters in Nigeria.

All appeals from the FHC (including shipping disputes) go to the Court of Appeal of Nigeria, and, thereafter, to the Supreme Court of Nigeria. The common maritime claims in Nigeria are proprietary and general maritime claims as defined by the AJA. Proprietary maritime claims relate to the title, ownership, possession, or mortgage of a ship, a share in a ship or its freight, and the enforcement of a judicial decision made against a ship. General maritime claims include claims for:

- damage done or received by a ship;
- crew wages;
- goods, materials, or services supplied or to be supplied to a ship for its operation or maintenance;
- loss of or damage to goods carried by a ship; and
- claims for the enforcement of, or claims arising out of, arbitral awards.

1.2 Port State Control

The Memorandum of Understanding on Port State Control for West and Central African Region applies to Nigeria, and the Nigerian Maritime Administration and Safety Agency (NIMASA) is Nigeria’s port state control agency.

The NIMASA’s general port state control powers and authorities, pursuant to the NIMASA Act, the Merchant Shipping Act 2007 (MSA) (which domesticates several maritime conventions, such as the United Nations Convention on the Law of the Sea (UNCLOS)) and other relevant legislation, include powers to:

- board, inspect and search any vessel and to detain any vessel within the Nigerian maritime zone;

- expel any vessel which may endanger the safety of the Nigerian maritime zone; and
- enter ports, terminals and vessels to investigate matters related to maritime labour, ship safety and security.

In relation to marine casualties, the NIMASA is authorised and empowered to:

- provide search-and-rescue services;
- receive and remove wrecks;
- make enquiries as to shipwrecks, other casualties affecting ships, or as to charges of incompetence or misconduct on the part of seafarers in relation to those casualties; and
- issue regulations governing the carriage of harmful substances by sea.

1.3 Domestic Legislation Applicable to Ship Registration

The registration of vessels under the Nigerian flag is primarily governed by the MSA. Other relevant legislation includes the NIMASA Act and the Coastal and Inland Shipping (Cabotage) Act 2003 (the “Cabotage Act”).

The Nigerian Ship Registration Office (NSRO) (domiciled within NIMASA and under the control of the Registrar of Ships) is responsible for the domestic registration of vessels in Nigeria.

1.4 Requirements for Ownership of Vessels

Under Section 18 (1) of the MSA, the registration of vessels under the Nigerian flag is limited to vessels wholly owned by (i) Nigerian citizens, (ii) bodies corporate and partnerships established under and subject to Nigerian law and having their principal place of business in Nigeria, and (iii) such other persons as the Minister of Transportation (the “Minister”) may, by regulation, prescribe.

Notwithstanding, Section 19 (6)–(9) of the MSA permits a foreign-owned vessel, which is bareboat-chartered for more than one year to a Nigerian citizen or a Nigerian body corporate or partnership, to be registered under the Nigerian flag as a Nigerian ship for the duration of the bareboat charter. This is, however, subject to the suspension of the foreign flag of the

foreign-owned vessel in favour of the Nigerian flag registration for the duration of the bareboat charter.

Where a foreign-owned and bareboat-chartered vessel is to engage in cabotage operations within Nigerian waters, it is required to be registered under the Special Register for Cabotage (Bareboat-Chartered Vessel). Further to the Coastal and Inland Shipping Cabotage (Bareboat Registration) Regulations 2006, eligibility for the Special Register for Cabotage (Bareboat-Chartered Vessel) requires (i) the vessel to be bareboat-chartered to Nigerian citizens and to be under the full control and management of Nigerian citizens or a company, wholly and beneficially owned by Nigerian citizens, where all the shares in the company are held by Nigerian citizens, free from any trust or obligation in favour of any person not a citizen of Nigeria, and (ii) the bareboat-charter period must be for at least five years.

By virtue of Section 34 (1) of the NIMASA Act, small vessels, including fishing vessels, which are wholly or partly owned by Nigerian citizens and foreigners who are resident in Nigeria, are registrable under the Nigerian flag.

Whilst the MSA requires the Registrar of Ships to keep a register for ships that are under construction in Nigeria, only a fully constructed vessel can be registered under the Nigerian flag as a Nigerian ship.

1.5 Temporary Registration of Vessels

The MSA permits the issuance of Provisional Certificates of Registry for provisional registration of vessels under the Nigerian flag. Accordingly, vessels that are (i) located in a foreign country and owned by persons eligible to register a vessel under the Nigerian flag, and (ii) to be registered under the Nigerian flag, may be issued Provisional Certificates of Registry to sail the vessels to Nigeria. A Provisional Certificate of Registry is valid for six months or until the vessel's arrival at a Nigerian port, whichever is earlier.

In other circumstances, Provisional Certificates of Registry are issued to vessels that are within Nigerian waters and owned by persons eligible to register a vessel under the Nigerian flag, but who have yet to

fulfil the requirements for permanent registration and the issuance of a Certificate of Nigerian Registry.

Nigerian law does not permit dual registration of vessels and a vessel can fly the flag of only one country at a time. As such, where a vessel is registered under a foreign flag, (i) a deletion certificate, from the foreign flag, is required for temporary or permanent registration under the Nigerian flag, or (ii) a suspension certificate is required, from the foreign flag, for the duration of the bareboat charter, for the registration of a foreign bareboat-chartered vessel under the Nigerian flag.

1.6 Registration of Mortgages

Nigerian Mortgages

The Registrar of Ships is responsible for the registration of mortgages on Nigerian-registered ships. Where the mortgagor is a Nigerian-registered company, the ship mortgage must be registered with the Corporate Affairs Commission (CAC).

For the registration of a ship mortgage, the required documents include:

- the NSRO's consent to a mortgage;
- a formal letter of application by the ship-owner or their authorised representative;
- a board resolution of the owners, authorising the mortgage (corporate owners only);
- a duly signed and sealed NIMASA mortgage form, with stamp duty paid;
- an executed deed of mortgage, duly stamped; and
- a copy of a Certificate of Registration of Mortgage, as issued by the CAC.

For registration of a ship mortgage with the CAC, the required documents include:

- a formal letter of application by the ship-owner or their authorised representative;
- an executed deed of mortgage, duly stamped;
- a duly signed and sealed statutory Form CAC 9 (Particulars of Charge), with stamp duty paid;
- a board resolution of the owners, authorising the ship mortgage; and
- evidence of payment to the CAC of the required statutory fees.

Foreign Mortgages

A duly registered foreign mortgage on a foreign-owned and bareboat-chartered vessel (duly registered under the Nigerian flag) may be notated at the NSRO for the duration of the bareboat charter to a Nigerian citizen or a Nigerian body corporate or partnership.

For the notation of a registered foreign mortgage on a foreign-owned and bareboat-chartered vessel (that is duly registered under the Nigerian flag) with the NSRO, the required documents include:

- a formal letter of application by the mortgagee or its authorised representative;
- an executed copy of the foreign law-governed deed of mortgage;
- a copy of the transcript of registry (or any other similar document) confirming the registration of the foreign law-governed deed of mortgage with the relevant foreign ship registry; and
- evidence of payment to the NIMASA of the prescribed fees for foreign mortgage notation.

1.7 Ship Ownership and Mortgages Registry

In Nigeria, the ship-ownership and mortgage registries are not available to the public.

A person who is not the owner of a vessel must apply formally to the NSRO to conduct a search on the status of registration of a ship or mortgage over a ship.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

The key terms and operative provisions of a typical ship loan financing agreement in Nigeria include the following.

- Purpose: defines the use of the facility and the specific project/transaction it intends to fund.
- Conditions precedent: specifies the documents, approvals and requirements to be satisfied before the lender will permit the borrower to drawdown on the facility.
- Conditions subsequent: sets out the documents, approvals and requirements (including timeline)

that the borrower must fulfil after the initial draw-down of the facility.

- Utilisation: outlines the process for submitting drawdown requests and the terms on which the lender will disburse the facility.
- Payment terms: provides the framework for mandatory and voluntary prepayments, interest, fees, taxes, etc.
- Security: sets out the securities to be provided by the borrower to secure its obligation under the facility documents.
- Indemnities: obliges the borrower to reimburse the lender for defined losses/costs/liabilities arising from certain events relating to the financing arrangement.
- Undertakings: sets out the covenants that the borrower agrees to be bound by for the tenor of the facility – environmental, financial, information, sanctions and AML, vessel facility tenor.
- Representations and warranties: factual and legal assurances given by the borrower, which form the basis on which the lender advances the loan.
- Insurances: specifies the insurance cover for the vessel.
- Event of default: identifies the circumstances that entitle the lender to accelerate the loan, enforce its security.
- Governing law and dispute resolution: the facility agreement typically confirms Nigerian law and Nigerian courts as the governing law and primary forum for resolving disputes arising under the transaction. It is also common for the lender to retain an exclusive right to refer disputes to arbitration, notwithstanding the court jurisdiction provisions, with the terms of the arbitration agreement expressly set out therein.

The key terms and operative provisions of a typical ship mortgage in Nigeria include the following.

- Covenant to pay: the mortgagor undertakes to pay all the secured obligations to the lender (as mortgagee) (free of any taxes and deductions) in accordance with the terms of the facility agreement and the mortgage.
- Legal mortgage: establishes a registered legal mortgage over the vessel in favour of the mortgagee as security for the secured obligations. It will

also state the timeline when the mortgage is to be duly registered with the relevant authorities.

- **Undertakings:** sets out the covenants that the mortgagor agrees to be bound by for the tenor of the mortgage – insurances, charters, security, financial, operational and environmental.
- **Assignment of earnings, insurance, and requisition compensation:** this covers the assignment of the vessel's earnings, insurance, and requisition compensation to the mortgagee as additional security.
- **Mortgagee's power to protect security:** allows the mortgagee to take necessary steps to safeguard the security, including remedying the mortgagor's failures.
- **Event of default:** identifies the circumstances that entitle the mortgagee to exercise its enforcement rights under the mortgage.
- **Mortgagee's power of enforcement:** sets out the mortgagee's rights and remedies upon the occurrence of an event of default.
- **Attorney:** appoints the mortgagee as attorney of the mortgagor to act in relation to the vessel, usually triggered by a listed event of default.
- **Proceeds of sale:** sets out the order in which the proceeds from the mortgage (be it via a sale of the vessel or the vessel's insurance proceeds) are to be applied.
- **Governing law and dispute resolution:** the ship mortgage typically confirms Nigerian law and Nigerian courts as the governing law and primary forum for resolving disputes arising under the transaction. The mortgage also recognises that disputes may be commenced in the courts of any jurisdiction (other than Nigeria) where the vessel may be found. It is also common for the mortgagee to retain an exclusive right to refer disputes to arbitration, notwithstanding the court jurisdiction provisions, with the terms of the arbitration agreement expressly set out therein.

The most common ship loan financing transactions are in relation to the purchase and lease of second-hand vessels, building/construction of new vessels and working capital. These transactions are usually funded through loans from banks and other financial institutions, as well as by shareholders and intercompany/related entities.

Security packages other than mortgages include:

- personal guarantees – from the shareholder(s) and/or director(s) of the borrower;
- corporate guarantees from a guarantor, usually a related company;
- assignment of the earnings of the ship;
- assignment of insurances of the ship;
- assignment of requisition compensation;
- deed of account(s) charge; and
- charge other assets of the borrower/guarantor.

2.2 Ship Leasing

Ship leasing transactions are increasing in Nigeria and the growth is most evident in the oil and gas value chain. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) reported that Nigeria's rig count rose from 8 in 2021 to 69 in 2025, representing a 762.5% increase. This is significant for ship leasing as each rig drives a support spread of chartered tonnage, notably Platform Supply Vessels (PSVs), Anchor Handling Tug Supply (AHTS) vessels, crew boats and barges for exploration, production and evacuation support. Additionally, according to the Equipment Leasing Association of Nigeria (ELAN) 2025 Outlook Report, the oil and gas sector held 25% of leases worth NGN1.1 trillion. The report also noted that operating leases remain dominant in the oil and gas and its supporting maritime sectors. Overall, the surge in rig activity and oil and gas operations in Nigeria has translated into demand for leased vessels, as oil and gas operators seek cost-efficient and fit-for-purpose maritime assets to support their logistics.

No published or industry-wide research tracks shifts in vessel financing patterns in Nigeria. However, the authors' experience in the space suggests that traditional bank lending continues to dominate vessel financing activity in the Nigerian market. Some growth has been observed in alternative credit arrangements, particularly shipyard/supplier credit financing and bareboat charter party with an obligation to purchase. Private equity participation and the use of Chinese leasing houses exist, but they are mainly de minimis.

In Nigeria, there are no differences in the treatment/enforcement of ship mortgages and lease defaults by courts or arbitral tribunals.

Vessel sale-and-leaseback transactions exist in Nigeria but are not common.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Pollution

Pursuant to Section 12 of the Constitution, every Convention is required to be domesticated by the National Assembly before it can have force of law in Nigeria. Section 335 (1)(i) of the MSA domesticated some international conventions that govern the liability of owners and interested parties for pollution by vessels, including:

- the International Convention for the Prevention of Pollution from Ships, 1973/1978 and the annexes thereto;
- the International Convention on Civil Liability for Oil Pollution Damage 1992; and
- the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC) and the 1996 Protocol thereto.

Other Nigerian laws relating to pollution include:

- the Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria (LFN), 2004;
- the National Environmental Standards and Regulations Enforcement Agency Act, 2007;
- the NIMASA Act;
- the Anti-Fouling Systems Regulations 2012; and
- the Prevention of Oil Pollution Regulations 2012.

Wreck Removal

The MSA is the primary domestic legislation governing the liability of owners and interested parties for wreck removal in Nigeria. Section 364 of the MSA provides that where any wreck is determined to constitute a hazard, the Receiver of Wreck shall ensure that all reasonable steps are taken to mark the wreck. Section 365 of the MSA then places the responsibility for the removal of any ship that becomes a wreck on her owners.

Nigeria is a signatory to the Nairobi International Convention on the Removal of Wrecks, 2007 (the "Nairobi Convention"). However, the Nairobi Convention does not have the force of law in Nigeria, as the National Assembly has yet to enact legislation to domesticate it, in accordance with the Constitution.

3.2 International Conventions: Collision and Salvage

The MSA has domesticated the following international conventions, which will impact the liability of owners and interested parties in the event of collision and salvage:

- International Convention for the Safety of Life at Sea (SOLAS);
- 1988 Protocol relating to SOLAS and Annexes I to V thereto;
- Search and Rescue Convention, 1979; and
- International Convention on Salvage, 1989.

The MSA, in Sections 337 to 342, provides for liability in collision cases. In particular, Section 344 provides that the damages recoverable by the claimant in a collision case shall be the restoration of the claimant back to the same position as it would have been had the collision not occurred. In relation to salvage, Sections 386 to 404 of the MSA provide for the remuneration of a salvor and protection of a salvor's claim.

Other Nigerian laws on collision and salvage include:

- the Merchant Shipping (Collision) Rules, 2010, modelled after the Convention on International Regulations for Preventing Collisions at Sea, 1972 (COLREGs);
- the Merchant Shipping (Wrecks and Salvage) Rules, 2010;
- the AJA;
- the Admiralty Jurisdiction Procedure Rules, 2023 (AJPR);
- the Cabotage Act; and
- the NIMASA Act.

3.3 Convention on Limitation of Liability for Maritime Claims

The LLMC (and its 1996 Protocol) is applicable in Nigeria. Pursuant to Section 335 (1)(f) of the MSA,

parties who may limit their liability for maritime claims, under the MSA, are ship-owners (including the owners, charterers, managers of a ship), salvors and their insurers.

Section 352 of the MSA provides for claims to be subject to limitation of liability. These claims include:

- loss of life or personal injury or loss of or damage to property, occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- removal, destruction or rendering harmless of the cargo of the ship; and
- floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof.

The increased liability for maritime claims, as provided in the amendment to the 1996 Protocol, which entered into force on 8 June 2015, is inapplicable in Nigeria because Section 357 of the MSA expressly states the limits under the 1996 Protocol.

3.4 Vienna Convention on the Law of Treaties

Although Nigeria ratified the Vienna Convention on the Law of Treaties (VCLT) in 1969, making it binding at the international level, it is not enforceable in Nigeria as it is yet to be made a law of the National Assembly as required by Section 12 of the Constitution.

However, this does not mean the VCLT is irrelevant. Most of its interpretive rules are widely accepted as codifications of customary international law, which automatically form part of Nigerian common law unless displaced by statute. On this basis, Nigerian courts applying Nigerian law have cited and relied on VCLT provisions as persuasive interpretive tools. In the case of *Abacha v Fawehinmi* (2000) 6 NWLR 228, the Supreme Court demonstrated judicial willingness to invoke the VCLT when clarifying the scope of Nigeria's international obligations.

Thus, Nigerian courts interpreting the LLMC, which is part of Nigerian law, may use VCLT principles to

ensure conformity between domestic implementation and the Convention's international intent. This approach aligns conceptually with the UK Supreme Court's reasoning in *MSC Flaminia*, where Articles 31 to 33 of the VCLT were applied to resolve ambiguity under the LLMC regarding charterer rights.

Nonetheless, the VCLT's use in Nigeria remains persuasive rather than mandatory. Nigerian courts remain bound, first and foremost, by the text of the domesticated statutes and, where a conflict arises, Nigerian judges tend to prioritise the enacted legislation over external interpretive doctrines.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Where an eligible party anticipates that a claim is likely to be made against them by any other party under any maritime law, including the MSA, they may apply to the FHC to determine whether their liability(ies) may be limited under law and the extent of the liability.

The AJPR provides that a limitation of liability proceeding shall be commenced by filing an originating summons alongside an affidavit, copies of all the exhibits to be relied upon, and a written address at the registry of the FHC. Such an action is commenced as an admiralty action in personam against at least one of the (possible) claimants in a maritime claim (as a defendant), who must be served before the case may be set down for hearing or determination given in default of appearance.

After determination of the applicant's entitlement to a limitation of its liability, the court may order (i) the constitution of a limitation fund for the payment of claims in respect of which the applicant is entitled to limit their liability, and (ii) advertisement of its determination to allow anyone with a maritime claim against the vessel or any other parties previously named to apply to set aside, vary the court's determination or lodge its interest.

The order for the constitution of the limitation fund would also specify the method of calculating the fund, usually based on the vessel's tonnage and the applicable limit prescribed in the MSA.

It is not required to provide a deposit in relation to a constituted limitation fund.

3.6 Seafarers' Safety and Owners' Liability

Nigeria has ratified the Maritime Labour Convention 2006 (MLC) but is yet to domesticate it as required by the Constitution. Notwithstanding, the NIMASA, by requesting evidence of compliance with the MLC financial security provisions before issuing certain operational permits to vessels, has invariably started to implement the provisions of the MLC.

Other international conventions on seafarers' rights have been implemented, pursuant to Section 215 of the MSA. These include:

- rights with regard to their employment contracts, including wages, leave benefits and discharge from service; and
- rights regarding general welfare, health, and accommodation.

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 has the force of law in Nigeria via the rule-making authority of the Minister (Section 434 of the MSA) by way of subsidiary legislation in the Merchant Shipping (Medical Examination of Seafarers) Regulations 2001 and the Merchant Shipping (Safe Manning, Hours of Watchkeeping) Regulations 2001. Regulations 3 and 4 of the Safe Manning, Hours of Watchkeeping Regulations place duties on masters of Nigerian ships to ensure that a seafarer on board a ship does not work more hours than is safe in relation to the safety of the ship and performance of the seafarer's duties. Section 5 places the duty on both masters and seafarers, insofar as is reasonably practicable, to ensure that they are properly rested before commencing duty on a ship and that they obtain adequate rest during periods when off duty.

The ILO Convention, 1932 on Protection Against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932) and the Placing of Seamen Convention, 1920 are the other international conventions on seafarers' rights that have been domesticated by the MSA.

The AJA also provides seafarers and masters with the right (as general maritime claims and maritime liens) to bring an action against a shipowner for unpaid wages. However, the Court of Appeal, per its 2020 decision in the MT SAM PURPOSE, states that pursuant to Section 254 (c)(1) of the Constitution, the National Industrial Court is the appropriate court to deal with an action for unpaid crew wages. The matter is currently pending on appeal before the Supreme Court.

4. Cargo Claims

4.1 Bills of Lading

The conventions regarding bills of lading which are enforceable in Nigeria are:

- the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1924 (the "Hague Rules"), domesticated via the Carriage of Goods by Sea Act, Cap C2, LFN 2004 (COGSA); and
- the United Nations Convention on the Carriage of Goods by Sea (the "Hamburg Rules"), domesticated via the United Nations Convention on Carriage of Goods by Sea (Ratification and Enforcement) Act 2005).

The Hague Rules and Hamburg Rules are applicable in Nigeria, as the National Assembly failed to repeal/denounce the Hague Rules, as required by Article 31 of the Hamburg Rules.

While Nigeria is not a party to the Hague-Visby Rules, it has ratified, but is yet to domesticate, the Rotterdam Rules; hence, it does not have force of law in Nigeria.

4.2 Title to Sue on a Bill of Lading

Generally, only a party to a contract contained in a bill of lading can sue on it, that is, the carrier, shipper (consignor), consignee or the endorsee on the bill of lading.

Unless endorsed as an endorsee, a notifying party is not a party to a contract contained in a bill of lading and lacks the locus standi to sue or institute an action on the bill of lading.

Notwithstanding, Nigerian law recognises some notable exceptions to these rules, including the *Brandt v Liverpool* doctrine, whereby the holder of the bill of lading can maintain an action at common law, where the court is able to infer or imply a contract on the bill of lading terms between the holder and the carrier, in circumstances where the holder:

- takes delivery of the goods;
- pays freight or demurrage; or
- presents the bill of lading.

Nigeria recognises the assignment of the right to sue, particularly in the context of insurance claims – subrogation. In the context of a bill of lading, the right to sue for breach of contract or damages can be assigned to a third party, such as the holder of the bill or the insurer, provided that the subrogation is properly executed.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Pursuant to Article 3 Rule 6 of the Hague Rules, in a claim for liabilities against cargo damage, written notice of loss or damage to cargo must be made to the carrier at the port of discharge either before or at the time the person entitled to delivery of the goods takes custody of the items. The notice must be delivered within three days if the loss is not immediately evident, otherwise, this amounts to conclusive proof that the carrier delivered the items according to the bill of lading.

Pursuant to Article 5 of the Hamburg Rules, a ship-owner who is the contractual or actual carrier is liable for loss resulting from damage to the goods, if the occurrence that caused the loss, damage or delay took place while the goods were in its charge, unless it can be proven that the ship-owner, its servants and agents took all measures that could reasonably be required to avoid the occurrence and the consequent damage to the goods. In the case of damage caused by fire, the ship-owner who is the contractual or actual carrier will be liable if it is proven that the fire arose from the fault or neglect of the ship-owner, its servants or its agents.

The provisions of the Hamburg Rules are not applicable to charterparties. However, where a bill of lading

is issued pursuant to a charterparty, the provisions of the Hamburg Rules shall apply to that bill of lading if it governs the relations between the carrier and the holder of the bill of lading who is not the charterer.

Pursuant to Article 6 of the Hamburg Rules, the liability of the carrier for loss resulting from damage to goods is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher. According to Article 26 of the Hamburg Rules, the unit of account is the Special Drawing Right, as defined by the International Monetary Fund converted into the Nigerian naira at the date of the judgment, unless otherwise agreed by the parties.

However, Section 354 of the MSA states that the limitation of liability will not apply where it is proved that the loss or damage resulted from the ship-owner's, or its servants' or agents', personal act or omission or the act or omission of their servants or agents acting within the scope of their employment, committed with the intent to cause that loss or damage or recklessly and with knowledge that such a loss would probably result.

There will be no difference in the liability of the ship-owner for cargo damage where it is the actual carrier or the contractual carrier. Article 2 of the Hamburg Rules states that the basis of liability and limitation of liability apply to both the contractual carrier and the actual carrier. Article 10 of the Hamburg Rules further states that, where the contractual carrier engages an actual carrier, the contractual carrier remains liable.

4.4 Misdeclaration of Cargo

The carrier may maintain a claim against the shipper for misdeclaration of dangerous goods. Section 322 (2) of the MSA requires a shipper to mark dangerous goods distinctly, with details of the nature of the goods on the outside of the outermost package containing the goods, and the shipper must first give written notice of the nature of the goods, and of the name and address of the sender, to the master or owner of the ship.

Additionally, Article 13 of the Hamburg Rules provides that the shipper must inform the carrier of the dangerous character of the goods and, if necessary, of the precautions to be taken and, where the shipper fails to do so, the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of those goods; the goods may at any time be unloaded and destroyed without payment of compensation. Article 17 of the Hamburg Rules also provides that a shipper is liable to indemnify the carrier against the loss resulting from inaccuracies stated in the bill of lading.

Article IV (6) of the COGSA also states that the shipper shall be liable to the carrier for any damages and expenses directly or indirectly arising out of the shipment of inflammable, explosive or dangerous goods, where the shipper fails to notify the carrier of the nature of the goods.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Noting that the Hamburg Rules and Hague Rules are in force in Nigeria, the limitation periods indicated in each of these conventions are applicable in Nigeria.

Under the Hague Rules, the time bar for the institution of claims for loss of or damage to goods is one year from the date on which the goods were delivered or, in the case of lost goods, from the date the goods should have been delivered, provided that a written notice of loss or damage was given to the carrier or their agent at the port of discharge before or at the time of the delivery of the goods, or, in the case of lost goods, within three days.

Under the Hamburg Rules, the time bar is two years from the date the goods were delivered or from the last day on which the goods should have been delivered. Notwithstanding, the person against whom the claim is made can extend the limitation period by making a declaration in writing.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

There is no international convention in force in relation to the arrest of vessels in Nigeria.

The AJA, MSA and AJPR are the domestic legislation covering ship arrests in Nigeria.

5.2 Maritime Liens

Section 5 (3) of the AJA defines maritime liens as a lien for:

- salvage;
- damage done by a ship;
- the wages of the master or a member of the crew of a ship; or
- the master's disbursements.

In addition to these definitions, Section 67 of the MSA (as inspired by the Maritime Liens and Mortgages Convention, 1993, to which Nigeria acceded but which it has yet to domesticate in accordance with the Constitution) expanded the definition of maritime liens to include the following claims:

- loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the relevant ship;
- salvage, wreck removal and contribution in general average; or
- ports, canal and other waterways, dues and pilotage dues.

Thus, Nigeria recognises maritime lien for indemnities for injuries to crew. Also, the AJA distinguishes between maritime claims (ie, proprietary and general maritime claims, as explained at **1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts**) and maritime liens. Proprietary maritime claims and maritime liens are vested with in rem rights against a vessel.

Notwithstanding, a vessel may be arrested in relation to a general maritime claim where the claim arises in connection with a ship and the person who would be liable on the claim in an action in personam (the "Relevant Person") is, at the time the action is filed: (i)

the owner, in respect of all the shares in the offending ship, or its bareboat charterer; or (ii) the owner, in respect of all the shares, in any other ship (sister-ship).

5.3 Liability in Personam for Owners or Demise Charterers

In relation to a proprietary maritime claim/maritime lien, it is not required for the owner or demise charterer to be liable in personam before a vessel can be arrested.

For a general maritime claim, the Relevant Person (ie, the owner/demise charterer) needs to be liable in personam before a vessel or its sister vessel can be arrested.

5.4 Unpaid Bunkers

Pursuant to Section 2 (3)(k) of the AJA, a claim for unpaid bunkers amounts to a general maritime claim for goods, materials or services supplied to a ship for its operation and maintenance. As such, the supplied vessel may be arrested if the Relevant Person wholly owns all the shares in the supplied vessel, or is the demised charterer of the supplied vessel, at the time the arrest is filed. Also, any other vessel, which is wholly owned by the Relevant Person (in respect of all the shares) at the time the arrest is filed, may be arrested in relation to the claim for unpaid bunkers supplied to another vessel.

Where the Relevant Person (who ordered the unpaid bunkers) is the time-charterer, the bunker supplier would be unable to arrest the supplied vessel pursuant to the AJA.

Notwithstanding, it is possible to arrest a vessel for unpaid bunker claims where (i) the governing law for the bunkers supply contract creates an in rem right against the supplied vessel (in the form of a maritime lien), or (ii) the terms and conditions of the bunkers supply contract create an in rem right against the supplied vessel.

Neither case law nor any legislation makes any distinction between a contractual supplier or the actual supplier of unpaid bunkers for an in rem right to arrest a vessel.

5.5 Arresting a Vessel

Further to the AJPR and the Federal High Court (Civil Procedure) Rules 2019, an application for the arrest of a vessel is brought via an ex parte application (if the vessel is within Nigerian territorial waters or is expected to arrive there within three days) disclosing a strong prima facie case for the arrest order. This application must be supported by:

- an affidavit and an affidavit of urgency deposed to by the applicant, its counsel or its agent;
- an undertaking to indemnify the ship against wrongful arrest; and
- an undertaking to indemnify the Admiralty Marshal in respect of any expenses incurred in effecting the arrest.

Such applications can be filed electronically. The applicant is also required to pay, fortnightly, the Admiralty Marshal's minimum cost of NGN100,000 for maintaining the arrested vessel.

Original copies of the supporting documents are required. However, where an original document has been lost or is unavailable, a notarised copy of the document will suffice. If the document provided is a public document within the meaning of Section 102 of the Evidence Act (Amendment) Act 2023, a certificate written at the foot of that copy, by the relevant public officer, declaring that it is a certified true copy of the document, is required in certification of that document.

Documents prepared in a language other than English language are required to be translated into English language.

The FHC does not require a security deposit from the arresting party. However, Order 13, AJPR provides that the court may order security for costs, on the application of the arrested party, where the sum claimed is more than NGN10 million or its foreign currency equivalent, or where the arresting party has no assets in Nigeria. The security for cost may be in the form of a cash deposit into court, a letter of undertaking (LOU) from a member of the International Group of Protection and Indemnity Clubs (IGP&I), or a guarantee from a Nigerian bank or insurance company.

If the ordered security for costs is not provided within the set timeline, the vessel will be released from arrest.

5.6 Arresting Bunkers and Freight

Claims for bunkers and freight are maritime claims under the AJA. It is therefore possible to arrest bunkers and freights in Nigeria. See **1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts** and **5.4 Unpaid Bunkers**.

5.7 Sister-Ship Arrest

Section 5 (4) of the AJA permits sister-ship arrests, provided that the Relevant Person is, at the time the action is filed, the owner, in respect of all the shares of the sister-ship.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, another possibility of obtaining attachment orders is through an application for a Mareva injunction, which is an interim attachment of assets equivalent to the value of the claimant's claim. Nigerian courts will only grant the injunction where the claimant has a justifiable cause of action against the defendant and there is a real risk of the defendant removing their assets from jurisdiction.

5.9 Releasing an Arrested Vessel

Pursuant to the AJPR, an arrested vessel may be released upon an application by a party under the following circumstances:

- an amount equal to the amount claimed or the value of the ship has been paid into court;
- the defendant provides security in an amount equal to the amount claimed in the suit, or the value of the vessel, whichever is the lesser;
- the arresting party consents to the release in writing;
- the suit is discontinued/dismissed and there is no caveat against the release of the vessel; and
- the cargo on board the ship is under arrest, but the ship is not.

An LOU from a member of the IGP&I would be acceptable for the release of an arrested vessel. A bank guarantee from a foreign bank would not be accepted by the FHC, as it is not one of the forms of security pre-

scribed by the AJPR. Notwithstanding, the FHC may accept a foreign bank guarantee for the release of an arrested vessel where the arresting party is willing to accept such a guarantee.

5.10 Procedure for the Judicial Sale of Arrested Ships

Where a vessel has been under arrest, and her owners have failed to provide security for her release within 60 days from the date of arrest, the court may, on the application of the arrestor or any interested party, order that the vessel be valued and sold by the Admiralty Marshal and the proceeds of the sale placed in an interest-yielding fixed-deposit account in the name of the Admiralty Marshal, pending further orders from the court.

Notwithstanding, the court may also, (i) on the application of the arrestor or any interested party, or (ii) on its own volition, but with notice to the relevant parties and subject to a valuation, order the sale of the arrested vessel where it is deteriorating in value.

Whilst the Admiralty Marshal has custody from the arrest of the vessel, the arrestor(s) are liable for the cost of maintaining the vessel until she is released or sold by the Admiralty Marshal. An application by the arrestor or any interested party for an order for the valuation and sale of the arrested vessel constitutes an undertaking by that party to pay, on demand to the Admiralty Marshal, the cost of complying with the order. The Admiralty Marshall is also entitled to deduct 2% from the proceeds of the sale of the ship to cover their costs for the valuation and sale of the vessel.

Unless ordered by the court, the judicial sale of an arrested vessel will be undertaken by a public auction conducted 21 days after the Admiralty Marshal places an advertisement to that effect in two national daily newspapers. Where the parties agree to the sale of the arrested vessel by private treaty, this may be ordered by the court.

After the sale, the Admiralty Marshal will file a return of sale, as well as an account of sale and the vouchers of sale. The Admiralty Marshal will also pay the proceeds of sale to the court.

The priority of claims against arrested ships or property are laid down in the AJPR as follows:

- statutory/court charges and expenses, such as the Admiralty Marshall's expenses in connection with the ship or property;
- salvage, wreck removal and contribution in general average;
- wages and other sums due to the master, officer, and other members of the ship's complement in respect of their employment on the ship;
- disbursements of the master on account of the ship;
- loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- ports, canal and other waterways, dues and pilotage dues;
- possessory liens (repairer's lien – where the ship is still in possession);
- mortgages – priority of mortgages is determined by the date on which each mortgage is recorded in the register and registered mortgages have priority over unregistered mortgages;
- in rem action for possession or ownership of a ship;
- in rem action in relation to a dispute between co-owners regarding possession or use of a ship;
- in rem action in relation to loss or damage to cargo carried on a ship;
- lien in rem action in relation to damage received by a ship;
- in rem action in relation to a dispute arising out of contracts for carriage of goods or use of a ship; and
- in personam action.

Pursuant to Section 67 of the MSA, maritime liens have priority over mortgages and any other claims, in the following order:

- claims for salvage, wreck removal and contribution in general average;
- wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- disbursements of the master on account of the ship;

- claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship; and
- claims for ports, canal and other waterways, dues and pilotage dues.

Also, pursuant to Section 56 of the MSA, the priority of mortgages is determined by the date on which each mortgage is recorded in the register and registered mortgages have priority over unregistered mortgages.

5.11 Insolvency Laws Applied by Maritime Courts

Nigeria has a scheme of insolvency and restructuring laws, some of which are provided in the Companies and Allied Matters Act 2020 (CAMA) and the Bankruptcy Act, Cap. B2 LFN, 2004 (the "Bankruptcy Act"). These schemes include administration and companies' voluntary arrangements, which are analogous to Chapter 11 bankruptcy proceedings.

The AJA, which governs the arrest and judicial sale of vessels, does not include these bankruptcy proceedings as grounds for the arrest and judicial sale of a vessel. However, the CAMA and the Bankruptcy Act grant administrators, liquidators, and others wide powers with respect to the sale of a company's assets, with or without an order of court.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Section 13 of the AJA states that the arresting party will be liable for wrongful arrest where:

- the arrest was obtained unreasonably and without good cause; or
- the arresting party, unreasonably and without good cause, demands excessive security in the proceeding, or fails to give a consent required for the release of a ship or other property.

The AJPR also provides reparation for needless arrest where it is procured in bad faith, through gross negligence, or unlawfully. Following the dismissal of the suit, on the aforementioned basis, the AJPR states that the arrestor would be liable for damages for any loss, injury or expenses that the defendant may have sustained by reason of the arrest, upon the application

of the defendant made at any time before the expiry of three months from the termination of the suit.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The following conventions are applicable to the resolution of maritime passenger claims:

- the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974, and its Protocol of 1990; and
- the LLMC.

The AJA and the MSA are the domestic legislation applicable to the resolution of maritime passenger claims in Nigeria.

Actions relating to passenger claims must be commenced within two years after the loss of life or injury occurred.

The MSA also imposes a limit of liability on ship-owners in passenger claims arising on any distinct occasion for loss of life or personal injury.

As stated in **3.3 Convention on Limitation of Liability for Maritime Claims**, the increased liability for passenger maritime claims, as provided in Protocol Amendment 2015, is inapplicable in Nigeria.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Generally, Nigerian courts usually recognise law and jurisdiction clauses stated in contracts, including bills of lading. Notably, where the competence of an action is challenged on the ground that a bill of lading states a foreign jurisdiction and not a Nigerian court, the court is not bound to enforce those clauses and can exercise a discretion in determining whether to make a stay of proceedings to enable the parties to pursue dispute resolution in the foreign jurisdiction.

Additionally, Section 20 of the AJA provides that any jurisdictional clause in an agreement which seeks to oust the jurisdiction of the court will be void where the agreement relates to any admiralty matter under the AJA (only the jurisdictional aspects of the clause are affected, not the entire agreement).

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Nigerian courts recognise and enforce law and arbitration clauses in charterparties and bills of lading. Specifically, Section 10 of the AJA empowers the FHC to recognise and enforce arbitration clauses in admiralty agreements.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Nigeria is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, which has the force of law in Nigeria pursuant to the Arbitration and Mediation Act, 2023 (AMA). The AMA is the principal domestic law on arbitration in Nigeria.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Nigerian courts can order the arrest of vessels or other attachments where the relevant claim is subject to a foreign arbitration and/or jurisdiction, due to a foreign jurisdiction or arbitration clause.

Notably, by virtue of Order 7 Rule 8 of the AJPR, where an application is for a warrant of arrest of a ship or other property in respect of a claim commenced in a court outside Nigeria or commenced by way of arbitration proceedings (within or) outside Nigeria, such an application can be made without commencing an action before the court for the substantive claim. Thus, the FHC has the jurisdiction to entertain an action solely based on obtaining security via ship arrest in claims before a foreign court or arbitration (foreign and local) proceedings.

7.5 Domestic Arbitration Institutes

The Maritime Arbitrators Association of Nigeria (MAAN) is the primary domestic arbitration institute that specialises in maritime claims. Other arbitration bodies that deal with general commercial arbitration,

including maritime, include the Chartered Institute of Arbitrators UK (Nigeria branch), the Lagos Multi-Door Courthouse, and the Lagos Court of Arbitration.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In relation to a foreign jurisdiction clause, the defendant may file an anti-suit injunction in the relevant foreign court. This approach is aimed at ensuring that the party in breach terminates the Nigerian proceedings in favour of proceedings in the foreign court, as prescribed by the foreign jurisdiction clause.

The defendant may apply for a stay of the proceedings before the Nigerian FHC in accordance with the relevant foreign arbitration clause that has been breached and pursuant to the provisions of the AJA and the AMA. If the FHC sees merit in the defendant's application, it will grant the stay. Where a vessel is under arrest, the FHC may order that the proceedings be stayed on condition that the arrest and detention of the vessel shall stay or be satisfactory security for the release of the vessel for the satisfaction of any award that may be made in the foreign arbitration.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Nigerian law does not have a special tax exemption or tax reliefs applicable to the income earned by vessels. The recent tax demands by the Federal Inland Revenue Service (FIRS) on international shipping companies in Nigerian territorial waters are more about enforcing compliance with existing tax laws rather than introducing new tax reliefs or exemptions. These actions are aligned with the amendments made in the Finance Act, 2023, which require foreign companies, including shipping companies, to provide evidence of income tax filings and Tax Clearance Certificates to operate in Nigeria.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

For the non-performance of a shipping contract to amount to force majeure, the operative maritime contract must expressly/impliedly provide that the cause of any such non-performance would constitute force majeure.

The party alleging force majeure must show that:

- there has been a force majeure event that falls within the meaning of the clause in the charterparty;
- the non-performance is traceable to the force majeure event; and
- notice requirement in the charterparty, if any, has been satisfied.

Furthermore, for non-performance to amount to frustration, the cause of the non-performance must have been a supervening event (such as statutory impossibility, an outbreak of war or government acquisition of the subject matter of the contract) destroying a fundamental assumption on which the shipping contract is predicated on.

Where the supervening event is one which, by the terms of the contract, the parties contemplated the possibility of such an intervening circumstance arising, or one of the parties had deliberately brought the supervening event, or the intervening circumstance is one not so fundamental as to destroy the basis of the shipping contract, the non-performance arising from such supervening event cannot amount to frustration of the shipping contract.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

By Section 335 (1)(a) of the MSA, provisions of the International Convention for the Prevention of Pollution from Ships 1973/1978, of which the IMO 2020 is a product, apply in Nigeria. Furthermore, the NIMASA and the Nigerian Ports Authority (NPA) have made commitments towards ensuring the implementation and enforcement of the IMO 2020.

NIMASA is responsible for the enforcement of the sulphur-content limitation and the limit is the same as the global limit and IMO Standard, 0.5%.

Although there have been no large-scale enforcement actions, NIMASA engages with the Nigerian Upstream Petroleum Regulatory Commission to ensure that marine fuel to be refined or imported meets the IMO standard.

There have been no known proceedings/sanctions that have taken place because of a violation of the sulphur limitation.

9.3 Trade Sanctions

Nigeria has not incorporated any of the international trade sanctions. The main legislation governing sanctions and export controls is the Nigerian Customs Service Act 2023 (NCA). The Nigerian Customs Service has legal authority to act on behalf of Nigeria in all customs-related matters. While there are no specific entities that have been sanctioned, the Nigerian Customs Service can impose sanctions such as the seizure and forfeiture of goods. In cases of serious violations, civil or criminal liability may arise, and appropriate prosecution proceedings may be instituted in the Nigerian courts.

There are no trade sanctions-related impacts of the Russia–Ukraine war on Nigeria, save for the shortage in the supply of certain agricultural products and the consequent increase in the prices of such commodities in Nigeria.

The conflict in Ukraine is poised to impact Nigeria, which relies on Ukraine for key imports such as iron, steel and various dairy products. The war has contributed to heightened global crude oil prices, which have, in turn, led to an upsurge in international freight charges. There are no court decisions on matters relating to non-performance of obligations due to the war in Ukraine.

9.4 International Conflict

The various international conflicts have impacted the legal and economic landscapes in Nigeria. The Russia–Ukraine War (the “War”), for example, has negatively impacted the execution of the 2010 Nigeria–Russia

Memorandum of Understanding on co-operation in the oil and gas supply chain. Being an importation-dependent economy, the War has also negatively impaired Nigeria’s importation of food items, thereby leading to a surge in food prices.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Cabotage Operations

The Cabotage Act provides that only vessels which are wholly owned, manned by Nigerians, and built and registered in Nigeria can engage in the cabotage trade.

The Cabotage Act further provides that vessels shall not be registered or used in cabotage, unless:

- the vessel is wholly and beneficially owned by Nigerian citizens or by a company wholly and beneficially owned by Nigerian citizens;
- a vessel or company is deemed to be wholly and beneficially owned by Nigerian citizens where all the shares in the vessel or in the company are held by Nigerian citizens, free from trusts or other obligations (fiduciary or otherwise) in favour of non-Nigerians;
- the vessel is under a bareboat charter to Nigerian citizens or companies and is under the full control and management of Nigerian citizens or a company wholly and beneficially owned by Nigerians;
- the vessel is owned by a company registered in Nigeria and the percentage of shares held in the company by Nigerian citizens is not less than 60%; and
- the vessel is exclusively manned by officers and crew of Nigerian citizenship.

However, the Minister may grant waivers on the requirement for a vessel to be wholly owned and wholly manned by Nigerian citizens and to be built in Nigeria, if the Minister is satisfied that there is no wholly owned Nigerian vessel suitable to provide the services or perform the activities required, no qualified Nigerian officer or crew for the position specified

or no Nigerian ship-building yard with the capacity to construct the type and size of vessel specified.

The NSRO is also responsible for maintaining the cabotage register for vessels eligible to undertake coastal trade in Nigeria.

The Cabotage Act established a Cabotage Vessel Finance Fund (CVFF) and also stipulates that a surcharge of 2% of the contract sum performed by any vessel engaged in coastal trade shall be paid into the CVFF.

Enforcement of Foreign Judgments

A foreign judgment is required to be registered before it can be enforced in Nigeria. There are two applicable statutory regimes in this regard: the Reciprocal Enforcement of Judgments Ordinance Cap 175 of the Laws of the Federation of Nigeria and Lagos, 1958 (the Ordinance), and the Foreign Judgment (Reciprocal Enforcement) Act, 2004 (FJA). A party may also bring an action under common law.

The FJA provides for the enforcement in Nigeria of final judgments of foreign superior courts that accord reciprocal treatment to judgments of Nigerian courts.

The Ordinance applies to judgments of certain commonwealth countries, including the United Kingdom. Under the Ordinance, for a foreign judgment to be enforceable in Nigeria, an applicant must file a petition ex parte or on notice to a judge for leave to register the foreign judgment in Nigeria. The petition and the affidavit in support shall be accompanied by a written address, addressing all the legal issues involved in the matter.

If the court finds merit in the petition, it shall order that the foreign judgment be registered as a judgment of the Nigerian court, and the order will usually specify a time limit within which the judgment debtor can apply to set aside the order – usually 14 days if the judgment debtor is within the territory of the registering court, or longer if otherwise. The Ordinance has a six-year limitation period.

Under common law, a party seeking to enforce a foreign judgment in a maritime claim must institute fresh proceedings in the FHC, with the foreign judgment as the basis for the claim. The judgment creditor may apply for the case to be placed on the undefended list, an expedited procedure for cases where there is no reasonable defence to the claim.



Law and Practice

Contributed by:

Kristian Lindhartsen, Lilly Kathrin Relling and Tobias Kilde
Kvale Advokatfirma DA

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Kvale Advokatfirma DA is a leading commercial law firm that has provided assistance to Norwegian and international businesses since 1988. It is particularly renowned for assisting some of Norway's largest companies with their most important and complicated cases. Kvale's lawyers have extensive experience in negotiations, dispute cases before the ordinary courts and arbitration. With a broad understanding of the shipping industry, the firm assists in all specialist

areas of maritime law, ranging from purely private law disciplines such as charterparties and other types of maritime contract law, maritime casualties and maritime insurance to public law issues such as pollution liability and sanctions law. The team litigates cases before the ordinary courts and in arbitration. Kvale's extensive international network of contacts also enables it to assist clients with litigation assignments outside Norway.

Authors



Kristian Lindhartsen is a partner at Kvale Advokatfirma and has an extensive background in maritime law, with an emphasis on marine insurance disputes, including cover disputes and direct action matters.

He also advises ship-owners and charterers on operational issues, such as those related to charterparties and other contracts of carriage, commercial agreements, collisions and other marine casualties. Kristian is experienced as a litigator in both ordinary courts and arbitration proceedings, including arrests and other asset securing, as well as international jurisdiction issues. He also works on vessel-related transactions, particularly sale/leaseback transactions of ships.



Tobias Kilde is associated with Kvale's maritime and offshore department and primarily works on legal matters related to shipping, offshore, and insurance, assisting both national and international clients.

He has extensive experience in dispute resolution, including in litigation before the Norwegian courts, as well as enforcement proceedings, interim measures, and arrests. He handles cross-border disputes and regularly assists with the enforcement of international claims in both Norway and abroad. Tobias also advises on contract negotiations and provides compliance and anti-corruption counsel. He has a master's degree in law from the University of Bergen.



Lilly Kathrin Relling is a partner in Kvale's oil, gas and shipping department. She assists clients, both Norwegian and international, in commercial law matters and has substantial experience advising

participants within the shipping and offshore industry. She has broad knowledge advising on carrying out contracts, including charterparties, fabrication contracts and other commercial agreements. Lilly also has experience before the ordinary courts and in arbitration, including with arrests and securing other assets. She is a member and national representative of the global lawyers and in-house counsel network AIJA (International Association of Young Lawyers).

Kvale Advokatfirma DA

Haakon VII gate 10
PO Box 1752 Vika
N-0122 Oslo
Norway

Tel: +47 22 47 97 00
Fax: +47 21 05 85 85
Email: post@kvale.no
Web: www.kvale.no

KVALE

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The ordinary courts in Norway have authority in all maritime disputes that are subject to Norwegian jurisdiction, unless the parties have agreed to arbitration. Norway does not have specialised courts (such as an Admiralty Court), so shipping and maritime-related disputes are submitted to and settled by the civil courts; this includes, for example, ship arrest, direct action claims, claims for salvage, cargo claims and charterparty claims.

There are three instances in the Norwegian court system:

- the district courts;
- the courts of appeal; and
- the Supreme Court.

The relevant legislation for the courts that have jurisdiction in maritime law matters is the Norwegian Dispute Act (NDA) and the Norwegian Courts of Justice Act.

1.2 Port State Control

Norway is a signatory to the Memorandum of Understanding on Port State Control signed on 26 January 1982 (the “Paris MOU”). By utilising its database, results from previous inspections can be made avail-

able, enabling member states of the Paris MOU to review a vessel’s risk category prior to entering a port.

Port state control is regulated in domestic law under the Regulations of 24 November 2014 No 1458 on port state control. The controls are carried out by the Norwegian Maritime Authority, which has jurisdiction over foreign ships arriving in Norwegian ports. A vessel may be detained if it is considered a hazard to the environment or safety, has breached the Maritime Labour Convention, or has working conditions that pose an obvious threat to the crew’s safety.

If a pollution incident occurs, the Norwegian Coastal Administration (NCA) is responsible for the emergency response. The NCA is an agency of the Ministry of Trade, Industry and Fisheries, and exercises authority pursuant to the Harbour and Fairways Act and parts of the Pollution Act. Section 17 of the Harbour and Fairways Act provides legal grounds for the authorities to order wreck removal where a wreck poses a danger or disadvantage for navigation in port.

1.3 Domestic Legislation Applicable to Ship Registration

Ship registration in Norway is divided into the Norwegian International Ship Register (NIS) and the Norwegian Ordinary Ship Register (NOR). Vessels owned by foreign entities can only register in NIS. The Norwegian Maritime Authority is in charge of registering vessels in both NIS and NOR, and holds jurisdiction over all vessels registered in Norway. It is also responsible for the registration of rights in ships in NIS. NOR is regulated by the Norwegian Maritime Code, while

NIS is regulated by a special act called *Lov om norsk internasjonalt skipsregister* (the “NIS-law”).

1.4 Requirements for Ownership of Vessels

For NOR, a vessel must be owned by a Norwegian or European Economic Area (EEA) person/entity.

Vessels with foreign ownership may register in NIS. The conditions for registration are set out in Section 1 of the NIS-law. To be eligible for registration, the owner must satisfy the conditions for a vessel to be regarded as a Norwegian ship (even when the owner is a Norwegian national) contained in Section 1 of the Norwegian Maritime Code.

If these conditions are not met, the vessel can still register in NIS if the owner:

- is a limited company, public limited company or a limited partnership with its head office in Norway;
- is a ship-owning partnership with a managing *reder* (person or company) who satisfies the provisions relating to managing *reder* (person or company) in Chapter 5 of the Norwegian Maritime Code; or
- has appointed a representative who is authorised to accept writs on its behalf, if the owner does not satisfy the two previous conditions (the representative must fulfil the nationality requirements for managing *reder* (person or company) as set out in Section 103 of the Norwegian Maritime Code).

If the vessel is registered in accordance with these options, it is a legal requirement that the vessel be operated by a Norwegian shipping company, which is understood to mean either its technical management (manning, outfitting, maintenance, etc) or its commercial operation (chartering, marketing, etc).

The vessel can also be operated wholly or partly from management offices abroad, assuming they are owned by a Norwegian shipping company with its head office in Norway.

The foregoing requirements are in place to avoid NIS becoming a flag of convenience, and to ensure that a vessel can only be registered where the Norwegian authorities can exercise a certain level of control.

A vessel under construction in Norway, or a contract for the construction of a vessel in Norway, can be registered in a separate register, the Ship-Building Register (BYGG), which is a sub-division of NOR. Vessels under construction abroad cannot be registered in BYGG. The prerequisite is that the vessel must be at least ten metres long. The application must be submitted by the owner (if the vessel is under construction) or by the buyer (if it is a ship-building contract).

1.5 Temporary Registration of Vessels

Bareboat registration in and out of the Norwegian ship registers has been permitted since 1 July 2020. Foreign vessels (both passenger and cargo ships), as well as drilling platforms and other mobile offshore units, may be bareboat-registered in NIS and NOR while having permanent registration in another state. To be registered, a vessel must be at least 15 metres long, and both the ship-owner and the mortgagee(s) must give their consent before permission to register is granted.

1.6 Registration of Mortgages

The registration of mortgages is under the administrative control of the Norwegian Maritime Authority, and the registration can be in NOR, NIS or BYGG. Voluntarily established mortgages can only obtain legal protection through registration.

The registries include information about all registered rights in a vessel, as well as their priority. The registry will also contain information if it has been agreed that a sale or further mortgages are forbidden. As many mortgages include a clause prohibiting further mortgages, the mortgagee must either consent to registration of the new mortgage/right or sign the mortgage for deletion. The amendment must be made in the original document.

The following document requirements are applicable:

- consent to the registration of a new mortgage/right requires specification of a new creditor, face value and currency;
- if the mortgagee/holder of the right is a company, the endorsement must have a binding signature according to the certificate of company registration; and

- if the mortgagee/holder of the right is a foreign body, a notary public must confirm both the identity and authority of the person signing the amendment (after which, the notary's signature must be legalised by a Norwegian foreign service station or by the amendment of an apostille).

It should also be noted that the new mortgage/right must be forwarded, in its original form, to the Department of Ship Registration with a binding signature in the following circumstances:

- if the mortgagor is a Norwegian-registered company, it must be signed according to the certificate of company registration; and
- if the mortgagor is a foreign entity, a notary public must confirm the identity and authority of the person signing (after which, the signature of the notary must be legalised by a Norwegian foreign service station or by the amendment of an apostille).

From 1 January 2024, NOR, NIS and BYGG have allowed for fully electronic and fully automatic registration of ships and rights in ships. This requires access to the nationally used platform BankID, which is a personal electronic identification used for identification and signing online. This option significantly reduces processing time.

If the electronic option is not used, the documents submitted must be originals, and should not be sent for deposit more than three weeks prior to the scheduled registration (the sender must include a statement to this effect). The documents will be returned to the sender without registration if there is no scheduled registration within three weeks.

1.7 Ship Ownership and Mortgages Registry

All three ship registries in Norway are open to the public, and are searchable by name and the International Maritime Organization (IMO) number of the vessel on www.sdir.no. The information available to the public includes the full details of the owner(s) of the vessel.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Secured loans from banks dominate Norwegian ship financing because they provide lenders with strong legal protection and predictable enforcement through a first-priority mortgage. Lenders in Norway almost always require additional security beyond the ship mortgage.

For new-builds, Norway has a strong tradition of Export Credit Agency financing through Eksfin, which can cover up to 80–85% of the contract price for Norwegian-built vessels, and up to 100% of Norwegian equipment value for foreign builds. Eksfin shares risk with commercial banks and requires the same securities package as the bank.

High-yield bonds are also widely used in the Norwegian market, typically with a trustee structure using standardised Nordic bond terms.

On the equity side, Norwegian shipping companies frequently use project-financing structures through special-purpose vehicles, often syndicated among investors. Sale-leaseback transactions are also common, especially for new-builds, often combined with support from Eksfin.

The registration of mortgages is under the administrative control of the Norwegian Maritime Authority, and the registration can be made in NOR, NIS or BYGG. Voluntarily established mortgages can only obtain legal protection against third parties through registration.

2.2 Ship Leasing

Ship leasing transactions – particularly sale-leasebacks – have become increasingly common in ship financing. This development is largely driven by structural changes in the financial market – with traditional banks operating under stricter capital requirements, Norwegian ship-owners face growing demands for liquidity and flexibility. In addition, Chinese leasing houses offer competitive terms.

The legal and commercial relationship between a lessor and lessee differs significantly from that of a

lender and a borrower. In a leasing agreement, the lessor retains the ownership of the vessel, while the lessee operates it under a bareboat charter. Ownership itself serves as security for the lessor, and in the event of default, repossession can occur relatively quickly under the terms of the leasing agreement. By contrast, in a loan structure, the borrower owns the vessel, and the lender secures its position through a ship mortgage and additional collateral such as guarantees and assignments of insurance.

Enforcement of a mortgage in Norway requires a formal legal process, including arrest and judicial sale through the courts, which is more time-consuming and procedurally complex than repossession under a lease without court involvement, if the agreement provides for it.

Sale and leaseback transactions are very common in Norway for second-hand vessels, liquidity needs and green retrofits.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The Norwegian parliament adopted legislation in 2018 to implement the 2007 Nairobi International Convention on the Removal of Wrecks. On 11 February 2025, the Nairobi Convention entered into force in Norway.

Norway is also party to the 1973/1978 International Convention for the Prevention of Pollution from Ships (MARPOL) Convention as incorporated into Chapter 5 of the Norwegian Ship Safety and Security Act. Owners must also comply with the following conventions (which have been incorporated into the Norwegian Maritime Code and the Norwegian Pollution Act):

- the 1976, 1992 and 2003 Protocol on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- the 1976 and 1992 International Convention on Civil Liability for Oil Pollution Damage; and
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage.

3.2 International Conventions: Collision and Salvage

Norway has ratified the IMO International Convention on Salvage of 1989, which is incorporated into Chapter 16 of the Norwegian Maritime Code. The regulation on collisions can be found in Chapter 8, Sections 161–164. The regulation is based on the Comité Maritime International (CMI) Collision Convention of 1910, and applies the same fault-based division of liability – ie, the party at fault covers the losses or, if the collision was accidental, each party carries its own loss.

3.3 Convention on Limitation of Liability for Maritime Claims

Norway has ratified the 1976 Convention on Limitation of Liability for Maritime Claims, with the subsequent amendments of the 1996 Protocol, with certain reservations. In accordance with Article 7.1 (a) of the 1996 Protocol, Norway has reserved the right to exclude from limitation under the convention claims made in respect of the raising, removal, destruction or rendering harmless of a ship that has sunk, or is wrecked, stranded or abandoned, including anything that is or has been on board such a ship, and claims in respect of the removal, destruction or rendering harmless of the cargo of the ship.

The above-mentioned claims will be limited in accordance with Section 172a of the Norwegian Maritime Code, which has substantially higher limitation amounts than the 1996 Protocol. The ship-owner (which includes the disponent owner and the manager, as well as charterers and salvors) can rely on the limitations in Section 171 of the Norwegian Maritime Code.

3.4 Vienna Convention on the Law of Treaties

Norway is not a party to the 1969 Vienna Convention on the Law of Treaties. However the convention interpretation rules are widely accepted as customary international law, and are therefore applied in Norway when interpreting treaties. In practice, that means Norwegian courts and authorities generally use the same approach as the UK Supreme Court did in the *MSC Flaminia* case.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Under Norwegian law, a limitation fund can only be established after the creditors have initiated legal proceedings to pursue a claim that is subject to limitation, or after the creditors have filed a petition for arrest to temporarily secure such a claim. In such instances, the defendant may request the creation of a limitation fund at the court where the action has been brought. The courts have the authority to order a fund to be established. Once a fund is established, either by transfer of the limitation amount or by way of other security (such as an indemnity), the creditors are given a time limit within which to notify their claims.

The limitation fund can be created by all parties that are entitled to limitation under Section 171 of the Norwegian Maritime Code. This includes the ship-owner, the disponent owner, the manager, charterers and salvors, for example.

Pursuant to Section 232 of the Norwegian Maritime Code, the limitation fund amount is calculated on the basis of the vessel's tonnage and must also include interest calculated from the time of the incident until the establishment of the fund. This is in accordance with the provisions of the Convention on Limitation of Liability for Maritime Claims 1976 (as amended by the 1996 Protocol).

3.6 Seafarers' Safety and Owners' Liability

Norway ratified the Maritime Labour Convention on 10 February 2009, and it came into force on 20 August 2013. The convention is implemented in Norwegian law through the Ship Labour Act and the Ship Safety and Security Act, along with their associated regulations.

The Ship Labour Act applies to workers who perform their duties on Norwegian vessels, with its primary objective being to ensure safe labour conditions, equal treatment and the promotion of general welfare for the workers and the work environment. The Ship Safety and Security Act applies to all Norwegian ships and extends to foreign ships within Norway's territorial waters, economic zone and continental shelf. The overarching objective of the Act is to safeguard life

and health, the environment and valuable material by facilitating good ship safety and safety management.

4. Cargo Claims

4.1 Bills of Lading

Although Norway is a signatory to the Hauge-Visby Rules (HVR), the Hamburg Rules and the Rotterdam Rules, only the HVR has been ratified.

The HVR has been implemented in the Norwegian Maritime Code, albeit with some modifications. For instance, the rules in the Norwegian legislation are more favourable to cargo owners than the HVR stipulates, unless they are expressly waived by the cargo owner. This relates to two categories of rules in particular:

- under the Norwegian Maritime Code, the owner is responsible for the goods from the time and place when the owner physically takes over the goods, as opposed to the tackle-to-tackle principle contained in the HVR; and
- Chapter 13 of the Norwegian Maritime Code applies special liability provisions for the carriage of deck cargo, as well as livestock, which cannot be derogated from through agreement.

4.2 Title to Sue on a Bill of Lading

If the bill of lading is subject to Norwegian jurisdiction, any lawful holder of the bill of lading will have title to sue pursuant to the NDA. The prerequisite is that the claim is a legal claim that is based in law, contract or tort, and the claimant must have both a reasonable need to pursue the claim and an adequate connection with the dispute (such as legal or equitable interest). Norway recognises an assignment of title to sue.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The key provisions governing ship-owners' liability for damage to cargo are Sections 275 and 276 of the Norwegian Maritime Code. As long as the goods are in the custody of the ship-owner or any of their contracted helpers, a reversed burden of proof of liability is applied. This means that the ship-owner is liable for damage to the cargo, unless they can prove that

the loss or damage was not due to their own fault or neglect or that of any of their agents or servants. This also applies if the carriage is wholly or partially carried out by a sub-carrier.

There are, however, certain exceptions. The carrier is not liable for damage or delays caused by nautical errors or fire (unless caused by the negligence of the carrier), unless the ship-owner has failed to take all reasonable steps to ensure that the vessel was seaworthy on departure.

Note that the exceptions for navigational error and fire do not apply for domestic trade.

Furthermore, a carrier will not be liable for damage to animals if the carrier acted with due care and the damage resulted from particular perils associated with the transportation of animals.

The ship-owners' liability is limited. Section 280 of the Norwegian Maritime Code states that the carrier's liability is limited to 667 Special Drawing Rights (SDRs) for each unit or package of the goods, or two SDRs for each kilogram of the gross weight of the goods claimed for damage, delay or loss. In domestic trade, the carrier can limit the liability to 17 SDRs for each kilogram of the gross weight of the damaged or lost goods. Liability for delays in domestic trade may not exceed the total freight under the transportation agreement.

It is also worth noting that a voyage charterer or time charterer must hold the carrier harmless if the bill of lading contains terms other than those stated in the charterparty, thereby increasing the liability of the carrier.

4.4 Misdeclaration of Cargo

In accordance with Section 301 of the Norwegian Maritime Code, the carrier can claim against the shipper for liability they have incurred as a result of misdeclared cargo.

However, the carrier cannot establish a claim against the shipper if they knew or should have known that the information was not correct. If a clean bill was issued against a letter of indemnity (LOI), for instance,

the carrier loses its statutory right to claim against the shipper. The same will apply even if there is no explicit agreement to issue a clean bill, if the carrier had an incentive to inspect the cargo more closely or it was visible that the cargo was not in apparent good order.

In the judgment *ND 1969 s.105 Stockholm rådhusrätt, Hood River Valley*, which is part of the collection of Nordic Maritime Judgments, it was stated that the carrier must consider not only the state of the cargo but also the state of the packaging. Therefore, the courts would consider the carrier's overall knowledge about the cargo, the packaging and the transportation when considering a potential recourse claim against the shipper.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Norwegian law, the general time limit for filing a claim for damaged or lost cargo, or for incorrect information in a bill of lading, is one year from the time the goods were or should have been delivered (Section 501 (7) of the Norwegian Maritime Code).

For recourse claims related to damage to or loss of cargo, the deadline is one year from the time the original claim was paid or legal proceedings were instituted.

The limitation period can be extended by agreement between the parties after the incident occurred, for up to three years at a time.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Norway is party to the 1952 Arrest Convention, which is implemented in Chapter 4 of the Norwegian Maritime Code. Norway is also a signatory to the 1999 Arrest Convention, which came into force in 2011 but has not yet been ratified. The relevant acts for ship arrests in Norway are the Maritime Code and the NDA.

Under Norwegian law, the prerequisite for arrest of a ship is that the claim in question is defined as a maritime claim in accordance with Section 92 of the Norwegian Maritime Code. The provision exhaustively

defines what constitutes a maritime claim and corresponds with Article 1 (1) of the 1952 Arrest Convention.

In addition, Norwegian law introduces a special requirement that there is a “genuine need for security” (Section 33-2 of the NDA). This goes beyond the 1952 Convention and means, in essence, that the claimant must establish that the debtor’s behaviour indicates that the enforcement of the claim will be prejudiced or would have to take place outside of Norwegian jurisdiction if the court does not grant the arrest. The requirement will usually be found satisfied if the debtor has failed to pay a clear debt, failed to respond to reminders, taken steps to remove their assets from Norwegian jurisdiction, etc. However, it is underlined that this represents a complication in terms of obtaining a ship arrest in Norway.

5.2 Maritime Liens

Section 51 of the Norwegian Maritime Code provides an exhaustive list of the following claims that are protected as a maritime lien:

- wages and other sums due to the Master and other persons employed on board in respect of their employment on the vessel;
- port, canal and other waterway dues and pilotage dues;
- damages in respect of loss of life or personal injury occurring in direct connection with the operation of the ship;
- damages in respect of loss of or damage to property, occurring in direct connection with the operation of the ship, provided the claim is not capable of being based on contract; and
- salvage reward, compensation for wreck removal and general average contribution.

Maritime liens enjoy special protection under Norwegian law, and the arrest of a ship is allowed irrespective of whether the requirement of “genuine need for security” (Section 33-2 of the NDA) is satisfied.

Norwegian law differentiates between maritime liens and maritime claims, with the latter category covering a broader array of claims. An arrest can be sought in respect of all maritime claims. However, for mari-

time claims that do not qualify for a maritime lien, the requirement of “genuine need for security” must also be satisfied.

5.3 Liability in Personam for Owners or Demise Charterers

Norwegian law generally requires that the owner of the ship must be the debtor of the maritime claim giving rise to the arrest, meaning Norwegian law does not acknowledge action “in rem”. The exception is certain claims that are secured by a maritime lien, thus giving grounds for an arrest.

5.4 Unpaid Bunkers

The bunker supplier (both contractual and actual supplier) may apply for an arrest for a claim relating to bunkers supplied by them, provided that the debtor owns the vessel for which arrest is sought. If the bunkers in question were supplied to a charter (time charterer or bareboat charterer), an arrest can only be obtained on the bunkers actually delivered. The charterer does not have the authority to bind the vessel independently. In accordance with Section 33-2 of the NDA, the bunker supplier must prove a genuine need for security to achieve an arrest.

5.5 Arresting a Vessel

Arresting a ship in Norway is considered to be relatively straightforward, and can be arranged quickly and at a reasonable cost. It is not necessary for the claimant to provide any documents in their original form, and legal counsel does not need to present a power of attorney from the claimant.

A security deposit from the arresting party can be required, which in accordance with Section 97 of the Norwegian Maritime Code must be at least equivalent to port dues for the next 14 days, as well as possibly also expected damages for wrongful arrest. If the arresting party is the public authority or the claim in question is a crew claim secured by a lien, the court can disregard the security requirement at its own discretion.

5.6 Arresting Bunkers and Freight

Bunkers on board, claims for hire payment and claims for insurance proceeds and bank accounts can be arrested. The prerequisite is that the bunkers must

be owned by the debtor – keeping in mind that the bunkers are normally owned by the charterers (not the owners) under a time charterparty.

5.7 Sister-Ship Arrest

The arrest of sister-ships is regulated in Section 93 (1) of the Norwegian Maritime Code, which states that only the ship in which the claim arose may be arrested. The exception is where the vessels are owned by the same legal entity, and that legal entity is the debtor for the relevant claim. However, it is not possible to arrest ships with associated ownership – ie, where two ship-owning companies have the same holding company or are otherwise part of the same corporate structure.

5.8 Other Ways of Obtaining Attachment Orders

Applying for a ship arrest is clearly the most commonly used procedure to obtain security for a claim against a vessel under Norwegian law. That being said, if the claimant has a binding decision against the debtor, they may proceed directly with an application for attachment of the debtor's vessel. In addition, the general right of detention/retention may also give a claimant security by way of physical possession of the vessel – eg, the yard's right to detain the vessel in its docks until its claims have been paid in full.

5.9 Releasing an Arrested Vessel

Under Section 3-4 of the Norwegian Enforcement Act and Sections 33-4, 33-5 and 32-12 of the NDA, only a cash deposit or an unconditional bank guarantee issued by a Norwegian financial institution is accepted as security.

Under the Norwegian Enforcement of Claims Act, LOIs issued by P&I (protection and indemnity) clubs are not security recognised by law. Nevertheless, a letter of undertaking may be sufficient security for the claimant to agree to release the vessel on a mutual basis. This is quite common in Norway.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial sale proceedings are conditional upon the claimant having an enforceable claim in accordance with the rules of the Enforcement Act. All arrests and

forced sales are carried out by public district courts in co-operation with the local enforcement office.

Chapters 11 and 12 of the Norwegian Enforcement Act establish the rules regulating a forced sale. In short, the claimant must have a final and binding court decision on the claim itself (the main proceedings) before proceeding with a judicial sale. The claimant must also obtain an attachment of the vessel. It is important to note that the claimant's claim has priority from the time of the arrest, even if the final judgment and the execution lien are established later (except where sale proceedings have not been commenced within one year of the arrest), so the arrest may be an important tool for the claimant to establish priority.

In accordance with Sections 11-20 and 11-21 of the Enforcement Act, all claims with higher priority than the claimant's claim will be covered in full before the claimant receives any funds. This means that the court cannot accept a bid unless it is sufficient to cover all claims with a higher priority than that of the claimant. The sale proceeds will be distributed in the following order:

- court fees and the court-appointed administrator's remuneration;
- costs in connection with the accession that the buyer will not cover itself, such as document and registration fees (unless the buyer has agreed to cover such fees);
- maritime liens – in the order and priority contained in Sections 51 and 52 of the Norwegian Maritime Code, mortgages, similar registered encumbrances based in contract and enforcement liens (including interest); and
- unsecured debts.

5.11 Insolvency Laws Applied by Maritime Courts

Under Norwegian law, insolvency is regulated by the Debt Negotiation and Bankruptcy Act (the DNB-Act) and the Recovery Act. The Mortgage Act and the Norwegian Maritime Code are also important when considering the priority of claims.

Parts of the DNB-Act build on the same principles as the US "Chapter 11" procedure, but it does not go as

far in providing the court with flexibility to steer the process to a result that is seen as being acceptable by all involved. As the Norwegian court system does not have specialised courts, bankruptcy proceedings would be submitted to the civil courts. See **5.10 Procedure for the Judicial Sale of Arrested Ships** regarding the judicial sale of a vessel.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

A claimant may be held strictly liable for all of the defendant's economic loss if the claim did not exist at the time of arrest (Section 32-11 of the NDA). Furthermore, a claimant who gives wrongful or misleading information concerning the grounds for the arrest, by negligence or intent, will be liable for the losses incurred.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Maritime passenger claims are regulated by Chapter 15 of the Norwegian Maritime Code, in Sections 405–432. These provisions are based on the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL), the EEA Agreement Appendix XIII No 56x (Regulation EC No 392/2009), the 2002 Athens Protocol and the EEA Agreement Appendix XIII No 56y.

The limitations of liability for personal injury, death or luggage claims are included in Chapter 15 of the Norwegian Maritime Code, and are based on the 1974 Athens Convention. The time limit is two years from the end of the voyage, or the time that the voyage ought to have ended. Limitation in passenger claims is regulated in Chapter 9 of the Norwegian Maritime Code. The limit is 250,000 SDRs, multiplied by the number of passengers that the vessel is registered as being allowed to carry. Claims for indemnities for personal injury of a passenger are recognised as a maritime lien in accordance with the Norwegian Maritime Code Section 51.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The starting point under Norwegian law is that the parties are free to enter into agreements concerning dispute resolution. In accordance with the Section 4–6 of the NDA, the jurisdiction clauses in bills of lading will therefore be recognised and enforced.

However, Section 310 of the Norwegian Maritime Code provides some limitations in this regard, establishing certain rights for the claimant.

In accordance with Section 310, the claimant has certain rights when bringing a claim that is related to the carriage of cargo, in terms of where to pursue the claim.

The provision states that a jurisdiction agreement that limits the claimant's rights may be invalid if it concerns restrictions on bringing an action at the place where:

- the claimant's principal place of business is situated, or the claimant's place of residence (if there is no principal place of business);
- the contract of carriage was concluded, provided the defendant has a place of business or an agent through whom the contract was concluded;
- the receipt for carriage in accordance with the contract of carriage was issued; or
- delivery was agreed or actually occurred in accordance with the contract of carriage.

If the agreement in a bill of lading concerns any of the foregoing scenarios, the court may find that the agreement is not valid, in accordance with Section 310.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In accordance with Section 310 of the Norwegian Maritime Code, if a bill of lading is issued pursuant to a charterparty that contains a law and arbitration clause, but the bill of lading itself does not expressly state that the provision is binding on the holder of the bill of lading, said clause cannot be invoked against

the holder of a bill of lading – assuming the holder has acquired it in good faith.

Therefore, the arbitration clause must be sufficiently specific when incorporated into the bill of lading in order for the court to recognise it; a general reference to the charterparty will not be sufficient.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Norway is a party to the 1958 New York Convention, which has been incorporated into the Norwegian Arbitration Act 2004 and the Norwegian Enforcement Act. Additionally, any bilateral agreement in place between Norway and the jurisdiction in question will be applicable when determining the recognition and enforcement of arbitral awards.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In accordance with Section 96 of the Norwegian Maritime Code, arrest of a vessel can be granted to secure a claim in Norway, which may be pursued in a foreign jurisdiction through either arbitration or court proceedings. That being said, the requirements for arrest – ie, that there is a “genuine need for security”, as per Section 33-2 of the NDA – must still be satisfied.

7.5 Domestic Arbitration Institutes

The Nordic Offshore and Maritime Arbitration Association (NOMA) is a joint Nordic initiative that was established in 2017. NOMA has established separate rules for arbitration based on UNCITRAL Arbitration Rules, as well as best practice guidelines and fast-track rules. The Nordic Marine Insurance Plan is a commonly used standard contract for hull and machinery insurance, and has included NOMA as the standard solution for dispute resolution. Nevertheless, ad hoc arbitration remains the most common way of solving a maritime dispute that is referred to arbitration.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In accordance with the NDA, the court is obliged to consider whether the claim in question falls within its jurisdiction. If the parties have agreed on a foreign jurisdiction or arbitration, the court will reject

the claim. As a consequence, the key defence where proceedings are commenced in breach of a foreign jurisdiction or arbitration clause would be to present the jurisdiction/arbitration clause to the relevant Norwegian court and explain why the dispute in question is covered by the wording of the clause.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The main tax incentive is the tonnage tax regime, which makes it possible to operate in Norway without being subject to corporate tax on operating income. The European Free Trade Association Surveillance Authority has approved the continuation of the Norwegian tonnage tax (NTT) regime until 31 December 2026. The Norwegian regime is in line with EU-based regimes.

The NTT regime provides a final exemption from tax on qualifying shipping income. Net financial income is subject to 22% tax. The shipping company needs to opt for the tonnage tax regime in its tax return, or all net income will be taxed at 22% (the ordinary rate).

A tonnage taxed company may only perform activities related to the operation of the company's qualifying ships. As a starting point, other business activities are not permitted by a company that is covered by the regime. However, the permitted activities include strategic and commercial management as well as day-to-day technical operations and maintenance for group-related companies outside the tonnage tax regime. This also includes activities in group-related foreign companies and controlled foreign corporations (CFCs). In addition, a specified number of ancillary activities are within the scope of the tonnage tax regime.

The following requirements need to be met for a company to qualify under the tonnage tax regime.

- The shipping company must be registered in Norway or the EEA.
- The minimum requirement for assets is primarily ownership of a qualifying vessel or ownership of

at least 3% in a company or chain of companies owning such a vessel. There is a required ratio of owned vessels to chartered-in vessels, and certain restrictions to the chartering out of vessels on bareboat to external parties. There is also a restriction as to what assets the company may own.

- The company must comply with flag requirements.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

The wording of the specific force majeure clause is decisive for whether certain events, such as global illness, epidemics or pandemics, constitute force majeure.

Under Norwegian law, the starting point is that professional parties entering into agreements are responsible for their contractual obligations. Therefore, if they have agreed to a contractual obligation, they must fulfil said obligation. If the contract is subject to Norwegian law, the Norwegian Sale of Goods Act may be applicable, under which certain force majeure-like events may give grounds to exemption of liability for economic loss caused by a breach of contract.

For the exception to become applicable, it must be shown that the breach was caused by a hindrance that was outside the control of the defaulting party, and that the defaulting party could not reasonably have been expected to have foreseen the hindrance at the time of entering into the contract, nor avoided or remedied the consequences of it.

The decisive factor is the actual effect the hinderance has, rather than the nature of the hinderance in question. When considering whether the breach would be considered a force majeure event, the following should be considered:

- review of the contract or statute applicable;
- consideration of the underlying cause of the hinderance;
- the foreseeability requirement (was the hinderance foreseeable?);

- formalities connected to invoking force majeure; and
- mitigation/remedy.

The Norwegian Court of Appeal handled a case (*Gulating Lagmannsrett* reference LF-2021-146849) during the pandemic regarding this current problem. The case concerned a contract of delivery of salmon, which had to be cancelled due to the COVID-19 pandemic. The issue was whether the cancellation was a breach of contract or whether the pandemic constituted a force majeure event, thereby giving contractual grounds for the cancellation. The court found that this qualified as a breach of contract, as the event was not within the force majeure clause, and the non-performing party was liable for the loss.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

MARPOL Annex VI and the EU Sulphur Directive (Directive EU 2016/802) have been implemented in Norwegian law.

Norwegian waters up to longitude 62 degrees are part of the North Sea emission control area (ECA), designated in MARPOL, with a 0.10% limit to SOx and particulate matter emissions. On 1 March 2019, the 0.10% limit was extended to also cover the Norwegian world heritage area, which includes the fjords north of this area, as set out in the Regulations of 30 May 2012 No 488 on environmental safety for ships and mobile offshore units. Outside an established ECA, the applicable limit is 0.5%.

Specific requirements have also been introduced on passenger ships sailing en route to or from harbours in the EEA that are located in Norwegian territorial waters or exclusive economic zones, with an applicable limit of 1.5%.

Multiple sanctions are available if a breach is established, including orders, fines and withdrawal of permits. The vessel also risks detention, and the party inducing the breach may risk prison if there are serious breaches as a result of gross negligence or wilful misconduct.

9.3 Trade Sanctions

In general, any sanction introduced by the UN or the EU will be incorporated into Norwegian law. The Law on Sanctions allows for UN sanctions, sanctions introduced by other intergovernmental organisations and sanctions aimed at maintaining peace and security that have broad international support to be incorporated into domestic law. This gives the parliament the necessary legal grounds to implement sanctions introduced internationally into domestic law.

EU sanctions are not included in the EEA Agreement, and the Norwegian state has therefore decided to implement these as a political decision, albeit with some exceptions. For instance, Norway has an exception that allows for Russian fishing vessels to call at Norwegian ports. The prohibition on Russian vessels calling at Norwegian ports does not apply to Svalbard due to special considerations connected to the Svalbard Treaty.

There is very limited case law on the consequences of the sanctions imposed against Russia in Norwegian law. However, one exception is the court case brought by ship-owners Havila Kystruten. The vessel, *Havila Capella*, was operated by Kystruten but financed through a Hong Kong leasing company that was owned by Russian financing firm GTLK, which itself was owned by the Russian Ministry of Transport. Due to the financial leasing agreement, GTLK was listed as the formal owner of *Capella*. Following the increasingly strict sanctions on Russia, the insurance company terminated the vessel's insurance. While the Norwegian Ministry of Foreign Affairs granted a dispensation from the sanctions for the use of the vessel, it did not grant a dispensation for the insurance of the vessel. In its rejection, it was stated that a dispensation would entail money being placed at the Russian owner's disposal.

To operate the vessel, Kystruten therefore brought the issue to court, seeking arrest of the vessel to obtain ownership thereof. The court was also asked to consider whether the vessel should be subjected to forced use. In June 2022, Hordaland County Court decided to grant *Havila Kystruten* both arrest and forced use for a period of up to two years, giving Havila Kystruten

the possibility to insure the vessel and operate it as normal.

9.4 International Conflict

The Norwegian Ship-Owners' Association has reported that the war in Ukraine has had a significant impact on the Norwegian shipping industry, and has resulted in increased costs, delivery and supply complications, security risks and reduced availability of seafarers.

Further, the Russian invasion has largely disrupted the maritime routes from Ukraine via the Black Sea, inevitably causing delays and cancellations. Consequently, numerous freight and transport contracts have been rendered unfulfillable. Given these challenges, most affected businesses have opted for voluntary contract revisions or sought freight and transport agreements with alternative entities. At this time, there has not been any substantive case law in Norway on non-performance of shipping contracts due to the war in Ukraine.

Over the last couple of years, there has been significant growth of the "dark fleet", which transports sanctioned oil, including from Russia, and has been taking large volumes away from legitimate Norwegian markets. This fleet now accounts for a substantial portion of the oil transported by sea and significant exposure of the tanker fleet. In response to the geopolitical risks and the war in Ukraine, companies such as Frontline have refused to transport Russian oil, citing the high risk involved. Despite a weak tanker market and low contracting activity, several Norwegian shipping companies have seen their share prices rise. However, there has been little contracting of new-builds due to insufficient market rates.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The latest and most significant update to the Norwegian Maritime Code was the proposal and acceptance of Norway's Ministry of Trade, Industry and Fisheries of updates to maritime and ship safety laws to enable electronic registration of ships and maritime

rights. The revisions aim to streamline the process, reduce priority conflicts between electronic and paper submissions and modernise notification methods for registration issues. The changes also allow certain financial institutions to handle mortgage document deletions electronically. Additionally, the Ship Safety and Security Act will be amended to allow fines for those in shipping management and captains who fail to comply with safety and security measures. The system for electronic registration came online on 1 January 2024.

Previously, the practice required that original documents had to be sent by mail. The new system has shortened the processing time and the registration of rights is now more practical to carry out.

During 2023, changes in the Maritime Code Section 232 were also suggested to clarify that the entire limitation fund should be distributed to claimants, irrespective of interest on claims. This follows a Supreme Court decision which affected the fund distribution after the MV Full City disaster. The aim is to ensure polluters pay and victims are fully compensated. The suggested changes are still being processed.

As previously noted, the 2007 Nairobi International Convention on the Removal of Wrecks came into force in Norway in February 2025.

Furthermore, in July 2025, certain amendments to the Norwegian General Application Act came into effect. These ensure that workers onboard foreign-flagged ships operating in Norway receive Norwegian wage conditions.

Trends and Developments

Contributed by:

Lilly Kathrin Relling, Kristian Lindhartsen, Miriam Myhre and Tobias Kilde
Kvale Advokatfirma DA

Kvale Advokatfirma DA is a leading commercial law firm that has provided assistance to Norwegian and international businesses since 1988. It is particularly renowned for assisting some of Norway's largest companies with their most important and complicated cases. Kvale's lawyers have extensive experience in negotiations, dispute cases before the ordinary courts and arbitration. With a broad understanding of the shipping industry, the firm assists in all specialist

areas of maritime law, ranging from purely private law disciplines such as charterparties and other types of maritime contract law, maritime casualties and maritime insurance to public law issues such as pollution liability and sanctions law. The team litigates cases before the ordinary courts and in arbitration. Kvale's extensive international network of contacts also enables it to assist clients with litigation assignments outside Norway.

Authors



Lilly Kathrin Relling is a partner in Kvale's oil, gas and shipping department. She assists clients, both Norwegian and international, in commercial law matters and has substantial experience advising

participants within the shipping and offshore industry. She has broad knowledge advising on carrying out contracts, including charterparties, fabrication contracts and other commercial agreements. Lilly also has experience before the ordinary courts and in arbitration, including with arrests and securing other assets. She is a member and national representative of the global lawyers and in-house counsel network AIJA (International Association of Young Lawyers).



Miriam Myhre is a senior associate in Kvale's shipping team. She focuses on negotiating and litigating disputes before the Norwegian courts and in arbitration. Miriam brings valuable in-house insight from her former role

as legal adviser to a major international offshore player, where she advised on contract negotiations, operational issues and compliance across multiple jurisdictions. Her combined private practice and industry experience enables her to deliver commercially focused, technology-driven and efficient solutions for ship-owners, contractors and other key stakeholders in the shipping and offshore sectors.



Kristian Lindhartsen is a partner at Kvale Advokatfirma and has an extensive background in maritime law, with an emphasis on marine insurance disputes, including cover disputes and direct action matters.

He also advises ship-owners and charterers on operational issues, such as those related to charterparties and other contracts of carriage, commercial agreements, collisions and other marine casualties. Kristian is experienced as a litigator in both ordinary courts and arbitration proceedings, including arrests and other asset securing, as well as international jurisdiction issues. He also works on vessel-related transactions, particularly sale/leaseback transactions of ships.



Tobias Kilde is associated with Kvale's maritime and offshore department and primarily works on legal matters related to shipping, offshore, and insurance, assisting both national and international clients.

He has extensive experience in dispute resolution, including in litigation before the Norwegian courts, as well as enforcement proceedings, interim measures, and arrests. He handles cross-border disputes and regularly assists with the enforcement of international claims in both Norway and abroad. Tobias also advises on contract negotiations and provides compliance and anti-corruption counsel. He has a master's degree in law from the University of Bergen.

Kvale Advokatfirma DA

Haakon VII gate 10
PO Box 1752 Vika
N-0122 Oslo
Norway

Tel: +47 22 47 97 00
Fax: +47 21 05 85 85
Email: post@kvale.no
Web: www.kvale.no

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Introduction

Norway's maritime and offshore sector is seeing a series of important legal developments that directly affect how commercial parties allocate and manage risk. This article highlights three key trends:

- a recent arbitral award (*Heroic Idun*) clarifying the limits of war risk insurance under the Nordic Marine Insurance Plan;
- a Supreme Court decision on which country's law applies in international tort disputes; and
- the launch of a new Norwegian standard form shipbuilding contract, SHIP25.

Together, these developments are shaping the risk landscape for ship-owners, charterers, insurers, yards and financiers doing business related to the Norwegian jurisdiction.

The first part examines the Nordic Offshore & Maritime Arbitration Association (NOMA) award in the case of *Heroic Idun*, which draws a clearer line between war-type perils and ordinary law enforcement or regulatory measures, and addresses whether "perceived" piracy is enough to trigger war risk cover. The second part considers the Supreme Court judgment HR-2024-2330-A, which confirms that Norwegian courts will generally apply the law of the place where damage occurs in cross-border tort cases and aligns Norwegian practice with the EU's Rome II Regulation. These two decisions are relevant for parties structuring their operations, insurance programmes and litigation strategies in an international environment.

The third part of this article turns to SHIP25, the new Norwegian shipbuilding standard replacing SHIP

2000. It seeks to update the contractual framework for new-build projects in a volatile cost environment. SHIP25 introduces, among other things, revised solutions on:

- design responsibility;
- buyer-nominated equipment;
- price adjustment mechanisms;
- refund guarantees;
- compliance obligations and progressive transfer of ownership.

The article explains these changes in practical terms and discusses how parties can use SHIP25 to achieve a more balanced and predictable allocation of risk in modern shipbuilding projects.

War Risk Insurance Under the Nordic Plan – *Heroic Idun*

Why the case matters

The *Heroic Idun* arbitral award by NOMA is an important clarification of war risk insurance under the Nordic Marine Insurance Plan (the "Nordic Plan"). The ruling was rendered on 5 August 2025 and gives important clarification on the scope of war risk cover under the Nordic Plan. It confirms that law enforcement actions by foreign authorities and "perceived" war perils are generally not considered a war risk.

Background to the dispute

In August 2022, the large crude carrier *Heroic Idun* arrived at a Nigerian offshore terminal to load. During the night, the Nigerian Navy vessel *Gongola* approached and requested information about clearances. The *Heroic Idun* did not have the requested documentation.

The Nigerian Navy ordered the *Heroic Idun* to follow, but the crew believed that the Nigerian ship might be a pirate ship rather than a navy vessel and therefore refused to obey orders and fled Nigerian waters. Nigeria then asked Equatorial Guinea to detain the vessel. The navy of Equatorial Guinea arrested the *Heroic Idun* in the exclusive economic zone of São Tomé and Príncipe. The vessel and crew were detained in Equatorial Guinea and later transferred to Nigeria, where criminal charges followed. The matter was eventually resolved by a plea bargain, including a substantial payment to Nigeria.

The NOMA tribunal on law enforcement v “overriding political objectives”

Before the NOMA tribunal, the owners of *Heroic Idun* argued that the detention was a covered war peril under Clause 2-9 (1)(b), which deals with foreign state interventions made “for the furtherance of an overriding national or supranational political objective”. The tribunal rejected this.

The tribunal held that the initial approach, the arrest by Equatorial Guinea, the transfer to Nigeria and the continued detention and prosecution were fundamentally law enforcement measures in response to suspected criminal conduct. The fact that senior officials were involved, that the legal basis was questionable and that a large payment was demanded by Nigeria did not turn these actions into war-type political measures covered under Clause 2-9 (1)(b).

The tribunal stressed that only motives typical of war or serious international crises qualify as “overriding political objectives”. Routine or even aggressive law enforcement does not fall within Clause 2-9 (1)(b), even when it feels unfair and illegal from the ship-owner’s perspective.

Perceived piracy is not “piracy”

The owners also argued that the crew’s belief that they were under pirate attack should trigger cover for “piracy” under Clause 2-9 (1)(d) and justify sue and labour (mitigation) costs. The tribunal rejected this as well.

“Piracy” is a named peril and, on an ordinary reading, refers to actual pirate attacks, not situations where the

initiator is mistakenly thought to be a pirate vessel by the other vessel’s crew. Extending cover to perceived perils would significantly broaden the scope of war risk insurance and introduce difficult topics of evidence regarding subjective beliefs. The tribunal held that such a change, if desired, must come through revision of the Nordic Plan, not the court’s interpretation.

Conclusion

The *Heroic Idun* case confirms a narrow and predictable approach to war risk insurance under the Nordic Plan. The decision underlines that the plan covers defined war-type perils, not general political or regulatory problems with foreign authorities. As the plan is a market standard for the insurance conditions of many international clubs, the *Heroic Idun* arbitral award by NOMA should be of interest to owners operating in waters where sporadic coastal state enforcements and piracy are risks.

HR-2024-2330-A – the Use of International Choice-of-Law Rules in Norway

Norwegian courts have had a pragmatic approach to choice-of-law rules in international disputes since the doctrine of *Irma Mignon*. The *Irma Mignon* rule comes from a 1923 Supreme Court judgment (Rt-1923-II-58) about a collision between two Norwegian ships that took place outside Norwegian territorial waters, which forced the court to decide which country’s law should govern the ship-owners’ liability. The court formulated a general principle that the applicable law is found by an overall assessment of where the case has its closest connection. In later years, however, we have seen the Norwegian Supreme Court gravitate towards the EU choice-of-law rules in Rome II. The relevant Supreme Court ruling HR-2024-2330-A, published in 2025, further reinforces this trend.

The dispute was between the bankruptcy estate of Norwegian shipping company IMSK SE and German engine manufacturer MAN Energy Solutions SE. It concerned a claim for compensation for ship engines supplied in the early 2000s. In 2013 a German court fined MAN for manipulating engine documentation. IMSK then sued MAN in Oslo in 2015, seeking tort-based compensation for the losses it claimed to have suffered.

The main issue for the Norwegian Supreme Court was which country's law should be used to assess IMSK's claim against MAN. In simple terms, the court had to decide where the damage really happened in legal terms. Earlier Norwegian cases had moved towards the idea that, in non-contractual (tort) cases, you normally use the law of the country where the damage occurs, not where the wrongful act was carried out. One later Supreme Court judgment explained that for non-contractual obligations, the main rule is that the case must be decided according to the law of the place of damage – *lex loci delicti*. In this case, the court also stressed that not every knock-on financial effect counts. The focus should be on the immediate and direct damage, and more remote or indirect economic consequences should not usually decide which country's law applies. As the court put it, not every effect of a harmful act occurring in a country can serve as the basis for choosing that country's law.

When the court applied this approach to the facts, the majority found that the engines were produced, tested and delivered abroad, and that the companies which directly owned the ships were also foreign. IMSK's loss in Norway was therefore seen as an indirect loss arising through its ownership in these foreign companies, rather than the place where the damage itself occurred. The court noted that no financial loss arose for anyone until the engines were delivered, and that MAN's harmful act had no immediate and direct effect in Norway. On that basis, Norwegian law could not be used as the governing law for the claim, and the lower court's ruling on the matter (Court of Appeal) was set aside. The case was sent back so that the Court of Appeal could choose the correct foreign law and decide the case accordingly.

This ruling is important because it clarifies which country's law Norwegian courts will use when a tort case has links to several jurisdictions, especially where the economic loss is felt through ownership in foreign companies. The Supreme Court itself says that the judgment clarifies the content of the conflict-of-law rules for non-contractual obligations.

At the same time, the judgment explains how this "place of damage" rule fits together with both the EU Rome II Regulation and Norway's older, more flex-

ible *Irma Mignon* doctrine. The court pointed out that modern Norwegian practice is strongly inspired by the EU Rome Regulations, even though Norway is not bound by them, and that the system in Rome II must clearly apply as Norwegian law today for non-contractual claims.

New Shipbuilding Contract Standard – SHIP25 *SHIP25 replaces SHIP 2000*

SHIP25 is the new Norwegian shipbuilding standard replacing SHIP 2000. SHIP 2000 has seen widespread use and has been regarded as the go-to contract for new ship builds in the northern hemisphere and, to some extent, in Asia.

The new SHIP25 is based on the same premises as SHIP 2000, but is designed for a market characterised by more complex and expensive designs, greater project risk and marked price volatility. A key aim was to update the allocation of risk on issues such as design, subcontractors, price adjustment, refund guarantees, compliance and ownership, and to create a standard form that is more in touch with the current market, so that it can be used with confidence as a standard for international ship building.

Key changes

A key change concerns design responsibility. Under SHIP 2000 the yard effectively carried full responsibility for the vessel's compliance with the design, even where the design was ordered by the buyer, which meant that the yard had to price in a significant and open-ended design risk. SHIP25 allows the parties, through Appendix I and a separate design agreement, to limit the builder's liability for design errors and to place residual design risk more clearly on the party in control of the design.

The regulation concerning subcontractors has also been rebalanced. Under SHIP 2000 the builder was generally liable for delays in its supply chain, even where the buyer had effectively dictated the choice of supplier, which in practice pushed prices up and created difficult negotiation positions where there were no realistic alternatives. SHIP25 introduces the concept of "Buyers Elected Items" via Appendix V, under which delay risk for buyer-nominated equipment is shifted to the buyer and the yard is expressly

entitled to continue construction, even if this leads to additional costs that must be addressed under the contract mechanisms.

On pricing, SHIP25 acknowledges that the previous standard took little account of general price inflation and turbulent markets. While it retains SHIP 2000 as the starting point, it adds optional price adjustment mechanisms linked either to agreed indices or to budgeted costs for systems and components. These allow the contract price to be adjusted when index movements exceed a threshold, and oblige the buyer to provide additional funding (against refund security) if key subcontractors demand advance payments above an agreed percentage, instead of leaving the yard to absorb these shocks within the former fixed-price regime of SHIP 2000.

Refund guarantees and compliance clauses are likewise clarified. SHIP25 supplies default wording for refund guarantees where the parties do not attach bespoke terms, addressing earlier uncertainty around renewal and form. In addition, SHIP25 introduces a more comprehensive compliance framework, with clauses addressing human rights, safety, anti-corruption, anti-money laundering, sanctions and export control.

SHIP25 also standardises the alternative of a progressive transfer of ownership via Appendix II. This mechanism is intended to align the transfer of title to the hull and materials with payment milestones, reducing the risk of these assets falling into the builder's insolvency estate or general security and thereby decreasing the need for complex guarantee schemes. It is recognised under Norwegian law but may require particular attention where other legal systems are involved.

Conclusion

SHIP25 is a long-awaited update of the widely used but somewhat outdated SHIP 2000. The market has changed significantly over the last two decades, and those developments were not reflected in the SHIP 2000 template. SHIP25 will hopefully reduce the need for multifaceted tweaks and one-offs to the standard contract for shipbuilding.

Finally, the new solutions in SHIP25 are still relatively untested and contain a number of options, so it will take time for market practice to settle how SHIP25's features are used in negotiations and interpreted in disputes. It will be interesting to follow how the market receives SHIP25 and how its use develops over time.



Law and Practice

Contributed by:

Faisal Daudpota

Daudpota International

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Daudpota International routinely represents clients in ship arrest matters before the courts. From charterparty disputes to ship collisions, the firm has handled numerous cases in the courts in Pakistan and Saudi Arabia, including the following two cases at the High Court in 2025: representing a UAE company in a claim for recovery of money on account of bunker services provided to a vessel belonging to a Liberian

company; and representing the Egyptian owner of a vessel in successfully defending a claim by a French company alleging charterparty breach and tort of negligence. The lawyers assist clients in all the following matters: vessel arrests and documentation, bills of lading, collisions, environmental issues, marine financing, marine tariffs, personal injury, riparian rights, charter agreements, salvage, and subrogation.

Author



Faisal Daudpota focuses his practice on transactional and contentious matters relating to maritime, competition, intellectual property, data protection, information technology, telecommunications, and

competition law. Faisal routinely uses arbitration and other forms of alternative dispute resolution as pragmatic ways to meet clients' needs. He is expert at counselling clients on recovery claims in many jurisdictions across the Middle East as well as internationally, and has managed multiple litigations and instructed counsels in various countries.

Daudpota International

Suite No 306
Horizon Tower
Block-3, Clifton
Karachi 75600
Pakistan

Tel: +971559519972
Email: info@daudpota.com
Web: www.daudpota.com

Daudpota INTERNATIONAL

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Main Domestic Laws Establishing Maritime Jurisdiction

- The Admiralty Jurisdiction of High Courts Ordinance, 1980 (AJHCO 1980): this is the foundational statute, conferring exclusive jurisdiction on the High Courts of Sindh (Karachi) and Balochistan (Gwadar/other ports) to entertain, try and determine admiralty suits, including the power to arrest ships.
- Pakistan Merchant Shipping Ordinance, 2001 (MSO 2001): this comprehensive ordinance governs all matters related to ship registration, ownership, seamen, maritime pollution, and safety.
- Sindh Chief Court Rules (SCCR), Chapter XXXII: these procedural rules guide the specific actions (in rem and in personam) under the admiralty jurisdiction and are often applied in conjunction with the Civil Procedure Code (CPC) 1908.
- Carriage of Goods by Sea Act, 1925 (COGSA): this governs cargo claims and incorporates the Hague Rules.
- Pakistan Maritime Zones Act, 2023: this defines the maritime zones (territorial sea, EEZ, etc) and Sovereign Rights.

Common Maritime and Shipping Claims Filed in Practice

Maritime litigation in Pakistan frequently involves the following, usually filed as actions in rem (against the vessel) or actions in personam (against the owner/charterer):

- cargo claims (short landing/damage);
- arrest of ships/sister-ships;
- ship breaking/ship recycling claims;
- charter party disputes;
- necessities (supplies and services);
- maritime liens (crew wages); and
- marine insurance disputes.

Competent Courts

- High Court of Sindh (Karachi): the primary venue for most maritime disputes due to the concentration of shipping activities in Karachi.
- High Court of Balochistan (Quetta/Gadani Bench): this court primarily handles cases related to ship-breaking and incidents in the Gwadar port area.
- Superior Courts (Appellate): appeals against single-bench judgments go to a division bench (two judges) of the same High Court, and subsequently to the Supreme Court of Pakistan.

1.2 Port State Control

In Pakistan, the system of port state control (PSC) is designed to ensure that foreign-flagged vessels visiting Pakistani ports comply with international maritime safety, security, environmental and labour standards. The regime operates under the authority of the Directorate General of Ports & Shipping (DGP&S), which falls under the Ministry of Maritime Affairs.

System of Port State Control in Pakistan

- Legal basis: inspections are carried out in accordance with the Merchant Shipping Ordinance (MSO) 2001, the Ports Act 1908, and international conventions to which Pakistan is a signatory, including SOLAS, MARPOL, STCW and the Maritime Labour Convention (MLC) 2006.
- Operational mechanism: inspections are conducted by port state control officers (PSCOs) from the Mercantile Marine Department (MMD), who act as authorised agents of the maritime administration.
- Regional co-operation: Pakistan is part of the Indian Ocean MOU (IOMOU) on Port State Control, which harmonises inspection procedures.
- Scope: PSC in Pakistan focuses on 16 key areas of working and living conditions (under MLC, 2006), as well as structural and operational safety, aiming to identify and detain substandard ships.

Authorities and Powers

- Primary authority: the Directorate General of Ports and Shipping (DGP&S) oversees the regime.
- Operational authority: the Mercantile Marine Department (MMD) in Karachi and other ports handles the inspections.
- General powers:

- (a) inspection – PSCOs have the right to board foreign ships to verify documents and check equipment;
- (b) detention – ships found to be in substantial non-compliance (substandard) with international conventions can be detained until deficiencies are rectified; and
- (c) rectification – repairs or operational changes are required before a ship is allowed to sail.

Powers in Relation to Marine Casualties and Incidents

When a marine casualty (collision, grounding, sinking, pollution) occurs involving a foreign ship, the MMD and DGP&S act immediately to prevent further damage and ensure safety.

- Grounding/stranding: PSCOs co-ordinate with the Port Authority (Karachi Port Trust, Port Qasim Authority, or Gwadar Port Authority) and the Pakistan Navy to issue navigational warnings and assess structural integrity.
- Pollution: if a vessel causes, or is likely to cause, pollution (oil/chemical), the PSCO has the power to –
 - (a) issue notices and fines under the MSO 2001 and the Pakistan Environmental Protection Act (PEPA); and
 - (b) detain the vessel until adequate pollution response measures are taken.
- Seafarer casualties/fatalities: the DGP&S office acts as the co-ordinating authority for investigations into fatalities on foreign ships. It has the power to –
 - (a) investigate working conditions and safety procedures on board; and
 - (b) ensure compliance with MLC 2006 regarding repatriation, compensation, and medical care for deceased or injured crew.
- Wreck removal: under the MSO 2001, the maritime authority has the power to force the owner to remove a wreck that poses a hazard to navigation or the environment, or to arrange for its removal at the owner's expense.

Key Entities Involved

- Directorate General of Ports & Shipping (DGP&S): highest authority for policy and oversight.

- Mercantile Marine Department (MMD): executes PSC inspections.
- Maritime Security Agency (PMSA): operates under the PMSA Act 1994 to enforce maritime safety, pollution control and security within Pakistan's maritime zones.

1.3 Domestic Legislation Applicable to Ship Registration

In Pakistan, the domestic legislation and administration of ship registration are governed by federal laws aimed at regulating the shipping industry, implementing international conventions (such as MARPOL and SOLAS), and offering incentives for local vessel registration.

Key Pieces of Domestic Legislation

- Pakistan Merchant Shipping Ordinance, 2001 (MSO 2001);
- Registration of Ships Rules, 2002;
- Pakistan Merchant Marine Policy 2001 (Amended 2019);
- Fishing Vessels Registration Rules – 2021; and
- Tonnage Rules – 2002.

Government Authority for Vessel Registration

- Registrar of Ships: the registration is carried out by the principal officer of the MMD, who acts as the Registrar of Ships.
- Parent ministry: the MMD functions under the DGP&S, which is part of the Ministry of Maritime Affairs.

Key Registration Requirements

- Eligibility: ships must be owned by Pakistani citizens, companies with their principal place of business in Pakistan, or approved bodies corporate.
- Name approval: the vessel name must be approved by the Directorate Signals, Naval Headquarters, Islamabad.
- Procedures: registration requires a declaration of ownership, builder's certificate, proof of payment of customs duties (if imported), and a survey by MMD surveyors.
- Bareboat charter: a ship on a bareboat charter for at least six months can be registered as a Pakistani ship.

1.4 Requirements for Ownership of Vessels

Vessels registered in Pakistan must generally be owned by citizens, companies with their principal place of business in Pakistan that control operations from there, or parties permitted by the federal government. Foreign ownership is restricted, but foreign entities may operate through a locally registered subsidiary. Registration of vessels under construction is possible, often requiring documentation of the builder and construction progress.

Key Requirements and Ownership Rules

- Eligible owners: according to the Registration of Ships Rules, 2002, ownership is restricted to Pakistani citizens (by birth or migration), individuals with Pakistani citizenship via registration, or companies with a principal place of business in Pakistan.
- Foreign ownership: while primarily a closed registry for citizens, foreign investors can potentially own vessels through a locally registered subsidiary or with specific permission from the federal government.
- Registration process: for individuals, this requires a declaration of ownership on stamped paper, notarised, with photographs; and for companies, the memorandum of association and incorporation certificates.
- Vessels under construction: a vessel under construction can be registered, requiring documentation such as a declaration from the builder and proof of ownership.
- Fishing vessels: registration for fishing boats requires submission to the registrar of fishing vessels nearest to the owner's residence or construction site.

Registration is processed through the MMD Karachi, and can typically be completed in approximately five working days upon submission of all required documentation.

1.5 Temporary Registration of Vessels

Pakistan's legal framework, under the Merchant Shipping (Registration of Ships) Rules, 2002, allows for temporary, specific registration, particularly for bareboat charters lasting at least six months. Dual registration is generally not permitted, as the registry requires

a declaration of ownership, although temporary bareboat charter registry allows for operation under the Pakistani flag while the primary registry is suspended.

Key Details on Vessel Registration in Pakistan

- Temporary registration: the Rules of 2002 permit the registration of ships on bareboat or demise charter for a period of no less than six months.
- Requirements: a vessel can be registered if the charterer/operator is a Pakistani citizen or a body corporate allowed to be a shipowner under the MSO 2001.
- Dual registration: while not explicitly allowing concurrent full registration, the system facilitates "flagging in" for chartered vessels, allowing them to operate as Pakistani ships.
- Process: applications are submitted to the MMD.
- Documentation: a declaration of ownership, a builder's certificate, and custom documents are required.

The registration process aims to establish ownership and ensure compliance with safety regulations, and owners can benefit from incentives under the Merchant Marine Policy 2001.

1.6 Registration of Mortgages

In Pakistan, primarily the Securities and Exchange Commission of Pakistan (SECP) maintains the registration of mortgages and charges created by companies under the Companies Act, 2017.

Key Requirements for Registration (Corporate)

- Form-10: duly signed form detailing the charge, filed within 30 days of creation;
- instrument of charge: original or verified copy of the mortgage deed;
- affidavit: duly signed and attested by a commissioner of oaths;
- proof of payment: fee submission receipt; and
- no objection certificate (NOC): a conditional NOC, if applicable.

Separately, there is also a ship ownership and mortgage registry, managed by the MMD.

1.7 Ship Ownership and Mortgages Registry

In Pakistan, the ship ownership and mortgage registry, managed by the MMD, is not fully digitised or openly accessible to the public online. While public in nature, the register is maintained through a manual, paper-based system, making remote, instant viewing by third parties difficult compared to in other jurisdictions.

How to View Registrations

As the system is not fully digitised, viewing records requires direct interaction with the MMD. The register is maintained at the office of the Principal Officer (Registrar of Ships), Mercantile Marine Department, Karachi, and enquiries regarding ownership or mortgages usually require a formal search request to be submitted at the MMD office. A manual search may then be undertaken for the vessel's registration.

Limitations

The registry operates on an old, manual system rather than a modern, publicly accessible digital platform. Although information is generally accessible to concerned parties, searching requires physical presence or local representation in Karachi, which can be challenging for international parties.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

In Pakistan, typical financing involves a high debt-to-equity ratio, with a heavy emphasis on secured lending, primarily governed by the MSO 2001.

Debt and Equity Financing

- Debt financing structure: The most common structure for vessel acquisition is a long-term loan, frequently in a debt-to-equity ratio of around 80:20.
- Key terms and operative provisions:
 - (a) Loan-to-value (LTV) ratios: typically 50%–60%.
 - (b) Interest rates/spreads: the State Bank of Pakistan (SBP) allows refinancing under its long-term finance facility (LTFF), with a maximum spread (eg, up to 3% pa for ten-year loans).
 - (c) Tenor: loans often match the useful life of the vessel or long-term charter commitments.
 - (d) Currency: loans are often in foreign currency to match revenue, or PKR for local transactions,

backed by foreign exchange savings.

- (e) Key covenants: include maintaining loan-to-value insurance coverage, and compliance with environmental regulations (eg, the PEPA, 1997).
- Equity/other financing: Private equity or internal accruals form the 20% equity portion. Shipping companies listed in Pakistan often raise capital through equity, although debt-based instruments (including through Islamic finance) are more common.

Ship Mortgages and Security Packages

Ship mortgages are registered under the MSO 2001, providing a statutory lien.

- Ship mortgages: A “simple mortgage” (no delivery of possession) is the most common form. Registration must be done with the designated maritime authority/Registrar of Ships to be effective.
- Security packages beyond mortgages:
 - (a) Assignment of earnings – assignment of charter hire, freight, and earnings to the lender.
 - (b) Insurance policies – mortgagee's interest insurance (MII) and assignment of hull and machinery (H&M) and protection and indemnity (P&I) policies.
 - (c) Corporate guarantees – from parent companies or sister companies.
 - (d) Pledge of shares – pledging shares of the special purpose vessel-owning company.
 - (e) Charge on accounts – a charge over the borrower's bank accounts, often authorised under the Companies Act, 2017.

Common Types of Transactions

- Direct bank loan (term loan).
- Long-term finance facility (LTFF/ILTFF).
- Islamic finance.
- Export finance schemes (EFS).

2.2 Ship Leasing

Key Aspects of Ship Leasing in Pakistan

- Market trends: The leasing industry in Pakistan has been a significant source of financing since the 1980s. While specific recent data on volume increases is not detailed in the provided search results, the global trend shows a shift towards

alternative financing (including leasing) due to stricter traditional bank lending.

- **Shift in finance:** There is a noticeable shift away from traditional, purely bank-financed lending towards alternative credit providers and Chinese leasing houses. These entities offer more flexible structures compared to conventional debt, including operating-and-finance leases.
- **Sale and leaseback:** These transactions are common in the industry, serving as a popular method for ship-owners to unlock equity in their vessels while retaining operational control.
- **Lessor/lessee v lender/borrower:** In a leasing arrangement, the lessor holds title to the vessel, making enforcement, such as repossession, potentially faster than enforcing a mortgage on a defaulting borrower, which may require lengthy judicial intervention.
- **Enforcement:** Courts and tribunals generally handle leasing defaults by focusing on the contractual right of the lessor to regain possession of the asset. However, legal issues in ship leasing can be complex, often requiring the application of both maritime law and specialised financial lease legislation.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Applicable International Conventions

Pakistan is party to several key International Maritime Organization (IMO) conventions, with the Ministry of Maritime Affairs (formerly Ports & Shipping) acting as the focal point:

- Civil Liability for Oil Pollution Damage (CLC), 1992;
- International Convention for the Prevention of Pollution from Ships (MARPOL 73/78);
- Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 & 1973 Protocol;
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), 1972;
- United Nations Convention on the Law of the Sea (UNCLOS), 1982; and

- Nairobi International Convention on the Removal of Wrecks, 2007.

Relevant Laws of Pakistan

- MSO 2001;
- PEPA, 1997;
- Port Acts (Karachi Port Trust Act 1886, Port Qasim Authority Act 1973, Gwadar Port Authority Ordinance 2002); and
- AJHCO 1980.

3.2 International Conventions: Collision and Salvage

Key Domestic Laws (Pakistan)

- MSO 2001;
- AJHCO 1980;
- Merchant Shipping (Navigation, Collision and Accident) Rules, 2003;
- Marine Insurance Act, 2016; and
- PEPA, 1997.

Applicable International Conventions

Pakistan has acceded to several International Maritime Organization (IMO) conventions, impacting liability:

- International Convention on Salvage, 1989 (Salvage 1989);
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992 ("CLC-92");
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the "Bunker Convention"); and
- COLREGs 1972.

Impact on Liability and Interested Parties

- **Collision liability:** under the MSO 2001, liability is usually determined based on fault, but in instances involving oil-carrying ships, the strict liability rules of CLC-92 apply, holding the owner liable regardless of fault, subject to limited exceptions.
- **Salvage rewards:** the International Convention on Salvage, 1989 allows for significant awards to be calculated based on the skill of the salvor, the value of the property salvaged, and the protection of the environment.
- **Limitation of liability:** ship-owners can limit their liability for property damage or personal injury in

accordance with the limits defined in the MSO 2001 and the CLC-92, provided the incident did not result from their personal fault.

- Maritime liens and arrests: in the event of a collision or salvage, the claimant can initiate an admiralty suit in the High Court and request the arrest of the vessel to secure claims.

3.3 Convention on Limitation of Liability for Maritime Claims

Applicability of the 1996 Protocol to the 1976 Convention (LLMC)

While Pakistan is a signatory to the Convention on the International Maritime Organization (1948) and has ratified UNCLOS, the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 is not directly shown as ratified or fully domesticated in the provided search results. However, standard terms in Pakistan's shipping industry, such as those used by DP World Karachi, reference the "1976 Convention on Limitation of Liability for Maritime Claims, and the 1996 Protocol thereto" as applicable limitation conventions.

Note: the 1996 Protocol substantially increases the liability limits set by the 1976 Convention.

2012 Amendments (Increased Limits)

The 2012 amendments to the 1996 LLMC Protocol (which entered into force internationally on 8 June 2015, increasing liability limits) generally apply to contracting states that have adopted the 1996 Protocol. As the status of Pakistan's accession to the 1996 Protocol is not explicitly confirmed, it is not certain if the 2012 amendments are formally binding in domestic law, although the industry often follows international standards.

Applicable Domestic Legislation

The primary legislation governing maritime liability in Pakistan includes:

- the MSO 2001 – this is the main statute governing merchant shipping, registration and liabilities;
- the Maritime Zones Act, 2013 – this Act (which replaced the 1976 Act) defines the maritime zones and applies to the territorial sea, exclusive eco-

nomic zone, and other maritime areas of Pakistan; and

- the Carriage of Goods by Sea Act, 1925 – this Act incorporates the Hague Rules.

3.4 Vienna Convention on the Law of Treaties

Pakistan signed the Vienna Convention on the Law of Treaties, 1969 (VCLT) on 29 April 1970, but has not ratified it.

Although Pakistan is not a party to it, the VCLT's guidelines for treaty interpretation are recognised by Pakistani courts as customary international law.

While the VCLT is not a direct statute, Pakistani courts, especially the Supreme Court and the High Courts, increasingly rely on international law to interpret domestic legislation.

The superior judiciary in Pakistan has shown a willingness to look at international legal instruments, including those not formally ratified, to ensure compliance with the "comity of nations" and international obligations.

3.5 Procedure and Requirements for Establishing a Limitation Fund

In Pakistan, a limitation fund, primarily used in maritime law to limit liability for ship-owners, is established by depositing a sum (or guarantee) with a court of competent jurisdiction based on vessel tonnage, governed by the MSO and international conventions like the LLMC 1976. The fund is set by ship-owners or salvors to cap liability for maritime claims.

Key Aspects of Establishing a Limitation Fund

- The following can set a fund: shipowners, charterers, managers, operators and salvors.
- Procedure:
 - (a) initiate legal action in the relevant court (eg, the High Court) seeking to limit liability;
 - (b) calculate the total limit based on the vessel's tonnage (limitation tonnage) as per the LLMC 1976;
 - (c) deposit the calculated amount into the court; and
 - (d) provide a bank guarantee or deposit cash, ensuring it is immediately available to claimants.

- Calculation: the fund is calculated using units of account (Special Drawing Rights – SDRs) based on the vessel's tonnage. It covers claims for loss of life, personal injury, and property damage.
- Deposit requirement: a deposit is mandatory. The fund must be constituted by depositing cash or providing a guarantee accepted by the court.

Once the fund is established, it prevents claimants from seizing other assets of the shipowner, acting as a "limitation" on liability.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention (MLC), 2006, is now applicable in Pakistan. Pakistan officially ratified the MLC 2006 on 14 March 2025.

The ratification signifies that the convention is applicable to all Pakistani-flagged vessels engaged in international voyages, setting minimum requirements for working and living conditions.

While the MLC 2006 was formally ratified in 2025, the primary legislation governing seafarers' rights, safety and working conditions in Pakistan is the MSO 2001.

4. Cargo Claims

4.1 Bills of Lading

Applicable International Conventions

Pakistan has adopted the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) (the "Hague Rules"). This is the primary legal framework governing the carriage of goods by sea and bills of lading. Pakistan has not officially adopted and does not directly apply the more modern Hague-Visby Rules (1968) or the Rotterdam Rules.

Domestic Laws Covering Carriage by Sea and Bills of Lading

The Carriage of Goods by Sea Act, 1925 (COGSA) and the Sea Carriage Shipping Documents Act, 2018 are both implemented.

4.2 Title to Sue on a Bill of Lading

In Pakistan, the right to sue on a bill of lading is governed primarily by the Bills of Lading Act, 1856, which

is still in force and mirrors English law of that era, granting rights to consignees and endorsees. Furthermore, COGSA applies to outward shipments from Pakistan.

The following have the title to sue: the consignee, the endorsee, the lawful holder and the shipper. Pakistan recognises the assignment or transfer of the title to sue.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

In Pakistan, ship-owners' liability for cargo damage is generally governed by COGSA, incorporating the Hague Rules, which mandate duty of care in handling, storing and transporting goods. Liability is limited to specific amounts per package or unit unless the value was declared. Actual and contractual carriers face different liabilities, as contractual carriers are directly responsible for the bill of lading, while actual owners may only be liable if the damage occurred during their operational control.

Ship-Owner's Liability for Cargo Damage

- Legal framework: Pakistan applies the Hague Rules under COGSA, focusing on the seaworthiness of the vessel and proper care of cargo.
- Scope of responsibility: owners are responsible for damage due to improper stowage or crew negligence, but are generally exempt from liability for Acts of God, fire on the ship, or the perils of the sea.
- Limitation of liability: liability is typically limited to a specific monetary value per package or kilogram under the Hague Rules.

Differences: Actual v Contractual Carrier

- Contractual carrier (eg, NVOCC/Charterer): issues the bill of lading, bearing primary liability for the entire journey, even if they do not own the ship.
- Actual carrier (ship-owner): the owner of the vessel who physically performs the carriage is usually only liable if the damage occurred during their operational control (eg, due to bad stowage), as they may not have a direct contract with the shipper.
- Key distinction: the contractual carrier is usually the primary target of claims, while the actual carrier may be sued directly, especially if the bill of lading

includes a “demise clause” identifying the owner as the carrier.

4.4 Misdeclaration of Cargo

In Pakistan, a carrier can establish a claim against a shipper for misdeclaration of cargo, primarily under the Customs Act, 1969 (Sections 32, 156) and the Carriage of Goods Act, 1925. Shippers are liable for inaccuracies in, or non-disclosure of, the nature/value of goods. If the shipper misdeclares, leading to fines or damage, the carrier can claim damages, though the shipper is often penalised by customs authorities.

Key Legal Positions and Judgments in Pakistan

- Shipper’s liability for misdeclaration: the shipper is generally held liable if the cargo declaration is incorrect, leading to misdeclaration in the Import General Manifest (IGM).
- Case example (misdeclaration/confiscation): in a High Court of Sindh case, East Wind Shipping was held liable for misdeclaring the IGM, resulting in a penalty and the cargo (xylene) being confiscated under the Customs Act.
- “Shipper loaded” containers: if the bill of lading is marked as “shipper’s load, stow, and count” (SLSC/STC), the carrier is not liable for the contents if they are misdeclared or damaged, provided the container was delivered with seals intact (PLD 1992 SC 291).
- Carrier’s defence: carriers can defend themselves if they prove they handled the cargo correctly and the damage/discrepancy resulted from the shipper’s misdescription.

Relevant Regulatory Context

- SRO 2031 (1)/2022: this outlines procedures for compensation and liability, often capping carrier liability unless high value is declared.
- Frustrated cargo (Section 138): if the misdeclaration causes issues, the cargo may be classified as “frustrated”, allowing for re-export, but the shipper/consignee is typically liable for the costs.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

In Pakistan, the time bar for filing a claim for damaged or lost cargo, whether framed as a breach of contract or liability in tort, is generally governed by COGSA

(incorporating the Hague Rules) or the Limitation Act, 1908.

The following is a breakdown of the limitation periods and extension possibilities.

Time Bar for Cargo Claims (Limitation Period)

- Sea carriage (most common): under Article III, Rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1925, the carrier and the ship are discharged from all liability for loss or damage unless suit is brought within one year after the delivery of the goods or the date when they should have been delivered.
- Other carriers (rail/inland): Articles 30 and 31 of the Limitation Act, 1908, also prescribe a limitation period of one year for compensation against a carrier for non-delivery or damage to goods.
- Contract/tort claims generally: if not covered specifically by COGSA, suits for damages for breach of contract or for tort (negligence/misfeasance) are generally subject to a three-year period under the Limitation Act, 1908, starting from when the damage occurs or the contract is breached. However, the one-year rule for carriers is usually enforced for cargo damage.

Extension or Sustainability of the Time Limit

- Extensions by agreement: the one-year time limit can be extended by mutual agreement between the parties (eg, a “standstill agreement” or extension of time limit). It is common practice for claimants to request an extension from the shipping line before the deadline expires.
- Statutory exceptions:
 - (a) acknowledgment – if the carrier acknowledges the debt/liability in writing before the expiry of the original period, a fresh period of limitation may begin from the time of that acknowledgment (Section 18 of the Limitation Act, 1908); and
 - (b) fraud/concealment – if the carrier has committed fraud or concealed the damage, the time limit might be extended, as equitable principles may apply (Section 18, Limitation Act, 1908).
- Court discretion: the courts in Pakistan are strictly bound by the Limitation Act, 1908, and have limited power to condone a delay in filing a suit once

the prescribed period has expired, even on equitable grounds.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

International Laws Governing Ship Arrests

Pakistan is a signatory to the 1999 United Nations International Convention on Arrest of Ships, but it has not yet ratified it.

Therefore, no international convention is directly applicable or enforceable regarding ship arrests in Pakistan.

Domestic Laws Governing Ship Arrests

- AJHCO 1980;
- SCCR, 1944 (Rules 729–775);
- CPC; and
- MSO 2001.

5.2 Maritime Liens

In Pakistan, recognised maritime liens are limited to claims for seaman/master wages, damage caused by a ship, salvage, and bottomry, which attach to the vessel and follow it regardless of change in ownership. While liens for crew injuries (a form of master/seaman claim) are generally recognised, Pakistani law distinguishes between maritime liens and statutory maritime claims. Liabilities from chartering a vessel can support a statutory maritime claim allowing vessel arrest.

Maritime Liens and Claims in Pakistan

- Recognised maritime liens: Pakistani courts recognise a narrow category of maritime liens – seamen’s wages/disbursements (including master’s wages), damage caused by a vessel, salvage, and respondentia.
- Crew injuries: a maritime lien for indemnities for injuries to the crew is recognised, generally falling under the umbrella of seamen’s wages/emoluments.
- Distinction between liens and claims: Pakistani law differentiates between these. A maritime lien is a privileged claim that attaches to the vessel from the moment the claim arises and travels with it. A

maritime claim is a broader statutory right to initiate an in rem action (arrest) for various, often contractual, claims, as outlined in the AJHCO 1980.

- Charterparty liabilities: liabilities resulting from contracts for chartering a vessel generally provide grounds for a statutory maritime claim (and potential vessel arrest) under Section 3 of the Admiralty Ordinance, 1980, rather than a maritime lien.

Arrest and Time Bars

- Grounds for arrest: a vessel can be arrested for both maritime liens and statutory maritime claims, which include, among others: damage caused by the ship, salvage, wages, loss of life or personal injury, charterparty breaches, non-payment of goods/materials, and mortgage disputes.
- Time bars and expiration: maritime liens are considered valid from the moment the cause of action arises. However, they can be extinguished by laches (unreasonable delay in enforcing the claim) or by a court-ordered sale of the vessel (judicial sale). The specific time limits often follow statutory limitation periods for the underlying cause of action, though laches is applied on a case-by-case basis.

5.3 Liability in Personam for Owners or Demise Charterers

Do the Owners or Demise Charterers Need to be Liable in Personam?

This depends on the nature of the claim.

For maritime liens (damage done, salvage, wages, bottomry)

The personal liability of the registered owner or demise charterer is not necessarily required. A maritime lien acts as a charge on the ship that travels with it, allowing the vessel to be arrested even if the owner is not personally liable.

For statutory in rem claims (necessaries, charterparty disputes, etc)

Generally, the “relevant person” – the person who would be liable for the claim in an action in personam – must be the owner, demise charterer, or the person in possession/control of the ship when the cause of action arose.

Sister-ships

Under Section 4 (4) of the AJHCO 1980, a sister-ship can be arrested, but only if the person who is liable in personam is the beneficial owner of that sister-ship at the time the action is brought. Note that Pakistani courts have excluded time charterers from the definition of “beneficial owner”, meaning sister-ship arrests usually require the same owner.

Can a Vessel be Arrested Regardless of Liability on Merits?

In specific circumstances, a vessel can be arrested regardless of the personal liability of the current owner.

Maritime liens

If the claim constitutes a recognised maritime lien (eg, collision damage, salvage, wages), the lien attaches to the ship itself (res) and remains attached regardless of a change in ownership. Therefore, a new owner who was not responsible for the liability can still have their ship arrested.

Procedural requirements

The arrest is initiated by filing a suit in rem and an affidavit in the High Court (usually the Sindh High Court). The arrest is a procedural step to secure the claim.

Sale of ship

If a ship is sold by the court, the new owner receives a clean title, but the lien-holder has priority over the sale proceeds.

5.4 Unpaid Bunkers

Key Aspects of Bunker Arrests in Pakistan

Contractual v actual supplier

A contractual supplier (middleman) may find it harder to arrest a vessel compared to the actual physical supplier, as the courts focus on who provided the “necessaries”. However, if the contract gives a direct lien to the supplier, it may assist, but this is not absolute against owners if they did not authorise the purchase.

Charterer-ordered bunkers

If bunkers are ordered by a charterer, and the supplier was aware of this (or the owner did not authorise it), an arrest is unlikely to succeed, as the owner is not liable.

Charterer's authority

Charterers are generally considered to have authority to order necessities to operate a vessel, but this does not automatically create a lien against the vessel itself for unpaid invoices, unless the charterparty or owner authorised the purchase.

Difference Based on Circumstances

Owner liability

If the vessel owner is not personally liable for the debt (ie, the contract was with the charterer and the owner did not authorise it), a claim in rem to arrest the vessel will likely fail.

Proof of supply

The physical supplier must prove the bunkers were supplied on the “faith and credit of the vessel”, yet even this is often insufficient without showing the owner's liability.

In summary, for a successful arrest in Pakistan, the supplier must typically establish that the owner is liable for the debt or that a specific, recognised maritime lien exists, rather than just a contractual right against the charterer.

5.5 Arresting a Vessel

Formalities to Arrest a Vessel

- Admiralty suit: a formal suit in rem must be filed against the ship, describing it as “Owner of or persons interested in the ship [name of vessel]”.
- Affidavit in support: a comprehensive affidavit must be filed alongside the plaint (complaint). This affidavit must outline the facts, the nature of the claim (eg, maritime lien, necessities, mortgage), and the source of information.
- Warrant of arrest: upon accepting the suit and affidavit, the High Court issues a warrant of arrest.
- Execution: the warrant is executed by the court's *nazir* (bailiff) by pasting/nailing the original warrant on the main mast or a conspicuous part of the ship.
- Documentation: proof of ownership, port of call details, and evidence of the claim are essential.

Power of Attorney and Documentation

- The PoA and any supporting affidavits originating outside Pakistan must be notarised or apostilled in the country of origin.
- Originals v copies – while photocopies may be accepted during the initial filing to urgently secure a warrant, original documents must usually be filed or produced before the court to verify authenticity, especially if challenged.

Translation Requirements

- All documents submitted to the High Court of Sindh must be in English.
- If the original documents are in another language, they must be accompanied by a certified English translation.

Security Deposit (Counter-Security)

- Court costs: the court requires payment of standard court fees for institution of the suit.
- Arrest costs/undertaking: the arresting party must provide an undertaking (and sometimes a deposit) to cover the bailiff's fees and the initial costs of maintaining the vessel while under arrest.
- Security for wrongful arrest: this is a rare exception and only possible in complicated cases where the defendant has a counter claim. Although not always mandatory, the court has the discretion to order the plaintiff to furnish security for any damages the shipowner might suffer if the arrest is deemed wrongful or unjustified.
- Release security: to release the vessel, the defendant must provide security (typically a P&I Club Letter of Undertaking or a bank guarantee) to the satisfaction of the court, usually covering the full claim amount plus costs.

5.6 Arresting Bunkers and Freight

The following is a breakdown of the legal position in Pakistan.

Arresting Bunkers (as Property/Goods)

- Action in rem: a claim for “necessaries” supplied to a ship – which includes bunkers (fuel) – can support an action in rem against the vessel.
- Arrested property: if bunkers are supplied and a lawsuit is filed, the court may arrest the ship, and in

some circumstances, cargo (including bunkers) on board, to secure the claim.

- Limitation: it is important to note that case law in Pakistan (specifically in the Sindh High Court) has indicated that a bunker supply claim may not hold a maritime lien (which is the highest form of claim), but it is a valid maritime claim that can lead to vessel arrest.

Arresting Freight (as Property/Proceeds)

- Freight as “res”: freight (money payable for the carriage of goods) can be attached as property belonging to the ship-owner or person in possession of the ship.
- Attachment: if the freight is unpaid, it can be arrested or attached to satisfy maritime claims relating to the carriage of goods or the hire of a ship.

5.7 Sister-Ship Arrest

A sister-ship arrest is possible in Pakistan.

The following are the key points regarding sister-ship arrests in Pakistan:

- Definition of a sister-ship: under Section 4 (4)(b) of the AJHCO 1980, a claimant can arrest a ship that is, at the time the action is brought, beneficially owned as regards the majority shares by the same person who is liable in an action in personam.
- Pre-condition for arrest: the person who would be liable for the claim (owner, charterer, etc) must, at the time the cause of action arose, have been the owner, charterer, or in possession/control of the ship, and must still beneficially own the majority shares in the sister-ship at the time of arrest.
- Excluded entities: recent judicial interpretation by the Supreme Court of Pakistan has clarified that the “beneficial owner” must hold the majority shares, thereby excluding mere time-charterers or demise-charterers from the definition, meaning a ship cannot be arrested for the debt of a mere charterer.
- Procedural requirement: an action in rem must be filed in the High Court (such as the Sindh High Court or Balochistan High Court) along with an affidavit, based on which a warrant of arrest is issued.

- Excluded vessels: ships belonging to the Pakistan Navy or government-owned ships used for non-commercial purposes are exempt from arrest.

The law in Pakistan is quite strict regarding “beneficial ownership”, and mere association between companies is not enough; the applicant must demonstrate that the same entity controls the majority shares of both vessels.

5.8 Other Ways of Obtaining Attachment Orders

Sister-Ship Arrest

Under Section 4 (4)(b) of the AJHCO 1980, a claimant can arrest any other vessel beneficially owned by the same person liable for the claim, particularly if the offending vessel has left Pakistani jurisdiction.

Attachment Before Judgment

If a defendant attempts to remove assets (like cargo or funds) to obstruct a potential court decree, the court can order their attachment under Order XXXVIII Rule 5 of the CPC 1908.

Attachment of Other Assets

Courts can attach a defendant’s movable or immovable property, such as freight money or bank accounts, under Section 60 of the CPC 1908. This extends to funds held as guarantees with local authorities.

Injunctions

High Courts can issue interlocutory injunctions (restraining orders) under Order XXXIX Rules 1 and 2 to prevent parties from transferring assets or removing cargo from the jurisdiction.

5.9 Releasing an Arrested Vessel

In Pakistan, an arrested vessel can be released by providing suitable security to the court, typically involving the consent of the plaintiff, payment of bailiff fees, and filing an application for release. A P&I Club Letter of Undertaking (LOU) is not commonly accepted unless the claimant agrees to the same; otherwise, a local bank guarantee is often required.

Options to Release an Arrested Vessel in Pakistan

- Security deposit/guarantee: this entails providing a bank guarantee, bail bond, or cash deposit to

the court for the claimed amount, plus interest and costs.

- Negotiated settlement/LOU: an LOU from an International Group P&I Club is generally not accepted, unless the claimant agrees to it.
- Court application: filing an application for release based on the security provided may be successful, if the court orders the release after ensuring the claimant’s interests are protected.
- Objection to arrest: this involves challenging the validity of the arrest in court, arguing that it was wrongful or that the claim is not a maritime lien.
- Foreign bank guarantee: this is generally not acceptable unless the claimant agrees to it.
- Conditional acceptance: if the plaintiff does not agree to the LOU, the court may require a more secure form of guarantee, such as a bank guarantee or cash deposit.

5.10 Procedure for the Judicial Sale of Arrested Ships

Public Auction

If an owner fails to provide security to release an arrested vessel, the High Court will order a public auction conducted by the *nazir*. The court confirms the sale to transfer a clean, unencumbered title to the buyer.

Private Sales

These are generally prohibited to ensure transparency. However, a court may allow a private sale if all parties consent or if it is proven to yield a better price than an auction.

Maintenance Liability

The arresting party (plaintiff) is initially responsible for the vessel’s maintenance costs while it is in court custody (*custodia legis*). These expenses are classified as “marshal’s charges” and are prioritised for reimbursement from the sale proceeds.

Priority Ranking

In the absence of specific statutes, the courts follow English principles to rank claims. The general hierarchy is:

- marshal’s costs (maintenance and sale expenses);

- possessory liens (holders in possession prior to arrest);
- maritime liens (crew wages, salvage, collision damage); and
- registered mortgages.

5.11 Insolvency Laws Applied by Maritime Courts

Corporate Rehabilitation and Vessel Arrests

Pakistan employs the Corporate Rehabilitation Act, 2018 (CRA) to manage insolvency, similar to Chapter 11 of the US Bankruptcy Code.

Rehabilitation framework

The CRA allows financially distressed companies (with liabilities of PKR100 million or more) to petition for a rehabilitation plan, granting a temporary stay on legal actions against them.

Impact on vessel arrests

A rehabilitation order does not absolutely bar the arrest or judicial sale of a vessel. Under the AJHCO 1980, courts can still exercise in rem jurisdiction to satisfy maritime liens (eg, crew wages or collision damage).

Priority of claims

Maritime liens are treated as highly secured claims that generally rank higher than unsecured debts. Consequently, a court may proceed with a judicial sale to settle these liens even if the shipowner is undergoing insolvency proceedings.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Pakistani High Courts (Sindh, Balochistan, Lahore) may award damages if an arrest is deemed “wrongful” based on specific criteria.

Grounds for Liability

An arrest is wrongful if executed in bad faith (*mala fides*) or without reasonable cause (eg, frivolous claims or false affidavits). Liability also arises from procedural failures, negligent misstatements, or arresting a vessel that does not meet “beneficial ownership” requirements.

Triggers for Damages

Courts may penalise claimants for demanding excessive security, arresting for claims not recognised by law (non-maintainable), or failing to diligently prosecute the suit after the arrest.

Compensation

Awards typically cover actual damages – including daily detention costs, lost profits, and port dues – along with the legal costs of the suit.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Claims regarding passenger injury or loss of life are adjudicated by the High Courts under a combination of domestic statutes and international conventions.

Governing Laws

Key frameworks include the AJHCO 1980 (granting in rem jurisdiction) and the MSO 2001, alongside the LLMC Convention, 1976 for liability limits.

Time Limits

The standard limitation period for filing a suit is one year from the date of injury or service completion. This may be extended if the carrier acknowledges liability in writing.

Liability Caps

Under the LLMC Convention, a shipowner’s liability is generally capped at 175,000 SDR multiplied by the ship’s passenger capacity. However, this limit is forfeited if the loss resulted from the shipowner’s personal intent or recklessness.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Pakistani courts generally recognise exclusive jurisdiction and arbitration clauses in bills of lading as binding contractual terms.

- General rule: the courts will typically stay domestic proceedings to allow disputes to be resolved in the agreed foreign forum. Under the 2011 Arbitration Act, referring parties to arbitration is mandatory if a valid agreement exists.
- The COGSA Exception: COGSA creates a critical distinction between –
 - (a) outbound (from Pakistan): the Act applies to shipments leaving Pakistan and foreign clauses that attempt to override statutory protections in these cases may not be enforced; and
 - (b) inbound (to Pakistan): the Act generally does not apply to incoming shipments, making the enforcement of foreign jurisdiction clauses much more likely.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

The courts in Pakistan generally recognise and enforce law and arbitration clauses of a charterparty that are incorporated into a bill of lading, provided the incorporation is express, clear and consistent with the bill of lading terms.

Pakistan, as a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), has incorporated its provisions through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (the “REFA Act”). Under Section 4 of this Act, Pakistani courts are mandated to stay legal proceedings and refer parties to arbitration if a valid arbitration agreement exists, unless the agreement is found to be “null and void, inoperative or incapable of being performed”.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Pakistan. Pakistan ratified the convention on 14 July 2005, and it entered into force on 12 October 2005.

Applicable Domestic Law

The primary domestic legislation that incorporates and enforces the New York Convention in Pakistan is the Recognition and Enforcement (Arbitration Agree-

ments and Foreign Arbitral Awards) Act, 2011 (the “2011 Act”).

Additionally, the Arbitration Act 1940 governs domestic arbitration, while the Arbitration (International Investment Disputes) Act 2011 implements the ICSID Convention.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Pakistani High Courts (specifically those with Admiralty Jurisdiction) retain the power to arrest vessels or attach assets to secure a claim, even if the underlying contract mandates foreign arbitration or jurisdiction.

Legal Basis

Under the Admiralty Jurisdiction Ordinance 1980, the courts can exercise in rem jurisdiction against a vessel for maritime claims, regardless of foreign ownership or where the cause of action arose.

Security v Dispute

While the 2011 Act requires disputes to be referred to arbitration, courts view vessel arrests as “precautionary measures” to secure the claim rather than a final adjudication, allowing both to co-exist.

Procedure and Release

To arrest a vessel (either the offending ship or a sister-ship), a claimant must file a supporting affidavit. The vessel is typically released once a Bank Guarantee or P&I Club letter of undertaking is provided.

7.5 Domestic Arbitration Institutes

Pakistan does not have any exclusive, or widely recognised, national maritime arbitration association.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

If a lawsuit is filed in a Pakistani court despite a valid foreign jurisdiction or arbitration agreement, the defendant has two primary remedies to halt the proceedings.

- Stay of proceedings (arbitration) – under Section 34 of the Arbitration Act, 1940, a defendant can request the court to stay proceedings. This must

be filed before submitting a defence. Additionally, the 2011 Act mandates that courts refer international disputes to arbitration unless the agreement is void or inoperative.

- Return of plaintiff (foreign jurisdiction) – if a contract specifies a foreign court, the defendant can apply under Order VII Rule 10 of the CPC, 1908 to have the plaintiff returned. Pakistani courts generally uphold these clauses and will direct the plaintiff to file in the agreed-upon foreign jurisdiction.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Pakistan offers significant tax relief to resident shipping companies and those flying the Pakistani flag.

- Tonnage tax regime – instead of standard corporate tax, ship-owners pay a fixed rate based on Gross Registered Tonnage (GRT): USD0.75 per GRT for the first five years, rising to USD1.00 per GRT thereafter.
- Key exemptions – income generated from ship operations (including tugs and dredgers) and the import of vessels are exempt from income and advance taxes until 2030.
- Depreciation – companies not using the tonnage tax regime can claim a 25% initial depreciation allowance on the cost of ships put into service.
- Seafarer relief – salaries of Pakistani seafarers working on foreign vessels are income tax-exempt, provided the funds are remitted through banking channels within two months of the tax year's end.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under the Contract Act, 1872 (Sections 32 and 56), parties can be excused from shipping contracts if an unforeseeable event creates “supervening impossibility” (making performance illegal or physically impossible), rather than just a commercial hardship.

Valid Grounds

Recognised events include acts of God (severe floods), government actions (embargoes), war/hostilities, perils of the sea (extreme weather), and widespread, unavoidable strikes.

Exclusions (Commercial Risks)

Routine port congestion, ordinary bad weather, and technical breakdowns do not excuse non-performance. Similarly, “self-induced” issues like negligence or poor planning are not valid grounds for frustration.

Demurrage

In cases of slow loading/discharging, the rule “once on demurrage, always on demurrage” typically applies, holding the charterer liable unless the contract explicitly provides a force majeure exemption.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Pakistan integrates United Nations Security Council (UNSC) resolutions into domestic law through the United Nations (Security Council) Act, 1948. This allows the Ministry of Foreign Affairs to enforce measures like asset freezes, arms embargoes, and travel bans. Additionally, the Anti-Terrorism Act, 1997 is used by the Ministry of Interior to apply targeted financial sanctions against proscribed entities.

Maritime Sulphur Regulations (IMO 2020)

Since January 2020, Pakistan has enforced the “IMO 2020” global standard, capping marine fuel sulphur content at 0.5%.

Enforcement

The Ministry of Maritime Affairs and PSC monitor vessels. The carrying of non-compliant fuel without approved exhaust scrubbers is prohibited and can lead to detention or fines.

Supply

As of late 2025, local initiatives have been actively supplying very low sulphur fuel oil (VLSFO) to ensure industry compliance.

9.3 Trade Sanctions

Pakistan incorporates international sanctions, specifically UNSC resolutions, into its domestic legal framework to ensure compliance.

UNSC Sanctions

Under the United Nations (Security Council) Act, 1948, the Ministry of Foreign Affairs issues orders to enforce asset freezes, arms embargoes, and travel bans.

Targeted Financial Sanctions

The Ministry of Interior utilises the Anti-Terrorism Act (ATA), 1997 to identify proscribed entities and implement financial sanctions.

9.4 International Conflict

The Red Sea crisis has created severe legal and commercial risks for Pakistan, primarily driven by forced rerouting via the Cape of Good Hope. Key consequences include:

- legal friction – companies may face contract disputes, invoking “force majeure” or frustration clauses due to the impossibility of performance or necessary route deviations;
- logistical setbacks – rerouting adds 10–14 days to transit, risking damage to time-sensitive exports like textiles and agriculture; and
- rising costs – war risk insurance premiums have surged (up to 2% of vessel value), while higher freight rates contribute to inflation and expensive raw material imports.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

There were no other shipping or maritime issues relevant to Pakistan at the time of writing.

Trends and Developments

Contributed by:

Faisal Daudpota
Daudpota International

Daudpota International routinely represents clients in ship arrest matters before the courts. From charterparty disputes to ship collisions, the firm has handled numerous cases in the courts in Pakistan and Saudi Arabia, including the following two cases at the High Court in 2025: representing a UAE company in a claim for recovery of money on account of bunker services provided to a vessel belonging to a Liberian

company; and representing the Egyptian owner of a vessel in successfully defending a claim by a French company alleging charterparty breach and tort of negligence. The lawyers assist clients in all the following matters: vessel arrests and documentation, bills of lading, collisions, environmental issues, marine financing, marine tariffs, personal injury, riparian rights, charter agreements, salvage, and subrogation.

Author



Faisal Daudpota focuses his practice on transactional and contentious matters relating to maritime, competition, intellectual property, data protection, information technology, telecommunications, and

competition law. Faisal routinely uses arbitration and other forms of alternative dispute resolution as pragmatic ways to meet clients' needs. He is expert at counselling clients on recovery claims in many jurisdictions across the Middle East as well as internationally, and has managed multiple litigations and instructed counsels in various countries.

Daudpota International

Suite No 306
Horizon Tower
Block-3, Clifton
Karachi 75600
Pakistan

Tel: +971559519972
Email: info@daudpota.com
Web: www.daudpota.com

Daudpota INTERNATIONAL

Pakistan Court Rules on the Trickery of Adding Tort Claims to Charterparty Disputes – the Recent “Beluga A” Case

Introduction

The global maritime legal landscape is undergoing a sophisticated recalibration, driven by the emergence of novel technical disputes, geopolitical volatility, and a judicial push towards the harmonisation of commercial remedies. At the heart of this evolution is the traditional action in rem, a procedural mechanism that has historically provided claimants with a unique form of security through ship arrest. However, as maritime commerce becomes increasingly complex, involving intricate layers of charterparties, technical certifications, and liquidated damages provisions, the High Courts of common law jurisdictions are being forced to delineate more precisely the thresholds between breach of contract and tortious negligence.

A recurring theme in common law courts is the effort to maintain the balance between tort and contract law. This is most evident in the application of the “Economic Loss Rule”, which seeks to prevent parties from using tort law to recover losses that are essentially the result of a failed commercial agreement.

This article examines the recent jurisprudence from the High Court of Sindh in Pakistan, which illustrates a shifting paradigm where the sanctity of contract is prioritised to prevent the “drowning” of commercial law in a sea of tort.

Issues in *Sucres et Denres SA v MV Beluga A*

The adjudication in the recent case of *Sucres et Denres SA v MV Beluga A* or “*Beluga A*” (Admiralty Suit No 13 of 2025 before the High Court of Sindh) represents a seminal first impression ruling in the Pakistani context, particularly regarding the interplay between technical certification, waiver, and the thresholds for negligence. The case involved a sugar charterparty for the transport of 25,000 metric tons of sugar from Brazil to Pakistan. The plaintiff sought the arrest of the vessel based on two primary contentions: a breach of an express term regarding gear certification and a breach of a duty of care (negligence) due to crane failures that delayed loading.

The court was presented with a technical conflict: Clause 42 of the charterparty required a gear certificate attesting that the vessel’s cranes had been tested within one year prior to the notice of readiness. The vessel provided certificates showing that while the “annual thorough surveys” were valid through 2026, the last “load test” had been conducted in November 2021 – nearly four years prior to the voyage. The plaintiff accepted these documents at the start of the voyage but subsequently sought to rely on the non-conformity as a ground for arrest following loading delays.

The High Court’s reasoning focused on the doctrine of waiver. By accepting the non-conforming technical documents and proceeding with the charter, the plaintiff was deemed to have waived their right to later assert a breach of that specific term. This highlights a critical issue: the extent to which a commercial party is bound by its initial acceptance of technical risks. The court signalled that in the absence of fraud, the formal acceptance of certificates – even if they do not strictly meet the contract’s requirements – bars subsequent claims for breach of those terms.

The court’s analysis of the weather-related delays further underscored the complexity of causation in these disputes. The loading statement of facts (SOF) indicated that approximately 321 hours (over 13 days) were lost solely due to rain and fog, which were categorised as laytime-interrupting events under the charterparty.

The judicial refusal to attribute these weather delays to the defendant’s negligence, even when the cranes were simultaneously inoperative, reflects a robust application of the principle that “pure economic loss” resulting from external environmental factors cannot be recovered in tort if it falls within the risk allocation of the contract.

Breach of contract v tort

The distinction between contract and tort in ship-arrest cases is summarised by the “form and substance” of the injury.

- Nature of the breach – In contract, the focus is on the failure to fulfil a specific promise (eg, providing

a gear certificate). In tort, the focus is on the failure to meet a societal standard of care (negligence).

- Damages available – Tort claims allow for “foreseeable” damages at the time of the act, whereas contract damages are limited to what was “reasonably foreseeable” at the time the agreement was signed.
- Remedy caps – As seen in *Beluga A*, contractual relationships often involve pre-negotiated caps (eg, the USD80,000 disbursement account cap). Courts are generally unwilling to allow “pure economic loss” claims in tort to bypass these caps unless the tort is independent of the contract.

The following paragraphs highlight the relevant differences between breach of contract and maritime tort (negligence).

Breach of contract

- Origin of duty: voluntary agreement;
- Primary remedy: expectation damages;
- Proof required: breach of agreed terms;
- Privity requirement: yes (generally); and
- Foreseeability timeline: at contract formation.

Maritime tort (negligence)

- Origin of duty: imposed by law/society;
- Primary remedy: compensatory/punitive;
- Proof required: duty, breach, causation, damage;
- Privity requirement: no; and
- Foreseeability timeline: prior to the wrongful act.

Warranty of seaworthiness and technical waivers

The obligation to provide a seaworthy vessel is a “core” component of any contract for the carriage of goods by sea. Historically, in common law, this duty was absolute: the ship-owner warranted that the vessel was “tight and fit” for the purpose, and ignorance of a defect was no defence.

Due diligence and doctrine of stages

Most modern maritime disputes are governed by statutes like the Carriage of Goods by Sea Act (COGSA), which replaces the absolute warranty with an obligation to “exercise due diligence” to make the ship seaworthy before and at the beginning of the voyage. In the *Beluga A* litigation, the court had to decide if the breakdown of two out of four cranes constituted

a breach of this duty. The court’s conclusion – that the provision of valid (though non-conforming) certifications, combined with the plaintiff’s acceptance of them, discharged any duty of care – suggests that “due diligence” is increasingly measured against the standard of technical documentation accepted by the parties at the outset.

This introduces a significant first impression issue in domestic jurisprudence regarding the Doctrine of Stages. Under common law, a vessel must be seaworthy at the beginning of each distinct stage of the adventure. If a vessel is fit for harbour but not for the open sea, the warranty is satisfied if the vessel is made seaworthy before “breaking ground” for the next stage. However, in the *Beluga A* context, the court held that because the plaintiff chose not to repudiate the contract when the non-conforming gear certificates were presented before loading, they were barred from asserting unseaworthiness after the “loading stage” had commenced. This creates a high threshold for claimants: a failure to object to technical deficiencies at the earliest possible stage may be construed as a permanent waiver of the seaworthiness warranty for that specific defect.

Future outlook: resilience of Admiralty Law

The issues identified in *Beluga A* – particularly the finality of technical waivers and the exclusivity of demurrage – suggest a judicial trend towards protecting the autonomy of commercial parties to define their own risks. Simultaneously, the “cutting edge” challenges of autonomous shipping and geopolitical trade bans will require the courts to develop more “pro-arbitration” and “pro-enforcement” schemes to maintain the efficiency of global trade.

The High Court of Sindh’s recent dismissal of the *Beluga A* arrest application provides a definitive roadmap: where a dispute arises from a sophisticated commercial agreement, the court will prioritise the “certainty and clarity” of that agreement over the “indeterminate liability” of tort. This approach ensures that the action in rem remains a powerful but disciplined tool for maritime justice, rather than a mechanism for commercial disruption in an already volatile global environment.



Law and Practice

Contributed by:

Nadya Price and Joaquín De Obarrio

Patton Moreno & Asvat

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Patton Moreno & Asvat is a leading Panamanian law firm with a strategic presence in London, and boasts over 40 years of experience. This tenure not only signifies a wealth of knowledge but also facilitates prompt legal services across various time zones. The firm's shipping department excels in maritime financing and ship mortgages, offering swift resolutions and efficient transaction closures. Serving a global clientele, including ship-owners, charterers, ship-yards, port and terminal owners, insurance entities, inter-

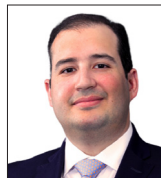
national banks, financial institutions, private equity investors and consortiums, **Patton Moreno & Asvat** is renowned for its unparalleled legal advice and representation in the maritime sector. The firm's lawyers are not only experienced but are deeply integrated into the industry, actively engaging with key maritime associations such as the Panamanian Maritime Law Association (APADEMAR). Their involvement in these associations underscores their commitment to the maritime sector's ongoing development.

Authors



Nadya Price has more than 20 years' experience of providing legal advice in a wide range of practice areas, and currently focuses on assets finance, corporate and financial law, including M&A, the establishment and

implementation of joint ventures, strategic alliances and project finance. For nine years, Nadya headed **Patton Moreno & Asvat's** London office, where she handled ship financing, ship registration and corporate matters. Since her return to Panama, in addition to assisting ship-owners in corporate matters, she continues to advise international banks on maritime financing. She is a member of the Panamanian Bar Association, the Panamanian Maritime Law Association and the Women's International Shipping and Trading Association (WISTA) – Panama Chapter.



Joaquín De Obarrio has more than a decade of experience within the legal sector, and specialises in shipping litigation, commercial law, administrative law, public procurement and arbitration. He

obtained an LLB from Universidad Santa Maria La Antigua and an LLM in Banking, Financial and Corporate Law from Tulane University (2015). He is a member of the Panamanian Bar Association, the International Chamber of Commerce (ICC), the Arbitration Committee, the ShipArrested Network, the Panamanian Maritime Law Association (a member of its board of directors in 2019–20 and 2020–21, Vice-President in 2022–23/2023–24 and President in 2024–25) and the International Maritime University of Panama (on the board of trustees).

Patton Moreno & Asvat

Capital Plaza, 8th floor
Roberto Motta Avenue
Costa del Este
PO Box 0819-05911
Panama City
Republic of Panama

Tel: +507 306 9600
Fax: +507 263 7887
Email: info@pmaalawyers.com
Web: www.pmaalawyers.com



PATTON, MORENO & ASVAT
INTERNATIONAL LAWYERS

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Law 8 of 30 March 1982 (which created the Maritime Courts and dictates the Rules of Maritime Procedure) – along with the modifications, additions and deletions adopted by Law No 11 of 1986, Law No 12 of 2009, and others – establishes a specialised maritime jurisdiction composed of two first-instance Maritime Courts, of equal standing, and a Maritime Court of Appeals with nationwide jurisdiction.

The most common maritime and shipping claims are the following.

- Ordinary proceedings (in personam).
- Special proceedings, regarding:
 - (a) collision;
 - (b) ship-owner's limitation of liability;
 - (c) enforcement of maritime liens (in rem);
 - (d) enforcement of a naval mortgage;
 - (e) creditors' concursus;
 - (f) abbreviated proceedings seeking summary judgment; and
 - (g) special proceedings for enforcement of domestic and foreign decisions.

All these claims are subject to the specialised maritime jurisdiction of the Republic of Panama.

1.2 Port State Control

Port state control (PSC) inspections in Panama are carried out by technical staff of the General Directorate of Merchant Marine of the Panama Maritime Authority (PMA), which is the government entity that must guarantee compliance with the maritime conventions approved and ratified by Panama.

These inspections are carried out in accordance with the provisions of international maritime conventions, such as:

- the International Convention for the Safety of Life at Sea, 1974 (SOLAS);

- the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL);
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW); and
- the International Ballast Water Management Convention (2004) (BWM) for the purposes of identifying deficiencies in ships visiting Panamanian ports.

Ships that may be rendered sub-standard under the terms of these conventions should take measures to remedy the deficiencies found, and the PMA inspectors will ensure that any such remedial measures are taken to safeguard human life and to guarantee safety and protection of the marine environment.

Panama is part of the Viña del Mar Memorandum of Agreement (the Latin American Agreement on Port State Control of Vessels) and the Tokyo Memorandum of Understanding (MOU). As such, PSC inspections are carried out following the guidelines of these two memorandums, and are also based on the guidelines established in International Maritime Organization (IMO) Resolution A.1138 (31), adopted on 4 December 2019, updating the procedure for PSC inspections.

For marine casualties such as in grounding, investigations are carried out by the PMA as the flag state. In practice, these functions are not mixed with the obligations of the authority as port state. As a flag state, it is the Maritime Casualty Investigations Department of the PMA that co-ordinates casualty investigations aboard flag ships around the world as well as incidents in Panama's jurisdictional waters.

In the case of pollution or wreck removal, the Directorate General of Ports of the PMA is the entity in charge of investigating and carrying out related actions.

1.3 Domestic Legislation Applicable to Ship Registration

Laws 55 and 57 of 6 August 2008, known as the Maritime Commerce Law and the General Merchant Marine Law, respectively, are the legislation that govern all matters related to the registration of domestic and international service vessels under the laws of the Republic of Panama.

There are two governmental institutions within the PMA in charge of the registration of vessels:

- the Directorate General of Merchant Marine (DIGEMAR), which is in charge of all administrative matters such as the enrolment of vessels and ensuring related safety and security matters; and
- the Directorate General of Public Registry of Property of Vessels (the “Ships Registry”), which is in charge of recording all matters related to the legal status of vessels concerning ownership and encumbrances.

1.4 Requirements for Ownership of Vessels

There are no citizenship requirements for registration of a vessel under the Panamanian register. Any person, natural or juridical, irrespective of nationality, may enrol a vessel under the Panamanian flag.

Panamanian laws allow the registration of a vessel while under construction. To that end, a certificate issued by the ship-yard, describing the vessel being built, the name of the company for which the vessel is being constructed and a declaration of the intention to transfer ownership thereof, will serve as title of ownership to be registered at the Ships Registry.

1.5 Temporary Registration of Vessels

The General Merchant Marine Law of Panama allows temporary registrations, as follows.

Special Registration for Temporary Navigation

This registration allows the enrolment of a vessel for a period of up to three months for ultimate scrapping, for a delivery voyage or for any other kind of temporary navigational purpose. The interested party needs to pay a single charge of 40% of the net tonnage of the vessel plus USD150.

The vessel will be deleted by operation of law at the end of the three-month period at no cost, but the interested party may, at any moment, request that deletion by way of filing a petition thereof and effecting payment of the regular governmental deletion fees.

The registration of title of ownership or mortgages is optional for this type of registration. Nevertheless, if a mortgage is to be recorded, the registration of title

must contain acknowledgement by the mortgagee that the registration of the vessel will elapse at the end of the three-month registration period.

Lay-Up Registration

This registration is valid for one renewable year and allows the registration of vessels under lay-up status, subject to certification issued by a recognised organisation (RO) or the applicable port authority where the vessel is located.

An advantage of this type of registration is that no enrolment fees apply to vessels enrolled in Panama under this registration for the first time, and they will be exempted from paying part of the applicable regular annual tonnage taxes and fees. In addition, they will be exempt from needing to have technical, safety and security certificates on board, but the respective RO should make the pertinent annotations concerning the lay-up status in the subject certificates.

Once re-activated, an inspection must be carried out by an RO to ascertain that the vessel is duly fitted in accordance with all national and international maritime laws and regulations, as a requirement for reverting to a regular international service registration.

In addition, Panamanian law allows dual bareboat-charter registrations. A ship with primary registration on a foreign registry is permitted to be registered under the laws of Panama as secondary registry, pursuant to bareboat charterparty arrangements. The inverse situation is also permitted by Panamanian law.

The system under Panamanian law results in dispersing of the features or attributes of registration. The laws of the primary registry govern the juridical status of a vessel in terms of the concept of ownership and encumbrances, while the laws of the special subordinated registry govern matters regarding the administrative and technical operation of a vessel – ie, manning, labour relations, safety and security matters.

A vessel registered in Panama under a bareboat-charter agreement will have a registration valid for a period of up to the validity of the bareboat-charter agreement; this period may be renewed as per renewals of the subject charter agreement.

A vessel registered under this special type of registration will be considered a Panamanian-registered vessel and will only be allowed to fly the Panamanian flag. Likewise, it will be subject to all regular applicable taxes, fees and duties in accordance with Panamanian law. Payment in respect of these applicable during the whole period of registration must be made in advance upon enrolment.

1.6 Registration of Mortgages

Ship mortgages are required to be registered at the Ships Registry in order to provide legal and binding effects against third parties.

A Panamanian mortgage may be executed in any language and must be notarised by way of acknowledgement of the legal capacity of the signatories and the authenticity of the signatures thereof. The notary's signature must then be legalised by a Panamanian consul or via apostille.

Registration may be effected preliminarily via the filing of an application form containing the description of the essential terms of a mortgage. This preliminary registration is completed during the course of one business day and has full legal effect for a period of six months, within which period the interested party must file for permanent registration. Upon completion of permanent registration, the effects are retroactive up to the time and date of the preliminary registration.

Permanent registration may be effected via two alternative procedures:

- by way of a full translation of the mortgage into the Spanish language and protocolisation before a Panamanian notary public into a public deed, which is filed for registration with the Ships Registry; or
- if the mortgage is executed in English, it can be registered in its original English version, provided a short mortgage extract is executed in respect of the mortgage and that extract is translated into Spanish for permanent registration, together with the original mortgage and any relevant attachments in English.

1.7 Ship Ownership and Mortgages Registry

The records related to ship ownerships and mortgages kept at the Ships Registry are available on the public website of the PMA, and any third party may access these in order to obtain information about ownership titles and encumbrances registered over Panamanian vessels.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship finance transactions involving Panama are typically structured as cross-border secured loan financings, with the underlying loan documentation usually governed by English or New York law, while ship mortgages and local security interests are governed by Panamanian law, primarily under Law 57 of 2008 (Merchant Marine) and Law 55 of 2008 (Maritime Commerce).

Debt financing most commonly takes the form of bilateral or syndicated term loan facilities for vessel acquisition, construction or refinancing, as well as fleet facilities, revolving credit lines and sale-and-leaseback-backed financings. Key operative provisions are in line with international market standards and include drawdown mechanics, interest and fees, amortisation and prepayment structures, financial and operational covenants, insurance and classification requirements, sanctions and compliance undertakings and customary events of default.

Equity financing is generally provided at the level of a Panamanian ship-owning SPV through paid-in capital, shareholder loans or subordinated instruments. Panama does not impose specific equity or capitalisation requirements for ship-owners beyond general corporate law, so capital structure is typically driven by lender expectations and commercial considerations.

The Panamanian ship mortgage is the central security instrument in transactions involving Panama-flagged vessels. It may secure present and future obligations, including revolving and multi-currency facilities, provided that a maximum secured amount is specified in the mortgage agreement. Mortgages may be execut-

ed abroad in any language and, to be fully effective against third parties, must be:

- notarised and legalised by Panamanian consul or by apostille;
- protocolised by a Panama notary public; and
- registered with the Directorate General of the Ships Registry.

Once registered, the mortgage benefits from privileged maritime lien status, and enforcement is carried out before Panama's specialised maritime courts through in rem proceedings and judicial sale.

The most frequent ship finance transactions involving the Panamanian flag include:

- acquisition and refinancing facilities secured by Panamanian mortgages;
- fleet financings involving multiple vessels;
- sale-and-leaseback transactions; and
- refinancing linked to the re-flagging of vessels into or out of Panama.

In addition to the mortgage, lenders usually require a broader security package aligned with international practice, which may include:

- assignments of earnings and insurances;
- pledges over bank accounts;
- Panamanian law share pledges over the ship-owning company;
- corporate guarantees; and
- ship-building-related security where construction financing is involved.

Together, these elements form a comprehensive and internationally recognised security package, reinforced by Panama's robust maritime lien and mortgage enforcement framework.

2.2 Ship Leasing

Although Panama is not a market where leasing products are originated, leasing and sale-and-leaseback structures involving Panama-flagged vessels have clearly increased in recent years, driven by global market dynamics rather than by local regulation. In practice, this reflects a broader shift away from tradi-

tional European bank lending towards Chinese leasing houses, Japanese lessors and other alternative credit providers, which are particularly active in sale-and-leaseback platforms using Panama as a flag and security jurisdiction.

Sale-and-leaseback structures are common in practice where the vessel is or will be registered under the Panamanian flag. Typically, the core sale-and-leaseback documents are governed by foreign law, while Panama is selected as the flag state, with the corresponding registration of title, any bareboat charters (where applicable) and, in some cases, Panamanian mortgages or additional local security in favour of the finance parties. In these structures, Panama's role is mainly to register title, record any bareboat or lease arrangements where required, and provide a reliable forum for arrest and judicial sale when necessary.

There are also substantive legal differences between the lessor/lessee relationship and the lender/borrower relationship. In a traditional loan structure, the ship-owning SPV remains the owner of the vessel and the lender holds a Panamanian ship mortgage as an in rem security over the asset. In a leasing or sale-and-leaseback structure, title is typically retained by the lessor (or finance vehicle), and the lessee's position is primarily contractual and possessory, with rights of use and enjoyment rather than ownership.

These distinctions are reflected in enforcement. A Panamanian ship mortgage is enforced through an in rem action before Panama's maritime courts, allowing the mortgagee to arrest the vessel (when located within Panamanian jurisdiction) and seek a judicial sale. The mortgage benefits from privileged maritime lien status, giving lenders a strong enforcement position under Panamanian substantive maritime law and maritime procedural rules.

By contrast, lease defaults are enforced in personam and are primarily contractual in nature. Where title remains with the lessor, remedies typically involve termination of the lease, recognition of ownership and repossession of the vessel, with the underlying dispute usually determined by foreign courts or arbitral tribunals, depending on the governing law and dispute resolution clause in the lease. In such cases,

Panama's role is generally limited to supporting measures, such as vessel arrest or flag and registry actions (including deregistration upon termination), rather than adjudicating the contractual dispute itself.

In essence, mortgage enforcement is a statutory in rem process under Panamanian law, whereas lease enforcement is contractual and typically resolved outside Panama, with Panama acting mainly as an arrest and enforcement jurisdiction for both types of structures.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The following international conventions on pollution and wreck removal have been ratified by Panama and, therefore, will impact on the liability of owners and interested parties in the event of pollution and/or wreck removal:

- the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) and annexes;
- the International Convention on Civil Liability for Oil Pollution Damage (CLC);
- the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER);
- the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the "London Convention"); and
- the Nairobi International Convention on the Removal of Wrecks.

3.2 International Conventions: Collision and Salvage

The following international conventions on collision and salvage have been ratified by Panama and, therefore, will impact on the liability of owners and interested parties in the event of collision and/or salvage:

- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs); and
- the Convention on Facilitation of International Maritime Traffic (London, 1965).

In addition, Law 55 of 2008 (the "Maritime Commerce Law") Title III, Chapters I and II regulate collisions and salvage.

3.3 Convention on Limitation of Liability for Maritime Claims

Panama is not a signatory to the 1976 Convention on Limitation of Liability for Maritime Claims. Nevertheless, most of the substantive rules established in this international agreement have been incorporated into Panamanian domestic legislation, specifically in Law 8 of 1982, as amended, on maritime procedure.

Therefore, despite not being a party to the 1976 Convention on Limitation of Liability for Maritime Claims, in practice Panama follows its general principles and rules, albeit with certain modifications and deletions.

Panama has not passed into law the limits as modified by the 1996 Protocol to amend the 1976 Convention on Limitation of Liability for Maritime Claims.

3.4 Vienna Convention on the Law of Treaties

Panama is a party to the Vienna Convention on the Law of Treaties 1969, which was ratified by Law 17 of 1979 and has been in force since 27 August 1980.

3.5 Procedure and Requirements for Establishing a Limitation Fund Constitution of the Limitation Fund

The constitution of the limitation fund for the payment of claims is subject to the following rules.

- Any person alleged to be liable may constitute a fund with the court or other competent authority in any state in which legal proceedings are instituted in respect of claims subject to limitation.
- The fund shall be constituted in the sum of those amounts set out in the article relating to general limits, and special articles relating to passenger claims, together with interest thereon from the date of occurrence giving rise to the liability under the date of the contribution of the fund.
- The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
- The fund may be constituted either by depositing the sum or by producing a guarantee which is

acceptable and which the court or other competent authority considers to be adequate. In Panama's Maritime Courts, the guarantees usually accepted are cash (certificate of judicial deposit), cashier's or certified cheques drawn against banks licensed to operate in Panama, and irrevocable payment guarantees issued by those banks.

Parties Entitled to Petition the Limitation of Liability

Law 8 of 1982 regulates parties who are recognised as having substantive legitimacy or standing to limit the liability of the claims described in said law. The rules contained therein are in essence the same rules contained in Article I of the 1976 Convention on Limitation of Liability for Maritime Claims.

In this respect, Law 8 of 1982 establishes that ship-owners and salvors have standing to limit their liability arising from the claims described under said law. The different categories of persons who have standing and are entitled to limit liability are as follows:

- the ship-owner, understood as the registered owner of the vessel, and other parties who may be considered as owners (ie, the charterer, the manager and the operator of an ocean-going vessel);
- the salvor of the vessel, understood as any person rendering services in direct connection with salvage operations;
- any persons for whose actions, defaults or neglect the ship-owner or salvor is responsible may avail themselves of limitation of liability;
- regarding in rem claims, the law establishes that the liability of a ship-owner shall include liability in an action brought against the vessel itself; and
- any insurer of liability for claims subject to limitation in accordance with Law 8 of 1982 shall be entitled to benefits to the same extent as the assured themselves.

It should be noted that Law 8 of 1982 clearly states that the act of invoking limitation of liability shall not constitute an admission of liability.

Limitation of Liability Fund Calculation

Law 8 of 1982 establishes that the liability limits for claims (excluding the claims of passengers) will be calculated as discussed here.

In respect of claims for loss of life and personal injury, the following applies.

- 333,000 units of account for a vessel with a tonnage not exceeding 500 tons.
- For a vessel with a tonnage in excess of the above, the following amounts in addition to that mentioned above:
 - (a) from 501 to 3,000 tons, 500 units of account per ton;
 - (b) from 3,001 to 30,000 tons, 333 units of account per ton;
 - (c) from 30,001 to 70,000 tons, 250 units of account per ton; and
 - (d) for each ton in excess of 70,000 tons, 167 units of account.

In respect of any other claims, the following applies.

- 167,000 units of account for a vessel with a tonnage not exceeding 500 tons.
- For a vessel with a tonnage in excess of the above, the following amounts:
 - (a) from 501 to 30,000 tons, 167 units of account per ton;
 - (b) from 30,001 to 70,000 tons, 125 units of account per ton; and
 - (c) for each ton in excess of 70,000 tons, 83 units of account.

Furthermore, claims for damage to harbour works, waterways and aids to navigation will have the priority determined by the law.

3.6 Seafarers' Safety and Owners' Liability

The Republic of Panama ratified the Maritime Labour Convention, 2006, by means of Law No 2 of 6 January 2009. The Convention is regulated in Panama by Executive Decree No 86 of 22 February 2013, amended by Executive Decree No 160 of 3 March 2021, and provisions for its application were also established.

Panama adopted the 2014 and 2016 Amendments to the Maritime Labour Convention, 2006 through Resolution ADM-075-2019 of 9 May 2019, and the Convention's 2018 Amendments by way of Resolution ADM 095-2020 of 27 July 2020.

In February 2023, by means of Resolution ADM-038-2023 (which entered into force on 23 December 2024), Panama adopted the 2022 Amendments to the Maritime Labour Convention, 2006.

In addition, by Law No 4 of 15 May 1992, Panama approved the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the "1978 STCW Convention"), as amended, and, through Resolution ADM 148-2011 of 18 November 2011, adopted the 2010 Manila Amendments to the 1978 STCW Convention and its Training Code.

4. Cargo Claims

4.1 Bills of Lading

Panama has not adopted any international conventions concerning bills of lading. However, the Maritime Commerce Law (see **1.3 Domestic Legislation Applicable to Ship Registration**), which covers carriage by sea and bills of lading, adopts into domestic legislation provisions based on the Hague-Visby Rules.

4.2 Title to Sue on a Bill of Lading

Any party deemed affected may sue on a bill of lading. In particular, the Maritime Commerce Law provides that both the shipper and the carrier or effective carrier may be liable under a bill of lading.

A title to sue may be assigned to a third party and recognised by the courts upon compliance with the legal formalities required for such transfer.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The Maritime Commerce Law imposes liability for damages on the vessel in rem, regardless of the party in control.

4.4 Misdeclaration of Cargo

The Maritime Commerce Law states that a carrier can establish a claim against the shipper for misdeclaration of cargo if the goods are not properly packed or accurately described. The carrier will be indemnified on any loss resulting from poor packaging or inaccuracies in the information.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

As established by Panama's Code of Commerce, actions derived from land or sea transport contracts, or charterparty contracts, have a one-year time bar. Actions derived from liability in tort also have a one-year time bar, established by Panama's Civil Code. The one-year term will run from the date of the damage or the date of delivery of the cargo. This time limit cannot be extended or sustained.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Panama has not adopted any international conventions regarding the arrest of vessels. This matter is covered by Law 8 of 1982, as amended.

5.2 Maritime Liens

Maritime liens are set forth in the Maritime Commerce Law, and are listed as liens against the vessel, the freight and the cargo.

The following liens will have privilege over the vessel and will concur on its price in the following order:

- any judicial costs caused in the common interest of the maritime creditors;
- any expenses, compensation and salaries for assistance and salvage;
- any salaries, remuneration and compensation due to the captain and crew;
- the naval mortgage;
- any credits in favour of the Panamanian state for fees and taxes;
- any salaries and stipends due to stevedores and dock workers hired directly by the owner, operator or captain of the vessel to load or unload it;

- any indemnities due for damages caused by fault or negligence;
- any amounts owed by way of contribution in general averages;
- any amounts owed by virtue of obligations contracted for the necessities and provisioning of the vessel;
- any amounts taken on the bottomry of the vessel and rigging for supplies, arms and apparel, and insurance premiums;
- any salaries of pilots and watchmen, and conservation and custody expenses of the vessel, its rigs and supplies;
- any indemnities owed to carriers and passengers for failure to deliver the goods carried or for any damages thereto imputable to the captain or the crew; and
- the price of the last acquisition of the vessel and any interest due.

The following liens will have privilege over the freight and will concur on its price in the following order:

- any judicial costs caused in the common interest of creditors;
- any expenses, indemnities and salaries for assistance and salvage;
- any salaries, remuneration and compensation due to the captain and crew for the voyage in which the freight was earned;
- any amounts due by way of general averages contributions;
- bottomry bonds on freight earned;
- insurance premiums;
- any amounts of capital and interest owed by virtue of the obligations contracted by the captain on the freight, with the legal formalities;
- any indemnities owed to carriers and passengers for failure to deliver the goods carried or for any damages thereto imputable to the captain or the crew; and
- any other duly registered debt guaranteed by bottomry bond, naval mortgage or pledge on the freight.

The following liens will have privilege over the cargo and will concur on its price in the following order:

- any judicial costs caused in the common interest of creditors;
- any expenses, indemnities and salaries for assistance and salvage;
- any commercial taxes or fiscal rights owed at the place of unloading;
- any transportation and cargo expenses;
- any leasing of storage for the things unloaded;
- any amounts owed by general averages contributions;
- bottomry bonds and insurance premiums;
- any amounts of capital and interest owed by virtue of the obligations contracted by the captain on the freight, with the legal formalities; and
- any other loan with pledge on the cargo, if the lender holds the bill of lading.

5.3 Liability in Personam for Owners or Demise Charterers

A vessel may be arrested in rem, regardless of the owner's personal liability. Notwithstanding, the owner or the demise may be held liable in an in personam claim if the applicable law so allows.

5.4 Unpaid Bunkers

A bunker supplier may arrest a vessel in connection with unpaid bunkers. Under Panamanian law, bunker claims generally permit the arrest of a vessel, regardless of whether the supply was requested by the owner, operator or charterer. Any party affected by that debt may file for the arrest.

5.5 Arresting a Vessel

To obtain an arrest order, it is necessary to file an arrest request and complaint, with prima facie evidence of the claim. The plaintiff must also cover the court arrest and maintenance expenses. In the Panamanian jurisdiction, an arrest is available in three instances, as follows.

Physically Seizing Property Susceptible to Arrest in Order to Make Effective Privileged Maritime Liens Over That Property

If filing an in rem claim against the vessel, the Maritime Courts may order the arrest of a vessel of any nationality in Panamanian waters, in order to attain jurisdiction. It would be necessary to deposit the following before the Maritime Courts:

- security to act without a power of attorney, which is returned in full once the power of attorney and a certificate of the legal existence of the plaintiff is filed with the court;
- USD1,000 security for damages that the arrest may cause; and
- USD2,500 initial maintenance fees – if the arrest is not lifted promptly, the marshal may request plaintiffs to post additional fees for maintenance, and the failure to post such fees may result in lifting of the arrest.

The plaintiff must file the evidence in respect of the applicable laws (copy of the relevant laws, legal opinions, lawyer affidavits and/or others).

Bringing Within the Jurisdiction of Panama's Maritime Courts Cognisance of Causes Emerging Within or Outside the National Territory, as a Result of Facts, or Acts Related to Navigation, When the Defendant Is Outside Its Jurisdiction

In this case, the plaintiff may request the arrest of the vessel (regardless of its nationality or of the ship-owner's nationality) while navigating in Panamanian waters or Panamanian ports, even if there are no other contacts with the Panamanian jurisdiction. It would be necessary to deposit the following before the Maritime Courts:

- security to act without a power of attorney, which is returned in full once the power of attorney and a certificate of the legal existence of the plaintiff is filed with the court;
- USD1,000 security for damages that the arrest may cause; and
- USD2,500 initial maintenance fees.

Assuring That the Proceedings Will Not Have an Illusory Effect, and Keeping the Defendant From Transferring, Dissipating or Encumbering Properties Susceptible to Those Measures

Here the plaintiff may request the arrest of the vessel involved in the transaction that gave rise to their claim, or of any other vessel or property belonging to the defendant.

In such a case, the Maritime Courts would request security in an amount between 20% and 30% of the

amount of the claim. The amounts would be affixed discretionarily by the judge. Security must be posted in cash, certified cheques issued by banks licensed to operate in Panama, or Panamanian public debt titles.

After filing the complaint and an arrest motion, as a general rule of proceedings, the following documents must be filed before the Maritime Court:

- a power of attorney;
- a certificate of the legal existence of the plaintiff;
- a certificate of the legal existence of the defendant – this document will be necessary only if the claim is filed against the owner of the vessel (in person-am complaint); and
- evidence of the claim.

All foreign documents must be notarised as authentic and legalised according to the 1961 Hague Convention on the apostille (the "Apostille Convention") or legalised before a Panamanian consulate at the place of issuance. Documents in languages other than Spanish must be translated by an official translator.

5.6 Arresting Bunkers and Freight

Law 8 of 1982, as amended, allows for arrests to be executed against bunkers and freight, under the general rules for arrest.

5.7 Sister-Ship Arrest

Sister-ships or vessels owned by affiliates may be sued and arrested in rem in lieu of those on which the claim originated, when the applicable substantive law so permits. The plaintiff must file prima facie evidence demonstrating that, under the applicable substantive law, the arrest of a sister-ship is viable, and that the vessel subject to the arrest is a sister-ship under the applicable substantive law.

5.8 Other Ways of Obtaining Attachment Orders

Law 8 of 1982, as amended, allows a party with reason to believe that, during the time prior to a judicial recognition of their right, they will suffer imminent or irreparable danger to request from the Maritime Court the most appropriate conservatory or protective measure which will provisionally guarantee, depending on the circumstances, the effect of a judgment on

the merits (ie, an injunction order). Such a measure is normally in the form of an order against the sale, transfer or mortgage of a Panamanian vessel.

Accordingly, the Maritime Court may issue an order restraining the sale of a Panamanian-registered vessel upon the filing of a complaint against the vessel or its owner with a petition accompanied with evidence of the existence, and the merits, of the claim. The plaintiff must deposit security with the court, which is fixed by the court as between USD10,000 and USD50,000.

The security must be posted in:

- cash;
- certified cheques issued by banks licensed to operate in Panama;
- Panamanian public debt titles; or
- any other guarantee agreed by the parties.

The plaintiff must file a complaint, together with security for damages and all the preliminary evidence to support the facts of the complaint. Initially, documents may be filed in fax or PDF copies with an undertaking to produce the originals within a short period of time.

Once issued, the court sends the order to the Department of Registration of Titles and Encumbrances of the Shipping Bureau, and such authority makes a note on the records of the vessel.

5.9 Releasing an Arrested Vessel

Once the arrest is executed, the defendant or any other interested party may petition the release of the arrest by posting a security which is affixed by the court to cover the amount of the claim, interest (three years), arrest expenses and legal fees. The security must be posted in:

- cash;
- certified cheques issued by banks licensed to operate in Panama;
- Panamanian public debt titles; or
- any other guarantee agreed by the parties.

The parties may agree on the amount, the nature and the conditions of the security which will be substituted for the arrested vessel, and must jointly petition

the judge for the lifting of the arrest, consigning the agreed bond at the same time. The parties may agree on other types of guarantees such as letters of indemnity/letters of undertaking (LOIs/LOUs), bank letters or property and casualty (P&C) insurance letters.

If the parties do not reach an agreement as to the amount and nature of the security to be consigned, the court shall, on a motion by the defendant or a third party interested in lifting the arrest, set the amount of the security so that it covers the amount claimed in the complaint plus interest (three years), costs and expenses. This amount may not exceed the market value of the property.

Notwithstanding the foregoing, when the arrest is requested to make effective proprietary rights, or the possession and the use of the property under arrest, the arrest may not be lifted or suspended.

5.10 Procedure for the Judicial Sale of Arrested Ships

When ordering a judicial sale, the court will instruct the marshal to carry out the sale procedure. The court will appoint a surveyor to survey the vessel and determine its market value. The plaintiff must pay the surveyor's professional fees.

The court order fixing the judicial sale dates must be published at least twice a week until the sale is completed, in national newspapers and any other specialised publications that the parties deem convenient.

Bids and counterbids will be received in writing by the marshal. On the same date, the oral bidding and counterbidding process will begin. Bids that have been submitted to the marshal will be announced and the vessel will be provisionally adjudicated to the bidder with the highest price.

The successful bidder must pay the full purchase price within three working days after the provisional adjudication of the vessel. Payment must be made in cash, or by a certified cashier's cheque in the name of the Maritime Court. On the date of the sale, the marshal will issue a provisional adjudication certificate in favour of the successful bidder.

After the full purchase price has been paid by the successful bidder, the court will issue a statutory adjudication certificate in favour of the purchaser. This document will constitute the legal title of the vessel and will state that the vessel has been acquired in a judicial sale free from any encumbrances.

The sums collected from the judicial sale of the vessel will be consigned with the court by the marshal and will be deposited in a special account maintained by the court. The marshal must apply to the court for payment of their fees and expenses of arrest, custody and sale.

Once the sale proceeds have been paid into the court, any party who has obtained a judgment in rem against the vessel or its sale proceeds may apply to the court for determination of priorities, if necessary, and for payment of their claim.

Notice of such an application will be given by the court to all parties who have actions filed against the vessel, warning them to lodge their claims. If claimants do not reach an agreement with respect to the distribution of the sale proceeds, the court will appoint an administrator to determine the order in which to pay the privileged maritime lien holders. The naval mortgage will rank fourth in priority.

The marshal's claim against the sale proceeds for their fees and expenses has the highest priority, and until they have been paid in full the court will always reserve sufficient funds in court for that purpose. The plaintiff will also be reimbursed for the sums that they supplied to the marshal for the arrest, custody and conservation of the vessel, before payment is made to any maritime lien holder. The order of priorities in which the sale proceeds will be paid will be determined by the applicable substantive law.

The judicial sale of arrested vessels is undertaken by the Maritime Courts. A private sale may be allowed extrajudicially if the parties have agreed to such terms in the mortgage or loan documents, with the shipowner granting an irrevocable mandate to the mortgagee.

5.11 Insolvency Laws Applied by Maritime Courts

Panama enacted Law 12 of 2016 on insolvency proceedings (the "Insolvency Law"), which came into effect in January 2017. The Insolvency Law includes provisions similar to those in Chapter 11 of the United States Bankruptcy Code, creating a specialised insolvency jurisdiction before the civil courts.

Bankruptcy financial protection will be granted by the civil courts to the debtor who undergoes a reorganisation process under the Insolvency Law. During this period, no executory proceedings, executions of any kind, restitution of assets or evictions may be initiated against the debtor.

The Insolvency Law is still recent and has not been extensively tested by the courts.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Any party who by mistake, fault, negligence or bad faith seizes an asset or property that does not belong to the defendant or in contravention of a prior and express agreement between the parties (or where a party requests an arrest for a maritime lien which is nonexistent or time-barred by the statute of limitations) will be responsible for the damages caused, as well as for the payment of the expenses and costs arising from that action.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Chapter IV of the Maritime Commerce Law regulates contracts for the carriage of passengers by sea, while Chapter II of Law 8 of 1982 (the "Code of Maritime Procedure") regulates the procedure for limiting a shipowner's liability.

Article 1651 of Panama's Code of Commerce establishes a one-year time-bar provision for indemnities derived from shipping transport or charter contracts, and a time-bar provision of six months if its issuance is within the territory of the Republic of Panama.

Available limitations on liabilities in respect of a passenger's claim include:

- claims related to death and bodily injury which occurred on board or were directly connected to the exploitation of a vessel, or to salvage or assistance operations, and damages resulting from any of these causes;
- claims related to damages resulting from a delay in the transportation of passengers or their luggage by sea; and
- claims for damages different from those arising from contractual rights, caused in direct connection with the exploitation of the vessel, or with salvage or assistance operations.

Panama's Maritime Commerce Law Article 244, on maritime liens, includes "compensation for damages caused by fault or negligence", which has been interpreted to include personal injury in a general sense.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Law 8 of 1982, as amended, recognises the validity of the substantive law included in bills of lading. The Maritime Courts may abstain from hearing a case in which the parties have previously and expressly negotiated to submit their controversies to a court in a foreign country and have agreed to this in writing. However, pro forma or adhesion contracts (such as bills of lading) are not considered to be previously and expressly negotiated.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Law 8 of 1982, as amended, recognises the validity of an arbitration agreement, provided it is in writing and has been negotiated between all parties. Arbitration can be conducted pursuant to the rules chosen by a party; otherwise, Panamanian law on arbitration will govern the arbitration proceeding.

The Maritime Courts must, at the request of one of the parties, abstain from continuing to hear a claim

already submitted to arbitration, as well as in cases where an arbitration clause exists. In such cases, the Maritime Courts can order the taking of appropriate measures to safeguard a party's rights, such as the consigning of a surety bond before the competent court or a waiver of time-bar defence, if the statute of limitations has been interrupted. If an arrest or seizure has taken place, or if it is not possible to consign a bond before the competent court, the Maritime Courts can stay the main proceeding and keep the arrest or seizure in place, subject to the results of the arbitral proceeding.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Foreign arbitral awards are recognised and enforced in Panama in accordance with:

- the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- the 1975 Inter-American Convention on International Commercial Arbitration; or
- any other treaty ratified by Panama on the recognition and enforcement of arbitral awards.

The petition for recognition is filed before the Fourth Chamber of the Supreme Court of Justice.

Law 131 of 2013 regulates national and international arbitration in Panama and incorporates modern international arbitration practices and principles.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In practice, the Maritime Courts are likely to grant the claim if the plaintiff complies with the appropriate prima facie evidence. Notwithstanding, the Maritime Courts may abstain from hearing a case in which the parties have previously and expressly negotiated to submit their controversies to a court in a foreign country and have agreed to this in writing. However, pro forma or adhesion contracts (such as bills of lading) are not considered to be previously and expressly negotiated.

7.5 Domestic Arbitration Institutes

The Centre for Maritime Conciliation, Mediation and Arbitration of Panama (CECOMAP), founded in 2007

by the Panamanian Maritime Chamber and the Panamanian Maritime Law Association, specialises in maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In proceedings commenced in breach of a foreign jurisdiction or arbitration clause, the defendant may raise incidents or challenges that can lead to an annulment of proceedings, such as lack of jurisdiction and lack of competence.

Arbitration jurisdiction is recognised at the constitutional level in Panama, and Law 131 of 2013 on arbitration dictates that, in disputes which include arbitration clauses, a judicial court shall decline jurisdiction in favour of the arbitral tribunal, and shall immediately forward the relevant file to the arbitral tribunal.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The Panamanian tax system is based on the principle of territoriality. Only income generated in the national territory is taxed, and foreign-source income is exempt.

The 2010 amendments to the Tax Code introduced provisions in relation to transportation, and include international transportation in the portion corresponding to freight, passengers, cargo and other services, of which the origin or final destination is Panama, as an activity that shall be considered as income obtained from sources within Panama. Notwithstanding, it is important to indicate that the amended Tax Code specifies that these activities will be exempt if the international companies have their home port in Panama.

Income obtained within Panama from the operations of ships registered abroad will also be exempt if the income obtained by Panamanian-registered vessels in that country is given a similar exemption under the principle of reciprocity. The same applies to income obtained within Panama from operations of ships reg-

istered abroad by foreign persons resident, or not, in the national territory, provided that Panamanian natural or legal entities are given similar treatment in the country of the nationality of that person.

The sale of vessels registered under the Panamanian flag and engaged in international trade shall be exempt from income tax.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Force majeure is defined as the situation produced by acts of man which have not been possible to resist, such as acts of authority exercised by public officials, imprisonment by enemies, and the like. The causes for the non-performance of a shipping contract would have to fit the definition provided in order to be considered force majeure. If the non-performance does not conform to this definition, is in any way foreseeable or has been stipulated in the contract, it will be dealt with under ordinary regulations or as agreed between the parties.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Panama is a signatory of the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) and implemented the IMO 2020 regulations from 1 January 2020. The PMA, through the General Directorate of Merchant Marine, is responsible for the enforcement of the sulphur content limit on vessels flying the Panamanian flag, while the General Directorate of Ports is responsible for the enforcement of the sulphur content limit on vessels coming into Panamanian ports.

Limits have been implemented by the PMA in accordance with the limit specified under MARPOL Annex VI, which is 0.50% m/m (mass by mass).

Currently, no known PSC enforcement actions take place in Panama to enforce the sulphur content limit.

There are no known sanctions from proceedings imposed by the Panamanian authorities owing to violations of the sulphur limit or related regulations.

9.3 Trade Sanctions

The Political Constitution of the Republic of Panama sets forth that the Panamanian State will abide by international law. Moreover, as a member of the United Nations (UN), Panama must comply with all issued UN resolutions, including trade sanctions. In this respect, there are precedents for trade sanctions being implemented and enforced by the Panamanian government, though to date no legal proceedings have been initiated in Panama in this regard.

Trade sanctions related to the Russia–Ukraine conflict have no significant impact on Panama given that the commercial bilateral exchange between Panama and said nations is very reduced (approximately 0.1% of the total international commercial relationships of Panama). Transit via the Panama Canal might suffer a reduction, but to date this has not been of significance.

It is worth pointing out that the Panama Canal does not prohibit transit of vessels on account of their nationality, due to the declared permanent neutrality of this interoceanic waterway. The Panamanian legal system currently does not provide mechanisms authorising trade activities otherwise outlawed by sanctions. A party may file administrative, judicial and constitutional challenges requesting that an order be revoked.

9.4 International Conflict

Panamanian maritime courts have not made public decisions discussing the legal or commercial implications of ongoing international conflicts. From a flag state point of view, the maritime administration constantly issues guidance and warning circulars to Panama-flagged vessels regarding these conflicts.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

No jurisdiction-specific shipping and maritime issues apply here.

Trends and Developments

Contributed by:

Belisario Porras

Patton Moreno & Asvat

Patton Moreno & Asvat is a leading Panamanian law firm with a strategic presence in London, and boasts over 40 years of experience. This tenure not only signifies a wealth of knowledge but also facilitates prompt legal services across various time zones. The firm's shipping department excels in maritime financing and ship mortgages, offering swift resolutions and efficient transaction closures. Serving a global clientele, including ship-owners, charterers, ship-yards, port and terminal owners, insurance entities, inter-

national banks, financial institutions, private equity investors and consortiums, Patton Moreno & Asvat is renowned for its unparalleled legal advice and representation in the maritime sector. The firm's lawyers are not only experienced but are deeply integrated into the industry, actively engaging with key maritime associations such as the Panamanian Maritime Law Association (APADEMAR). Their involvement in these associations underscores their commitment to the maritime sector's ongoing development.

Author



Belisario Porras has over 25 years of experience and is an expert on maritime law, ship finance, corporate, commercial and banking law. His expertise has been instrumental in managing the maritime and corporate

interests of prominent ship-owning companies, ship managers, banks and financial institutions across a diverse range of jurisdictions, including Europe, the

USA, the Middle East, Asia and Latin America.

Based in Patton Moreno & Asvat's Panamanian head office and leading the London branch, he contributes significantly to shipping financing and ship registration law development in the country. He is a member of the Panamanian Bar Association, the German Panamanian Chamber of Commerce and the Panama Maritime Law Association, having been the President of the latter from 2015 to 2017.

Patton Moreno & Asvat

Capital Plaza, 8th floor
Roberto Motta Avenue
Costa del Este
PO Box 0819-05911
Panama City
Republic of Panama

Tel: +507 306 9600
Fax: +507 263 7887
Email: info@pmalawyers.com
Web: www.pmalawyers.com



PATTON, MORENO & ASVAT
INTERNATIONAL LAWYERS

Introduction

In 2025, Panama's President Jose Raul Mulino began his mandate with several challenges that required urgent attention. [Fitch downgraded Panama to junk status](#) in March 2024; [S&P followed suit in November 2024](#), pushing Panama to its lowest investment grade in years. The government successfully cracked down on illegal immigration, closing the Darien Gap, and was able to approve a reform of Panama's social security system, which was undergoing serious financial and operational difficulties; dialogue with the Cobre Panamá mine is also under way, potentially looking for a reactivation of operations in 2026.

In 2025, Panama's economy demonstrated a robust recovery following the impact of the Cobre Panamá mine closure in 2024. While full-year final data is still being consolidated, key indicators for 2025 from most international financial organisations – including the [International Monetary Fund \(IMF\)](#) and the [Economic Commission for Latin America and the Caribbean \(ECLAC\)](#) – project a growth rate of 4.2% to 4.5% for the full year. The year began strongly with 5.2% growth in the first quarter, driven by a surge in the transportation and canal sectors. By the second quarter, growth remained positive at 3.4%. The key economic drivers of the Panamanian economy for 2025 were:

- transportation and logistics as the primary growth engine, which expanded by 26.2% in early 2025;
- financial services intermediation, which grew by 7.1%, reflecting dynamic operations within the International Banking Center;
- public infrastructure and construction activity, which was supported by a 20.7% increase in public works, including major projects such as Metro Line 3 and the fourth bridge over the Canal; and
- tourism, where international visitor arrivals increased by 4.1% in the first half of the year, with general revenue rising by 7.6%.

Following Panama's exit from the "grey list" of the Financial Action Task Force (FATF) in 2023, the European Union (EU) officially removed Panama from its list of high-risk third countries for money laundering on 9 July 2025. This trend will continue to encourage trust in international investments as well as in the international financial sectors and the banking sec-

tor. Panama's banking sector comprises total assets of USD148.8 billion in relation to Panamanian banks and USD26.72 billion in relation to international banks. Panama is still looking ahead and making important strides towards being removed from the EU's blacklist of non-cooperative jurisdictions for tax purposes.

In 2024 the "Niño" climatic phenomenon continued to produced one of the driest seasons on record, severely affecting the Panama Canal's water levels and reducing them to historic lows. This caused a reduction in transits of 9,936, a 29% drop compared to the fiscal year 2023. Thankfully, in 2025 climate improved and the waterway reported strong increases in revenues and transits. Additionally, the trade environment has been marked by heightened volatility due to the new US administration trade policies prioritising tariffs and domestic production. Therefore, countries continue to seek alternative market routes and reshape supply chains. Tariffs imposed by the United States augmented transits, which jumped 19.3% to 13,404, compared to 11,240 transits in 2024. Of this total, 3,342 transits were by Neopanamax vessels, while 10,062 were Panamax vessels. The Panama Canal ended the fiscal year 2025 with total revenues of USD5.7 billion, 14.4% above the USD4.98 billion in 2024. The Panama Canal Authority (ACP) intends to carry out an ambitious investment plan for the next ten years, investing more than USD8 billion in projects directed to water availability, liquified petroleum gas (LPG) pipelines, road connections between the Atlantic and the Pacific, and the construction of additional container cargo terminals on both oceanic coasts.

In the port sector, Panamanian ports ended 2024 by posting strong growth of 15.1% in container volume. The volumes benefited from the Panama Canal transit restrictions during the 2023–2024 drought. In 2025, a surge of volume in cargo was primarily due to route expansions primarily from the United States and Asia as well as inducement calls from shipping lines – mainly feeder services from South America. As of October 2025, the total container volume increased by 3.3% to 8.24 TEUs, compared to 7.99 TEUs the year before, based on:

- Cristobal on the Atlantic side posting the highest growth, of 11.4% to 1.03 million TEUs;

- Colon Container Terminal (CCT) with 8.3% and 1.34 million TEUs;
- Balboa with 2.5% and 2.22 million TEUs;
- SSA Marine MIT with 1.2% and 2.33 million TEUs; and
- PSA Panama with 0.4% and 1.14 million TEUs.

Present Trends and Developments

The Panama Ship Registry

In 2025, the Panama Maritime Authority (PMA) focused its administration on upgrading the quality of the fleet rather than increasing the quantity thereof, as was the policy of previous administrations.

At present, the PMA is concentrating its efforts on the following aspects:

- focusing on a safer fleet and significant accident reduction;
- implementing 100% digital, streamlined processes;
- transforming into a younger fleet, with active policies to phase out high-risk vessels;
- applying rigorous inspections and enhanced pre-checks to ensure that only compliant ships fly Panama's flag; and
- winning trust from industry leaders and ship-owners, which choose Panama because of its security and reputation in protecting both their investments and cargo.

Panama's shipping registry has also become a pioneer in enforcing, for the first time, a mandatory traceability for ship-to-ship (STS) transfers as part of a strategy to modernise the fleet by gradually phasing out older tonnage, thus aligning with the International Maritime Organization's (IMO) decarbonisation plans until 2050.

In October, the Panama Ship Registry decided to apply an age restriction to oil tankers or bulk carriers that are more than 15 years old. Any vessel above such age will not be able to enroll under the Panamanian flag. The action is aimed at reducing detention risks in port state inspections and reducing the possibility of vessels from the so-called "ghost fleet" or "shadow fleet" entering the Panamanian registry. The PMA has determined that these shadow fleets primarily consist of aging oil tankers with ownership structures that are often underinsured and apply unsafe practices to

circumvent international sanctions, particularly those targeting Russian and Iranian oil cargos.

In addition to the age restriction, Panama has enacted further oversight measures, including mandatory quarterly inspections for problematic vessels and enhanced verification of ship safety management systems, such as pre-check verification processes that all vessels must complete before registering under the Panamanian flag.

The application of these new measures seems to be leading to positive results in the form of fewer accidents and a 13% increase in new building registrations compared with the previous year.

According to IHS Markit and based on Clarksons Research's World Fleet Monitor, as of 25 August 2025, Panama's Ship Registry included 8,812 vessels totaling 241.5 million gross tons (GT), representing 14% of the global fleet.

Rio Indio

During the 2023–2024 period, Panama experienced its worst drought since 1950.

In order to avoid the negative effects of future droughts, the ACP has proposed a USD1.6 billion project in the area of Rio Indio in Panama's Coclé Province, which would dam the nearby Indio River. The project would then drill a five-mile mountain tunnel connecting the newly constructed reservoir to Gatun Lake, which supplies water to the canal.

The Supreme Court of Panama reinstated a previous law, which expands the boundaries of the ACP's watershed to include 1.4 million additional acres along the canal, compared to the 741,316 acres that were managed before such judicial decision was made.

Additionally, in support of Panama Canal operations, the Rio Indio project forms a critical component of a public water project programme designed to guarantee water availability for more than half of Panama's population. Construction of the project is expected to take approximately six years, which would make the project one of the most important public investments since the expansion of the Panama Canal locks. The

project will not only provide a push in the labour market but will also include comprehensive provisions for affected communities, allocating funds for compensation and resettlement to such property owners impacted by the Rio Indio project.

The long-term investment of the Rio Indio project will secure the Panama Canal's competitive position in global maritime commerce while also addressing potential future climate concerns.

Trans-shipment hubs

In 2025, the ACP declared its intention to develop two new trans-shipment hubs, marking the official start of the development timetable.

This follows prior intentions to develop a terminal on the Pacific side, called Corozal, back in 2013. The project did not attract enough bids in 2017 and was suspended. The present initiative resurrects the original Corozal project, and adds a second proposed trans-shipment hub on a property owned by the ACP on the Caribbean coast.

The terms and conditions for pre-qualification bidders are expected to be finalised by February or March 2026, and award concessions will proceed as of the fourth quarter of 2026. The terminals would each have a projected capacity of moving 2.5 million to 3.5 million TEUs per year.

LPG pipeline

The Republic of Panama has also announced the development of an interoceanic LPG pipeline system that will move gas from the United States to Asia. The corridor will ease the transportation of butane, propane, ethane and other oil products between the Gulf of Mexico and North-East Asia, without requiring ship passage through the canal, thus saving water usage. This project will also aid the Panama Canal by reducing vessel waiting periods.

The project will connect the Atlantic and Pacific sides with terminals and a 76 km pipeline, aiming at a movement of approximately 2.5 million barrels/day, with construction potentially starting in 2027, and offering an additional revenue source for the Panama Canal. The project will involve private sector investment and

concessions, aiming to consolidate Panama's role as a global trade hub by creating additional logistics infrastructure.

Regulatory Initiatives

The Beijing Convention

On 4 March 2025, the Republic of Panama signed the Beijing Convention on the Judicial Sale of Ships, formally known as the United Nations Convention on the International Effects of Judicial Sales of Ships. Panama finalised its ratification during the week ending 18 October 2025 and its global entry into force was scheduled for 17 February 2026. Panama therefore becomes the 32nd state to accede to this agreement, alongside Liberia, Spain, Italy and Singapore.

The Beijing Convention, which was adopted in 2022 by the United Nations Commission on International Trade Law (UNCITRAL), establishes a harmonised framework for the international recognition of judicial sales of ships. It is mainly designed to ensure clean title and minimise legal risks as well as to provide legal certainty, thus benefiting buyers, investors and creditors by extinguishing prior mortgages, charges or interests upon a judicial sale of a vessel.

The Convention provided a harmonised legal framework, and its application maximises the potential sale price of vessels while at the same time protecting creditors' rights through a more transparent process. The issuance of a Judicial Sale Certificate and the maintenance of a repository by the IMO is required by the Convention in order to ensure the desired transparency.

Ex officio cancellation of ships from the registry

One of the PMA's main objectives is to purify its merchant fleet and send a message of solidity and transparency to the global maritime community. The Panamanian registry's vision is to have a renewed fleet, with younger ships that use cleaner energy.

In order to achieve this objective, the Panamanian Ship Registry has established a zero-tolerance policy on the misuse of the Panamanian flag, implementing key measures such as Executive Decree No 512 of 2024 and Resolution No 106-003-DGMM of 3 January 2025. These legal instruments apply rules that estab-

lish more expeditious procedures to cancel the registration of ships that infringe, pollute or have negative precedents, as well as provide an enhanced monitoring of the fleet and its data of Panamanian registered ships.

Panama has removed more than 650 ships from its registry since 2019 as part of efforts to enforce western sanctions.

Conclusions and Challenges Ahead

Several challenges lie ahead for the maritime sector in Panama for 2026.

The main priority should be the approval of the main reforms of Law 57 of 6 August 2008 and the new Maritime Corporations Law, which are still under revision and should be filed with the National Assembly as official bills. If approved, these bills would help Panama maintain its leadership and competitiveness among the world's ship registries.

Another public priority is the completion of the Rio Indio project as a guarantee of the Canal's operations and the provision of water for the entire population. The possible reopening of the Cobre Panamá mine is also of utmost importance as it would help revamp Panama's economy and industrial capacity.

PHILIPPINES



Law and Practice

Contributed by:

Valeriano Del Rosario, Daphne Ruby Grasparil, Patrick Sarmiento and Maria Francesca Bautista
VeraLaw

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VeraLaw is a Manila-based full-service law firm. The maritime and admiralty team consists of two partners, five assisting lawyers and two paralegals. They are shipping litigators who handle both civil and admiralty matters. A part of the team attends administrative proceedings for ships involved in pollution and environmental damage claims, and collision investigations, while the other specialises in maritime labour/crew claim issues and proceedings. The team's specialised lawyers also handle instructions for matters that can be broadly described as maritime enterprises, such as formation of companies for ship and crew

management, vessel registration and deregistration, and processing of permits with the Maritime Industry Authority and the Department of Migrant Workers, which regulates the employment of seafarers overseas. In February 2023, the MT "Princess Empress" oil spill occurred, and her club appointed VeraLaw, which deployed four lawyers. Subsequently, in 2024, the MT "Terranova" capsized, threatening to spill over 1.4 million litres of oil. VeraLaw capably handled the matter given its lawyers' previous experience in oil spills.

Authors



Valeriano Del Rosario is managing partner of VeraLaw, and has extensive education and business experience in the USA and Europe. He was admitted to the Philippine Bar in 1982. He obtained a master's degree

in Maritime Law from the University of Wales Institute of Science and Technology, and started his shipping career doing LOF salvage arbitration with Sinclair Roche and Temperley in the City of London. He remained with that firm for three years before returning to the Philippines to join his father's firm, where he started his shipping practice in Manila. He is a shipping law specialist and has acted for the 4,000 victims of the MV "Doña Paz" sinking.



Daphne Ruby Grasparil has been a partner at VeraLaw since 2013. She heads the firm's maritime labour employment/crew claims team. Her work in this field spans 20 years, and includes rendering legal opinions and

merits case assessments to ship-owners, P&I clubs and manning companies relating to seafarers' illness and injury claims, and defending those claims before the National Labour Relations, National Conciliation Mediation Board and appellate courts. She also provides legal advice and step-by-step guidance to manning companies on the termination process of seafarers to comply with due process requirements of Philippine laws.



Patrick Sarmiento is currently serving as a managing associate of VeraLaw. He is a proud member of VeraLaw's esteemed and award-winning maritime and admiralty team, and has been recognised for his outstanding contributions.



Maria Francesca Bautista is a managing associate and assistant to the managing director, Valeriano Del Rosario, who heads VeraLaw's maritime and admiralty team. Maria is undertaking her LLM in Maritime Law

at the National University of Singapore. In addition to being part of the award-winning firm, Francesca has herself been personally recognised. She is also a key member of the firm's insurance team. Outside her core specialisations, she continues to assist the firm's partners in various corporate and special projects, complex arbitration cases and intellectual property matters.

VeraLaw

2nd Floor A&V Crystal Tower
105 Esteban Street
Legaspi Village
Makati City 1229
Philippines

Tel: +63 2 8550 1888
Fax: +63 2 8550 2888
Email: veralaw@veralaw.com.ph
Web: www.veralaw.com



DEL ROSARIO RABOCA GONZALES GRASPARIL

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

By way of background, the Philippines was a Spanish colony for almost 400 years and a US colony for about 50 years. By reason of the historical link to Spain and the USA, the Philippines follows the Spanish tradition of being a code-based jurisdiction, though all laws are written, and court proceedings are conducted in the English language. The New Civil Code and the Code of Commerce were both adopted from Spanish law. Most of the laws governing transportation and shipping are found in both Codes. The Philippines also follows the rule on judicial precedents, and only the decisions of the Supreme Court interpreting provisions of laws have the force of law.

The jurisdiction of Philippine courts over maritime disputes is determined by law. The Judiciary Reorganisation Act of 1980 (BP 129), as amended by Republic Act No 11576, provides that regional trial courts have exclusive original jurisdiction over admiralty and maritime matters for demands or claims that exceed PHP2 million, which is approximately USD34,000 at the exchange rate at the time of writing. The lower trial courts (metropolitan/municipal/municipal circuit trial courts) have exclusive original jurisdiction in admiralty and maritime actions where the demands or claims are below PHP2 million. It was only in 2020 that the Supreme Court promulgated Administrative Matter No 19-08-14-SC, otherwise known as the Rules of

Procedure for Admiralty Cases (the “Admiralty Rules”) with the aim of providing “fast, reliable and efficient means of recourse to Philippine courts” to parties in admiralty- and maritime-related matters.

As of 2020, there are only ten designated Admiralty Courts with jurisdiction over maritime claims under the Admiralty Rules. The busy ports of Manila, San Fernando, Subic Bay, Cebu and Davao each have two designated Admiralty Courts.

Considering that the Philippines is an archipelago of over 7,000 islands, trade and commerce is heavily reliant on sea transport. The shipping cases filed with the Admiralty Courts cover a wide range of both wet and dry shipping claims.

1.2 Port State Control

The Philippines accepted the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (or the “Tokyo MOU”) in 1994.

The Philippine Coast Guard (PCG), the body vested with the authority to conduct vessel inspections, also issued Memorandum Circular 03-20 in relation to Port State Control for the purposes of establishing a uniform implementation of the various international convention standards on foreign-flagged vessels calling at any port of the Republic of the Philippines.

Under the Philippine Coast Guard Law of 2009, the powers of the PCG are extensive. Among them are:

- “to remove, destroy or tow to port sunken or floating hazards to navigation, including illegal fish and vessels, at or close to sea lanes which may cause hazards to the marine environment”;
- “to investigate and inquire into the causes of all maritime accidents involving death, casualties and damage to properties”;
- “to enforce laws and promulgate and administer rules and regulations for the protection of the marine environment and resources from offshore sources [from] pollution within the maritime jurisdiction of the Philippines”; and
- “to develop oil spill response, containment and recovery capabilities against ship-based pollution”.

1.3 Domestic Legislation Applicable to Ship Registration

By virtue of Presidential Executive Order No 125 and 125-A, as well as the Domestic Shipping Development Act of 2004 (RA 9295), the Maritime Industry Authority (MARINA) was vested with the authority to handle the domestic registration of vessels. The specific regulations on vessel registration are provided under MARINA Memorandum Circular No 2013-02. MARINA was vested with the authority to accredit, and issue certificates of public convenience to, domestic shipping operators to trade within the islands of the Philippine archipelago.

1.4 Requirements for Ownership of Vessels

Prior to July 2021, only Philippine nationals or Philippine corporations that were at least 60% owned by Philippine nationals could own and register ships in the Philippines. However, the Act amending portions of the Public Service Act (RA 11659) was recently enacted by the Philippine Congress to lift such restrictions. For the implementation and application of this new law, MARINA issued Implementing Rules and Regulations (IRR) in its Memorandum Circular No DS 2023-02 to dismantle the decades-old restrictive rules and regulations.

A vessel under construction cannot be registered with MARINA because a Builder's Certificate from a MARINA-accredited ship-yard has to be submitted before issuance of a Certificate of Ownership.

1.5 Temporary Registration of Vessels

The Philippines allows temporary registration of vessels. A Philippine national or corporation may bareboat-charter a foreign-flagged vessel, which may be registered with MARINA upon compliance with specific conditions. The vessel does not lose its original flag, but instead will be considered Philippine registered and flagged for the duration of the charter.

1.6 Registration of Mortgages

MARINA maintains the ship registry, and ship mortgages are annotated on the ship's registry record. For a mortgage to be annotated by MARINA, the following documents should be submitted:

- a letter of intent;
- the mortgage contract, which has to be notarised;
- proof of payment of documentary stamp tax; and
- the original Certificate of Ownership and Certificate of Vessel Registry.

1.7 Ship Ownership and Mortgages Registry

These records and documents are available to the public; however, a letter of request has to be provided to and approved by MARINA before the information and documents are released.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

The key terms for a typical ship finance transaction would be set out in the loan agreement and the preferred mortgage agreement. A mortgage agreement obtains “preferred” status by being recorded in the ship registry of MARINA. The terms would be as expected in a normal ship finance deal, but the unique feature is embodied in the law.

The Ship Mortgage Decree of 1978 provided a single body of law with a view to accelerating the growth and development of the shipping industry. That law, which was closely patterned after the Liberian Maritime Law, included restrictions that were not found in the Liberian model. There is a nationality requirement under Section 2 of that Decree. Furthermore, the preferred ship mortgage could only be granted for purposes of financing the “construction, acquisition,

purchase or initial operation” of a vessel. However, a foreign ship mortgage over a documented foreign ship is recognised and can be enforced by the Philippine Admiralty courts. For national development, the Philippine government, through the Development Bank of the Philippines, has actively financed ship acquisitions and ship-building for inter-island connectivity.

2.2 Ship Leasing

Bareboat chartering arrangements were very popular in the Philippines prior to 2021 for a practical reason. Prior to 2021 the Philippines implemented restrictive cabotage regulations. Domestic ship operators were able to obtain a temporary Certificate of Philippine Registry for a bareboat chartered ship for use in the inter-island trade.

In 2021 the Philippines liberalised the rules on ship ownership by removing the nationality requirement. Foreigners operating through a registered Philippine corporation may own and register a ship in the Philippines for inter-island trade. The use of the bareboat chartering programme has become a popular tool as part of a ship finance programme. For ships built overseas and financed by an overseas lender, a leasing transaction can easily be arranged. The lender can create an SPV to own the ships, and the SPV in turn bareboat charters the ship to the operating entity in the Philippines. The leasing arrangement is a well-worn path familiar to the ship operators, and is accepted and recognised by the government authorities.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The Philippines is a signatory to the 1992 Civil Liability Convention and the 1992 Fund Convention.

3.2 International Conventions: Collision and Salvage

The Philippines is not a signatory to either the 1910 Brussels Collision Convention or the 1989 International Convention on Salvage.

However, regarding collisions, the Philippines adheres to and applies the 1972 International Regulations for Preventing Collisions at Sea (the “Collision Regulations”). The Collision Regulations are part of the Philippine Merchant Marine Rules and Regulations of 1997, which were promulgated by MARINA. The rules on collision liability in the Philippines are set out in the Code of Commerce. The rule is basically all or nothing. If both vessels are to blame, each ship must bear its own loss, but both vessels are jointly and solidarily liable for the cargo loss on both vessels. To succeed in a collision claim, the claimant ship must be completely blameless.

The Philippines has its own domestic legislation on salvage. The Philippine Salvage Law is set out in Act No 2616, and the principles for a valid salvage service are no different from the concept as it exists in the United Kingdom – that is, the party performing the service must be a volunteer, there must be danger, and the service must be successful.

3.3 Convention on Limitation of Liability for Maritime Claims

The Philippines is not a signatory to the 1976 Convention on Limitation of Liability for Maritime Claims. The domestic law on limitation of liability is set out in the Code of Commerce. The limitation amount is the value of the ship plus the value of the freight being earned during a voyage. If the ship has been damaged, the limitation amount would be the ship's damaged value plus the value of the freight in the course of being earned. The right to limit liability has been curtailed by the 2003 judgment in *Aboitiz v New India*. This Supreme Court judgment clarified that, if there is a finding of any kind of unseaworthiness against the vessel, the owner loses the right to limit liability, regardless of whether the unseaworthiness arose through the owner's fault or negligence.

3.4 Vienna Convention on the Law of Treaties

As a party to the Vienna Convention, it is applicable in the Philippines. The Philippines signed the Convention in 1969 and eventually ratified it in 1972.

The Philippines is not a signatory to the Convention on Limitation of Liability for Maritime Claims. Furthermore, the Philippines is a civil law jurisdiction and has

its own limitation regime based on its domestic laws. The UK Supreme Court's recent judgment in *MSC Flaminia* will find no application in the Philippines.

3.5 Procedure and Requirements for Establishing a Limitation Fund

A limitation action is an available remedy under the Admiralty Rules and is commenced by filing a verified (sworn) complaint impleading all known defendants any time after a marine casualty that causes damage, injury or death. The defendants are the parties that are known to the owner that have claims against the limitation fund. To avail itself of the limitation action, the ship-owner, charterer, or person in possession and control of the vessel must abandon the vessel with all its appurtenances, equipment and freightage by notarial act filed with the ship registry. However, abandonment by notarial act is not necessary in the case of a total loss.

The amount of the limitation shall be determined during a hearing set by the Admiralty Court based on judicial affidavits submitted by the parties. The limitation fund is constituted either by making a deposit of money to the Admiralty Court or by producing a letter of undertaking from a P&I club.

3.6 Seafarers' Safety and Owners' Liability

In an effort to align domestic legislation with international conventions such as the 2006 Maritime Labour Convention and the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, so as to ensure that Filipino seafarers have protections and opportunities in line with global standards, the Republic Act 12021, entitled "An Act Providing for the Magna Carta of Filipino Seafarers", was enacted in September 2024.

This Magna Carta of Filipino Seafarers primarily benefits seafarers on international vessels. Domestic seafarers are principally covered by the Labour Code of the Philippines; however, nine chapters of the Magna Carta also apply to them, including the chapter on seafarers' rights.

4. Cargo Claims

4.1 Bills of Lading

The Philippine Carriage of Goods by Sea Act (COGSA) was enacted during the period when the Philippines was a commonwealth of the USA, and brought into force in the Philippines the US Carriage of Goods by Sea Act, which is effectively the Hague Rules.

As for the general law governing carriage by sea involving common carriers, this is covered by the general provisions of the New Civil Code.

4.2 Title to Sue on a Bill of Lading

The New Civil Code (Articles 1507–1520) defines a bill of lading as a negotiable document of title and provides the rights emanating therefrom. The valid holder of a bill of lading would be entitled to sue the carrier. Under Article 1518, the holder of a bill of lading in good faith and for value would be a valid holder thereof. The New Civil Code defines a valid holder as:

- the named consignee in the bill of lading;
- in the case of a bearer bill of lading, the holder of the bill of lading transferred by delivery; and
- in the case of a "to order" bill of lading, the holder of the bill of lading transferred by endorsement and delivery.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

For domestic carriage, the liability of the carrier is governed primarily by the Civil Code. Under the Code, a common carrier cannot limit its liability for its own loss or loss to goods where such injury or loss was caused by its own negligence. In the absence of negligence, a ship-owner can limit its liability for domestic carriage to its interest in the vessel in keeping with the well-settled doctrine of the real and hypothecary nature of maritime law.

In the case of foreign carriage, neither the carrier nor the ship shall be liable for any loss or damage in an amount exceeding USD500 per package, or in the case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in another currency. The exception to this is when the shipper

declares the nature and value of such before shipment and inserts it in the bill of lading.

The foregoing limitation may be availed of by either the ship-owner or charterer.

4.4 Misdeclaration of Cargo

The carrier can set up a claim against the shipper for misdeclaration of cargo. The carrier acting under a contract of carriage is entitled to damages arising from the natural and probable consequences of the misdeclaration. Furthermore, if the misdeclaration was made in apparent bad faith – ie, made with a dishonest purpose and the conscious commission of a wrong – the shipper shall be responsible for all damages which may be reasonably attributed to the misdeclaration.

At the time of writing, there is no jurisprudence involving a carrier's claim against a shipper for misdeclaration of cargo. However, in the 2014 case of *Philam Insurance Company v Heung-A Shipping Corporation*, the shipper was considered solidarily liable for damages with the carrier due to the shipper's misdeclaration of the cargo.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

There are two sets of rules for filing a cargo claim: a rule for domestic carriage and another for foreign carriage.

In the case of domestic carriage, notice of loss or damage to the goods must be provided by the cargo owner to the carrier within 24 hours from the delivery of the goods or the date when the goods should have been delivered. This notice is a condition precedent to filing a claim for damaged or lost cargo. If notice of loss or damage has been timely given, the cargo owner has ten years within which to file its cargo claim. This period can be reduced by agreement of the parties but cannot be extended beyond ten years.

In the case of foreign carriage, the COGSA provides that the carrier shall be discharged from all liability in respect of cargo loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Failure to provide a notice of loss or damage shall not affect

or prejudice the right of the shipper to bring suit within said one-year period after the delivery of the goods or the date when the goods should have been delivered.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The Philippines is not a party to any international convention regarding the arrest of vessels. The procedure for the arrest of vessels in the Philippines is governed by the Admiralty Rules.

5.2 Maritime Liens

The Philippines recognises two types of maritime liens, namely damage done by a ship and services rendered to the ship. Indemnities for crew injuries is not a recognised maritime lien.

For purposes of arresting a ship, a maritime lien holder for services to a ship may arrest it regardless of its ownership based on Section 21 of the Ship Mortgage Decree.

In general, a ship may be arrested for maritime liens and maritime claims. The grounds for arresting a ship under the Admiralty Rules are as follows:

- preferred mortgage liens;
- pilot, tonnage and port dues and other similar charges;
- the wages of the crew, Master's wages and disbursements;
- repairs and other necessities;
- damage done by a ship and/or collision liabilities;
- salvage;
- loans on bottomry and respondentia; and
- use of drydocks or marine railway, or other necessities furnished to the vessel.

Under the Admiralty Rules, any of the foregoing maritime grounds can be used as a ground to arrest a vessel and can be enforced even if they result from chartering contracts.

5.3 Liability in Personam for Owners or Demise Charterers

By way of background, in an action both in rem and in personam, the Admiralty Rules require that the “relevant person” should either be the owner or the charterer by demise at the time of the filing of the initiatory pleading, called a Complaint with the Admiralty Court. The “relevant person” is defined by the Admiralty Rules as “the person who would be liable on the claim in an action in personam”.

However, in an action purely in rem, the vessel may be arrested regardless of its owners’ personal liability on the merits. Such would be the case for claims arising from recognised maritime liens such as the unpaid bunkers claim described in **5.4 Unpaid Bunkers** (see also *Tsuneishi Heavy Industries v MIS Maritime Corporation*).

5.4 Unpaid Bunkers

Under the Admiralty Rules, Section 5 (j), Rule 1, Part I, the bunker supplier’s claim for unpaid bunkers comes within the jurisdiction of the Admiralty Court. The claim for necessities gives rise to a maritime lien under Philippine law, and under Section 6 (e), Rule 1, Part I, a claim based on a maritime lien may be enforced by way of an action in rem. Under Section 21 of the Ship Mortgage Decree of 1978, any person furnishing supplies to any vessel upon the order of the owner of such vessel, or of a person authorised by the owner, shall have a maritime lien over the vessel. The bunker supplier will need to allege or prove that credit was given to such vessel. The Philippines does not yet have case law to state whether a charterer is “a person authorised by the owner” to order bunkers. Therefore, each claim will have to be judged based on its individual merits.

5.5 Arresting a Vessel

An application for arrest in the Philippines is an ancillary remedy – ie, it can only be applied for through a principal in rem action brought against the vessel. In filing the principal in rem action, a verified (sworn) complaint must be filed by the plaintiff, which should be accompanied by:

- a statement that it is a case in Admiralty jurisdiction;

- the names, addresses and other relevant personal or juridical circumstances of the parties;
- all facts material and relevant to the plaintiff’s cause or causes of action;
- the law, rule or regulation relied upon, violated or sought to be enforced;
- specification of all evidence supporting the cause or causes of action, such as affidavits of witnesses, authenticated documentary evidence which must be attached to the complaint, and object evidence;
- the reliefs applied for, which includes an application for the issuance of a Warrant of Arrest of a Vessel; and
- a certification against forum shopping.

Since the complaint must be verified and accompanied by a certification against forum shopping, the plaintiff’s representative must be duly authorised through a power of attorney, a board resolution, a secretary’s certificate or other similar document. These documents must be duly notarised, or when executed outside the Philippines, duly apostilled or consularised. The documents accompanying the verified complaint, including its annexes, need not be original or certified true copies at the time of filing, but the original or certified true copies will be required by the Admiralty Court during the pretrial conference.

In relation to the Warrant of Arrest, the applicant must execute an affidavit, which shall be attached to the verified complaint, that the applicant undertakes to pay all port charges, fees and expenses for preservation and maintenance of the ship or cargo during its arrest until its release or sale.

In addition to this undertaking, the applicant must also give a bond or security executed in favour of the Admiralty Court in the amount of 30% of the claim (but in no case less than PHP5 million).

Notice and hearing must be afforded unto the owner, Master, or person in actual possession and control of the property before any Warrant of Arrest may be issued. This notwithstanding, the plaintiff may request an ex parte issuance of a Warrant of Arrest in cases of extreme urgency where it may suffer irreparable or gross inconvenience on account of the mobility of the ship.

Once issued, the Warrant of Arrest shall be valid for a period of 12 months from the date of its issuance.

5.6 Arresting Bunkers and Freight

Prior to the promulgation of the Admiralty Rules, charterer's bunkers were successfully attached by way of a writ of preliminary attachment. This remedy is described below. However, with the promulgation of the Admiralty Rules, recourse to an attachment is no longer possible.

Arresting Bunkers

In theory, this should be possible, but the Admiralty Rules are relatively new and there are no precedents. Under the Admiralty Rules, Section 5 (j), Rule 1, Part I, "[a]ny agreement relating to the use of a ship, including bareboat charter, charter by demise, time charter, voyage charter or contract of affreightment, and maritime contract of carriage, whether of goods or people, including bills of lading", comes within the jurisdiction of the Admiralty Court. It should be possible formulate a claim for charterer's bunkers under said section.

Arresting Freight

Under the Admiralty Rules, Section 5 (f), Rule 9, Part I, "[a]ny agreement relating to the use of a ship, including bareboat charter, charter by demise, time charter, voyage charter or contract of affreightment, and maritime contract of carriage, whether of goods or people, including bills of lading", comes within the jurisdiction of the Admiralty Court. A Warrant of Arrest for freight may be issued through an action in personam and in rem.

5.7 Sister-Ship Arrest

It is possible to arrest a sister-ship provided that the sister ship is owned and registered under the same owner as the offending ship. Ships under the same management company or within the same group of companies may not be arrested.

5.8 Other Ways of Obtaining Attachment Orders

Under Rule 57 of the Rules of Civil Procedure, it is possible to obtain an order of attachment against the property of the defendant as security for the satisfaction of any judgment. The procedure and the requirements to obtain such an order are different from those

for a Warrant of Arrest. An attachment is similar to the English law Mareva injunction.

5.9 Releasing an Arrested Vessel

The Admiralty Rules provide that the defendant may file a bail bond or security, including a corporate surety, from a surety company accredited by the Philippine Supreme Court, to lift a Warrant of Arrest. The bail bond or security must be approved by the Admiralty Court, in an amount sufficient to cover the arresting party's claims.

While a letter of undertaking or a foreign bank's guarantee are not expressly mentioned, the same may be offered by the defendant and, if accepted by the plaintiff, may be allowed by the court in the exercise of its discretion.

5.10 Procedure for the Judicial Sale of Arrested Ships

During the pendency of the action, the applicant shall pay all port charges, fees and expenses for preservation and maintenance of the ship or cargo during its arrest until its release or sale.

After final judgment and upon motion of the prevailing party, the Admiralty Court may direct the sale (at a public auction) of a ship or cargo which has been the subject of a Warrant of Arrest and has remained in custodia legis due to failure to file the appropriate bail bond. For this purpose, the Admiralty Court shall cause the appointment of one or more appraisers who shall assign a value of the ship or cargo and assist the sheriff in the sale of the property.

If there are numerous prevailing parties in an action in rem, a motion may be filed before the court to determine the priority of the claims against the proceeds of the sale of the ship or cargo. In determining the priority of claims, the court shall consider the relevant laws such as, but not limited to, the Ship Mortgage Decree of 1978, which gives preferred status to duly constituted mortgages over the vessel.

5.11 Insolvency Laws Applied by Maritime Courts

The Philippines' insolvency law is Republic Act No 10142, also known as the Financial Rehabilitation and

Insolvency Act of 2010 (FRIA). FRIA provides procedures for the different types of rehabilitation and liquidation proceedings.

Under FRIA, when a petition is filed and commenced by or against a distressed debtor, a stay or suspension order is issued and has the following effects:

- it suspends all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
- it suspends all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
- it prohibits the debtor from selling, encumbering, transferring or disposing of, in any manner, any of its properties except in the ordinary course of business; and
- it prohibits the debtor from making any payment of its liabilities outstanding as of the commencement date, except as may be provided therein.

The suspension order under FRIA takes precedence over admiralty proceedings filed against the distressed owner. As such, the admiralty proceedings will be suspended and cannot continue without an order from the insolvency court.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

To apply for a Warrant of Arrest, the applicant is required to give a bond or security executed in favour of the Admiralty Court in the amount of 30% of the claim (but in no case less than PHP5 million). This bond is conditioned on the arresting party paying all the costs which may be adjudged to the adverse party and all damages which the adverse party may sustain by reason of the arrest, if the court finally adjudges that the applicant was not entitled thereto.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The Philippines is not a signatory to any international conventions relating to maritime passenger claims. For claims such as these, the Philippines relies on

the New Civil Code provisions as well as the Code of Commerce. Under the New Civil Code, for contractual breaches, the prescriptive period is ten years from the date the cause of action arose. For actions based on tort, the time bar is four years.

The personal injury of a passenger is considered a maritime claim. Article 587 of the Code of Commerce, as elaborated by Supreme Court jurisprudence, provides that ship-owners may be held liable for the indemnities in favour of third persons arising from the conduct of the captain in relation to transported goods, as well as for the safety of passengers. However, the same provision provides that the owner may exempt itself and limit liability by abandoning the vessel (including its equipment and freight it may have earned).

Furthermore, for cases of cancelled, delayed or uncompleted voyages, MARINA has issued Memorandum Circular No 7, series of 2018, which lists the rights of passengers and obligations of domestic operators.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The choice of law and jurisdiction in the Philippines is subject to the doctrine of forum non conveniens; ie, a court, in conflict-of-laws cases, may refuse jurisdiction where it is not the most convenient or available forum, and the parties are not precluded from seeking remedies elsewhere. In determining the applicability of said doctrine, the court considers the “connecting factors” such as the situs of the res, the place where the deal was executed, the place of performance or the place of wrongdoing.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

As a rule, the Philippines recognises arbitration as a means of resolving civil disputes. Parties may agree to enter arbitration either through an arbitration agreement contained in a contract between the parties or through a submission agreement. As such, an arbitra-

tion clause appearing on the face of a bill of lading is legally binding and enforceable in the Philippines.

For purposes of arbitration, the parties' stipulation as to the choice of law in their agreement shall govern the substance of the dispute.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The recognition and enforcement of a foreign arbitral award in the Philippines is governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and Administrative Matter No 07-11-08-SC promulgated by the Supreme Court of the Philippines (otherwise known as the "Special ADR Rules") and its implementing Rules and Regulations.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Rule 5 of Administrative Matter No 07-11-08-SC mentioned in 7.3 **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards** states: "a party to an arbitration agreement may petition the court for interim measures of protection". Among other relief, the applicant may seek security for the claim by means of a writ of preliminary attachment.

7.5 Domestic Arbitration Institutes

There is no domestic arbitration institute in the Philippines that specialises in maritime claims. There are, however, several capable domestic arbitration institutes in the Philippines such as the Philippine Institute of Arbitrators, the Philippine International Center for Conflict Resolution, and the Philippine Dispute Resolution Center, Inc, with arbitrators who have experience in handling maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Rule 5 of Administrative Matter No 07-11-08-SC mentioned in 7.3 **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards** states: "a party to an arbitration agreement may petition the court for interim measures of protection".

Among other relief, the applicant may seek an injunction directed against the party to the arbitration.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Republic Act No 10378 provides that international carriers are now only liable for paying the 3% common carrier's tax imposed on cargo, but not on passengers. The Bureau of Internal Revenue has also issued Revenue Regulation No 15-2015, which exempts from value-added tax (VAT) the transport of passengers and cargo by international carriers doing business in the Philippines. The sale, importation or lease of passenger or cargo vessels including engines, equipment and spare parts thereof for domestic or international transport operations is also VAT-exempt, subject to the requirements of MARINA.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

There is no concept of "frustration" under Philippine law, and therefore the New Civil Code would provide the guiding principles in the event of late delivery, non-arrival, or slow loading or unloading.

During the COVID-19 pandemic, the courts addressed issues such as these by referring to the contract's provisions on force majeure and the wording of the exempting circumstances. If the term "force majeure" was not contractually defined, the New Civil Code would be referred to. Article 1174 thereof provides that there must be extraordinary events that "could not be foreseen" or, even if foreseen, were inevitable. Jurisprudence further elaborates that, to invoke force majeure, it is necessary that the occurrence was independent of human will and that the event made it impossible for the party responsible to fulfil the obligation in a normal manner. Lastly, the party responsible for fulfilling the obligation should not have done anything to aggravate the injury or damage to the other party.

Articles 1266 and 1267 of the Civil Code also provide that a person responsible for fulfilling an obligation is released from it if, without that person's fault, the obligation becomes legally or physically impossible or if the difficulty of fulfilling the obligation is manifestly beyond the parties' contemplation.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

MARINA is the body that monitors and enforces the IMO 2020 sulphur content limitation in fuel oil. It has been previously reported by MARINA that Philippine-flagged vessels that ply international routes are already compliant with IMO 2020. However, as regards vessels plying domestic waters, MARINA Memorandum Circular No SR 2020-06 gave these vessels until 1 January 2025 to comply with the 0.50% m/m fuel oil sulphur content, per IMO 2020. This Memorandum Circular also provides for the penalty for using fuel oil with sulphur content above the limit. The authors are not aware of any proceedings before MARINA relating to the violation of the limit.

9.3 Trade Sanctions

The Philippines has recognised international trade sanctions, but only those specific to anti-terrorism financing. The Philippines enacted Republic Act No 10168 specifically to make the financing of terrorism a crime against the Filipino people, against humanity and against the law of nations.

The Philippines also follows the UN-mandated controls on exportation, transit and brokerage assistance of dual-use items related to proliferation of weapons of mass destruction. Republic Act No 10697, otherwise known as the "Strategic Trade Management Act", was set in place to fulfil the Philippines' international commitments and obligations, including those under United Nations Security Council Resolution (UNSCR) 1540 concerning the non-proliferation of weapons of mass destruction.

There are, however, no direct sanctions imposed by the Philippines against Russia. As a matter of fact, while not having any direct sanctions in place, the Philippines was adversely affected by trade sanctions on Russia imposed by the United Nations and other

countries because these resulted in the replacement and repatriation of several Filipino seafarers.

9.4 International Conflict

Similar to the rest of the world, the Philippines has felt the negative impact of the Ukraine–Russia war on the prices of fuel and commodities.

The Philippine maritime labour sector was greatly affected by the war in two ways. Considering that the Philippines provides about 30% of the officers and crew on international ships, the ships that were trapped in the Black Sea employed numerous Filipino seafarers who had no easy way home. The Ukrainian seafarers were being repatriated to join the war, and the Russian seafarers were also affected by the sanctions imposed on the Russian government. These factors created a short-term shortage of seafarers, and Filipinos were considered for replacement to respond to the shortage in marine personnel.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The Philippines is one of the largest providers of seafarers and marine officers for international vessels. These seafarers make a substantial contribution to the Philippines' economy. Prior to COVID-19, the Philippines deployed 507,730 seafarers internationally. During the pandemic, the number went down by almost 50%, but after the first year the number steadily increased. In terms of seafarers' remittance, the country earned USD6.852 billion in 2023 and USD6.941 billion in 2024, the latter figure comprising at least 20% of all US dollar remittances from Filipino overseas workers. In January to October 2025, seafarers' remittance reached USD5.841 billion ([Overseas Filipino Remittances](#), Bangko Sentral Ng Pilipinas, 4 January 2026).

This industry has not been without challenges, one of which is the rising number of seafarers' claims for disability benefits. Owing to the Philippines' labour laws' bias favouring employees and laws on immediate execution of judgment awards, ambulance chasers

have taken advantage by filing legally unsubstantiated cases, with most of them decided in favour of seafarers. Even if a lower court's decision is reversed by the Supreme Court, restitution of the paid award is usually slim as seafarers no longer have the assets to satisfy the writ of execution. Because of this, ship-owners are considering hiring seafarers of other nationalities for their vessels.

The Philippine government realises the repercussions of these questionable claims and recognises the vital contribution of the manning industry to the nation's economy. Thus, steps have been taken to "level the playing field" between seafarers and the ship-owners. Currently, pending legislation is awaiting signature by the Philippine Congress, giving ship-owners a fair chance of recovering paid judgments, should the Supreme Court decide that the award is erroneous. MARINA also has a complaints process for cancellation of the seafarer's identification and record book (SIRB) for those who received payment for full disability benefits.

Trends and Developments

Contributed by:

Valeriano Del Rosario, Maria Francesca V Bautista and Celestine Jeanne M Generillo
VeraLaw

VeraLaw is a Manila-based full-service law firm. The maritime and admiralty team consists of two partners, five assisting lawyers and two paralegals. They are shipping litigators who handle both civil and admiralty matters. A part of the team attends administrative proceedings for ships involved in pollution and environmental damage claims, and collision investigations, while the other specialises in maritime labour/crew claim issues and proceedings. The team's specialised lawyers also handle instructions for matters that can be broadly described as maritime enterprises, such as formation of companies for ship and crew

management, vessel registration and deregistration, and processing of permits with the Maritime Industry Authority and the Department of Migrant Workers, which regulates the employment of seafarers overseas. In February 2023, the MT "Princess Empress" oil spill occurred, and her club appointed VeraLaw, which deployed four lawyers. Subsequently, in 2024, the MT "Terranova" capsized, threatening to spill over 1.4 million litres of oil. VeraLaw capably handled the matter given its lawyers' previous experience in oil spills.

Authors



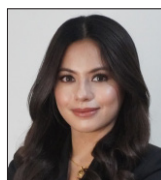
Valeriano Del Rosario is managing partner of VeraLaw, and has extensive education and business experience in the USA and Europe. He was admitted to the Philippine Bar in 1982. He obtained a master's degree

in Maritime Law from the University of Wales Institute of Science and Technology, and started his shipping career doing LOF salvage arbitration with Sinclair Roche and Temperley in the City of London. He remained with that firm for three years before returning to the Philippines to join his father's firm, where he started his shipping practice in Manila. He is a shipping law specialist and has acted for the 4,000 victims of the MV "Doña Paz" sinking.



Maria Francesca V Bautista is a managing associate and assistant to the managing director, Valeriano Del Rosario, who heads VeraLaw's maritime and admiralty team. Maria is undertaking her LLM in Maritime Law

at the National University of Singapore. In addition to being part of the award-winning firm, Francesca has herself been personally recognised. She is also a key member of the firm's insurance team. Outside her core specialisations, she continues to assist the firm's partners in various corporate and special projects, complex arbitration cases and intellectual property matters.



Celestine Jeanne M Generillo is an associate at VeraLaw working under the leadership of the managing partner, Valeriano Del Rosario. Her contributions span corporate, civil and maritime/admiralty cases and projects. She has also worked under another partner of the firm, Daphne Ruby Grasparil, focusing on maritime labour employment/crew claims and legal and corporate due diligence of manning companies, among others.

VeraLaw

2nd Floor A&V Crystal Tower
105 Esteban Street
Legaspi Village
Makati City 1229
Philippines

Tel: +63 2 8550 1888
Fax: +63 2 8550 2888
Email: veralaw@veralaw.com.ph
Web: www.veralaw.com



DEL ROSARIO RABOCA GONZALES GRASPARIL

Background

The “Pearl of the Orient” was the historical sobriquet of the Philippines. The archipelago of over 7,600 islands resembles a string of pearls that lies off the coast of South-East Asia, stretching 1,150 miles (1,850 kilometres) from North to South. The Philippine Islands occupies a strategic position along the coast of South-East Asia. From the South China Sea (which due to political reasons is now referred to as the West Philippines Sea), there are two viable westward sea routes to the Pacific Ocean: the San Bernardino Strait in north central Philippines or the Surigao Strait in the southern Philippines. On a historical note, during one of the decisive sea battles of World War II in the Pacific, one of the Japanese fleets attempted to break out to the Pacific Ocean through the Surigao Strait but was destroyed by American naval forces. The Battle of Leyte Gulf prevented the Japanese fleet’s access to the Surigao Strait, and is celebrated as one of the pivotal battles of 1944, allowing General Douglas MacArthur to fulfil his promise of “I shall return” when he departed in defeat from the Philippines in 1942.

The above historical notes are important for a proper understanding of the strategic location of the Philippine archipelago, and the continuing tensions caused by China in the West Philippine Sea. The Republic of the Philippines is different from other littoral states. The territory of the Philippines is, in simple terms, a block of ocean, and within this block are over 7,600 islands of the Republic. The block of ocean has baselines from which the Exclusive Economic Zone (EEZ) of the Republic extends eastward. In 2016, the Republic of the Philippines won a landmark arbitration

award against China, which China refuses to recognise. Currently, China has occupied and militarised these islands in the Philippines’s EEZ.

China has claimed most of the West Philippine Sea within what China calls the 9-dash line, and has continuously harassed and threatened Philippine vessels that attempt to re-supply Philippine outposts in its EEZ. A third of world trade in 2024 transits through the West Philippine Sea (Nick Martin, [“How South China Sea tensions threaten global trade”](#), DW, 25 Aug 2024). The threat of conflict between China and the USA in the West Philippine Sea is a trend that will continue for the foreseeable future. The northernmost island of the Republic of the Philippines, Mavulis, is only 88 miles from the southern tip of Taiwan, another flash point (Nick Aspinwall, “Philippines beefs up northernmost defences amid China tensions”, Al Jazeera, 7 April 2024), and was uninhabited until 2016. The defences of Mavulis are being strengthened by the Philippines, with US assistance, which China stridently opposes. The Republic of the Philippines is a treaty ally of the USA, and in 2025 the US Marine Corps brought the NMESIS system, which launches Naval Strike Missiles, to the Philippines. The system provides land-based sea denial, to the great consternation of China (Priam Nepomuceno, “US anti-ship missile platform still in PH”, Phil News Agency, 9 June 2025).

Climate Change

The Philippine archipelago lies on the western edge of the Pacific Ocean. Tropical cyclones, known as typhoons in Asia, spawn in the area of the central

Pacific Ocean north of the equator, and once born they track westward towards the Philippines. Over the last 15 years, the strength, ferocity and destructive power of typhoons that have struck the Philippine Islands have increased dramatically. As a result, ships on the water are at greater risk. As an example, in December 2021, Typhoon Rai (international name), which was named Typhoon Odette in the Philippines, cut through the Philippines like a scythe sowing death and destruction. The Philippines keeps track of the count of typhoons that enter the Philippine Area of Responsibility by designating the first of the year's typhoon with an "A" and following the sequence of the alphabet. VeraLaw was busy during Typhoon Odette when the firm opened over 20 files for damaged/stranded vessels for yachts, tugs, barges, general cargo ships, and docks and harbour facilities.

In 2023, the Philippines suffered a major oil spill off the island of Mindoro, with over 800,000 litres of industrial fuel spilled by the vessel *Princess Empress* during heavy weather. Again in 2024, another oil spill occurred in Manila Bay when the tanker *Terranova* went down during the passage of Typhoon Gaemi (local name Carina). The Philippines is a signatory to both the 1992 Civil Liability Convention and the Fund Convention.

In both instances, the flying squad of ITOPF (International Tanker Owners Pollution Federation Limited) were on site almost immediately to assist with remedial measures to minimise damage and environmental degradation.

It is a growing concern that climate change has been greatly affecting the severity of typhoons in the Philippines. In fact, the Asian Development Bank considers the Philippines as the nation that is most affected by extreme weather ("[Climate Change and Disaster Risk Management](#)", Asian Development Bank, accessed 6 Jan 2024). According to an article by Carbon Brief, the Philippines' typhoon season had worsened due to the fact that the world has warmed by 1.3 degrees Celsius. According to Carbon Brief, this would translate to the country possibly experiencing three major typhoons making landfall in a single month, roughly once every 15 years. This is said to be 25% more frequent than in a world without climate change (Ayesha

Tandon, "[Record-breaking Philippines typhoon season was 'supercharged' by climate change](#)", Carbon Brief, 12 Dec 2024).

With the increasing severity and frequency of typhoons due to climate change, there will likely be a corresponding increase in claims made to hull and machinery (H&M) and protection and indemnity (P&I) insurers in the foreseeable future.

Future Litigation Trends

The two recent oil spills mentioned above prompted inquiries concerning limitation of liability under Philippine law. There are two distinct limitation regimes. One regime is specific to oil pollution under the Oil Pollution Compensation Act (OPCA), which was passed in 2007. OPCA brought into force the Civil Liability and Fund Conventions. The other regime is available in the case of damage to third parties (for example, ship collision and cargo damage cases), and the procedure is governed by the 2020 Rules of Procedure for Admiralty Cases (the "Admiralty Rules").

Under OPCA, the limitation fund is based on special drawing rights (SDRs), and is SDR3 million for ships not exceeding 5,000 units of tonnage. For ships over 5,000 tons, there is an additional SDR420 per ton over 5,000 tons. OPCA likewise contains a provision that considers subsequent amendments to the 1992 Civil Liability Convention with respect to the limit of liability. When the Implementing Rules and Regulations of the law were issued in 2016, the limit of liability was increased as follows:

- for ships not exceeding 5,000 GT, the limit is SDR4.51 million;
- for ships of 5,000 GT to 140,000GT, the limit is SDR4.51 million and an additional SDR631 for each additional unit of tonnage; and
- for ships exceeding 140,000GT, the limit is SDR89.77 million.

The OPCA fund is constituted by depositing money with the Maritime Industry Authority (MARINA) or by providing a financial guarantee, such as a P&I letter of guarantee. The pollution claims must be brought before the regional trial courts, and recovery is from

the fund constituted with MARINA. Limitation is not available if the owner is guilty of actual fault or privity.

The larger of the two oil spills mentioned above was from the *Princess Empress*. The time limit to bring oil pollution damage claims for the *Princess Empress* spill is 28 February 2026. The P&I Club of the *Princess Empress* lodged the limitation fund with MARINA in December 2025 in accordance with OPCA by way of a P&I letter of guarantee. Under the OPCA provisions, the claims for oil pollution damages may be brought before the Regional Trial Court. The writer is aware that the first proceedings have been brought by 50 or so fisherfolk from Mindoro in a far-flung court in their home island of Mindoro, where the spill occurred. This will be the first time an OPCA claim will be litigated in court, and many new questions of law will need to be answered. By way of an example: if other claimants commence proceedings in a different Regional Trial Court, do the cases have to be consolidated with the first filed proceedings? If there are separate proceedings, there may be differing outcomes which will need to be addressed. A more interesting consideration is: will the *Princess Empress*'s limitation fund be eventually upheld or broken?

The Philippines' Strength

The Philippines has a well-developed, highly regarded and valuable manpower industry devoted to the maritime sector. With over 7,600 islands that required the movement of goods and people by sea, it is not surprising that the Philippines has a long and significant seafaring tradition. The Philippines provides over 30% of the officers and crew to overseas international ships. As stated by the Central Bank of the Philippines, the Philippines earned USD6.7 billion and USD6.8 billion in 2022 and 2023 respectively, from the salaries of Philippine seafarers, which made up 1.7% of the Philippines' GDP. The growth of the industry will most likely continue on an upward trend, as next-generation young men and women see the opportunities that were realised by the generation that went before them. Add to that the aspirations of youth, the better educational opportunities that are being offered by the Philippine Merchant Marine Academy, the Maritime Academy of Asia and the Pacific, and the private funded academies of shipping powerhouses such as NYK Line and the combination of Mitsui OSK Lines/

Magsaysay, and the Philippines will remain a major player in the industry for decades to come.

In an effort to align domestic legislation with international conventions such as the Maritime Labour Convention (MLC) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), so as to ensure that Filipino seafarers have protections and opportunities in line with global standards, Republic Act 12021 (or the Act Providing for the Magna Carta for Filipino Seafarers) was enacted in September 2024.

Filipino seafarers are constantly a preferred choice for foreign ship-owners, comprising approximately 400,000 employed worldwide, as of 2020 (Konstantinos Galanakis, [“The Filipino market supply of seafarers and cadets and their contribution to the global merchant fleet”](#), Safety4Sea, 20 Jul 2023).

The Philippines is known for producing well-educated, reliable, competent and adaptable officers and crew. The Magna Carta for Filipino Seafarers aims to provide benefits to current seafarers while also offering protections that will make it more appealing to potential recruits.

This Magna Carta offers protection not only to seafarers but also to employers in crew claims cases. Prior to the enactment of the Magna Carta, if a ship-owner lost a crew claims case, and its motion for reconsideration was denied, seafarers were entitled to immediate compensation from their employers. If on appeal the employer wins the case, it would usually be a difficult exercise to recover the award initially granted, because by then the funds would have already been used up.

Under the new law, if an employer initially loses the case, it is no longer required to immediately issue full compensation. It must promptly pay the part of the judgment that is not being contested, but for the rest of it the seafarer is now required to provide a bond to guarantee that the money will be returned to the employer, should it win the appeal. This now offers protection to ship-owner employers against baseless claims that have been caused by ambulance chasers.

The Magna Carta hopes to be a win-win scenario as this law will now assist in striking a balance between the needs and demands of both the seafarers and their employers. The law will assist in further producing world-class seafarers, while the improved labour regime brought about by it will push the manning industry into an upward trend.

Support for Foreign Investments

In 2013, the Philippines liberalised foreign investments in various industries through the amendment of the Public Service Act. Previously, the shipping industry was limited to only Philippine-owned corporations, with a maximum foreign equity of only 40%. With the government's goal of providing "efficient, reliable and affordable basic services to all", as well as revitalising the country's economy damaged by the COVID-19 pandemic, it felt the need to increase and diversify investment sources. The Philippine shipping industry was among those removed from the classification of "public utility", which is still limited to Filipino controlled corporations (60% Filipino equity). Thus, with the amendment of the law, restrictions on foreign ownership in the domestic shipping sector were modified.

So long as a corporation, though 100% foreign-owned, is registered with the Securities and Exchange Commission and obtains accreditation as a domestic shipping company or a maritime enterprise, it can participate in the industry. In fact, to further encourage investments from both the domestic and foreign sectors, MARINA has made efforts to improve its services through streamlining and digitalisation of application processes. While foreign entities have not fully capitalised on this privilege, the foundation has been set for its immediate use ("[Foreign shipping firms interested, but in no rush to enter PH](#)", Roumina Pablo, 1 March 2024).

Future Trends and Threats

The Philippines' economy has been experiencing robust growth, and with that growth, the country has a voracious appetite for power. The Philippines' economy continues to grow, but at a more sluggish pace as the world comes to terms with the Trump tariffs. The Philippines – a US treaty ally – was not exempted, and is subject to a 19% tariff on exports to the USA

(Chynna Grace Ong, "[Tit for tat: How PH deals with Trump tariffs](#)", The Manila Times, 4 January 2026).

To power economic growth, the Philippines continues to rely on coal-fired power plants. According to the International Energy Agency (IEA), in its annual coal report, the Philippines' consumption of coal likely grew by 5% to 42 million tons in 2024 from 40 million tons in 2023. The IEA said: "power generation primarily drives coal consumption with most coal imported from Indonesia". The IEA projects that, based on the Philippines' growth rate, in the next three years the Philippines will reach 47 million tons. "Coal-fired power plants are typically regarded as the cheapest among the scheduled based load generation facilities that can operate continuously and provide consistent power to meet the base demand of the grid" (Brix Lelis, "[Philippines soaring power demand triggers rise in coal use](#)", The Philippine Star Global, 5 Jan 2025).

The Indonesian archipelago lies due south of the Philippines in the southern hemisphere, and numerous tugs and barges ferry their coal cargo from the Indonesian mining ports and pass through the Sulu Sea to reach their destination in the Philippines. The shortest route will take the tug and barge array through the Sulu Sea, and there are ecologically sensitive areas along their route such as the Tubathaha Reef National Park. When tugs and barges need to seek shelter, they will head for smaller islands that have shallow waters with extensive fields of sea grass that feed marine mammals such as sea cows. One such island is Cagayancillo in the Sulu Sea, which was the site of a casualty known to the firm.

The traditional typhoon warnings that existed during the 20th century – such as the severity of typhoons based on a number system and the location of the typhoon within the grid known as the Philippine Area of Responsibility – no longer provide a good guide. The typhoons have become stronger and their outer bands' circumferences have become much wider. A recent example was the oil spill from the motor tanker *Terranova*, mentioned above. Typhoon Gaemi was already well north of the Philippines and outside the Philippines Area of Responsibility when she was cleared by the Coast Guard to sail, but she experi-

enced very heavy weather from the outer band of the typhoon, which caused her to flounder.

Ships throughout the ages have been vulnerable to the weather. The ships in the coal trade between Indonesia and the Philippines may present an ecological threat to the sensitive ecology of the Sulu Sea. Indonesia lies south of the equator, and is outside the typhoon belt that extends from the Philippines and north through Taiwan up to Japan. With the increasing severity and size of typhoons, the Philippines' environment will face an increasing threat from that ferocious force of nature in the decades to come.

The Philippines is not standing still; in January 2025, the Philippines enacted the Philippine Natural Gas Industry Development Act. The Philippines has one significant offshore gas field, named "Malampaya", which is being redeveloped due to its declining production. Operations have been extended to 2039 to extract remaining reserves and explore new sources. The purposes of the new legislation are to establish the Philippine downstream natural gas industry and allow the Philippines to transition to a low-carbon future.

PORTUGAL



Trends and Developments

Contributed by:

Francisco Rodrigues Rocha

Gouveia Pereira & Associados – Sociedade de Advogados, SP, RL

Gouveia Pereira & Associados – Sociedade de Advogados, SP, RL (GPA) is a full-service Portuguese law firm, founded in 2005. It provides legal assistance anchored on technical rigour and professional excellence, focusing predominantly on providing corporate legal advice to entities across various economic sectors. With the support of GPA Academy, GPA develops the potential of its lawyers through constant training. GPA Network extends its field of action to all district capitals of Portugal and beyond, thanks to in-

ternational partnerships and desks (Angola, Mozambique, Cape Verde, Sao Tome and Principe and Germany). GPA is also a member of GGI Global Alliance. Sustainability and corporate social responsibility have always been at the core of the firm's management and policies. GPA regularly co-operates with the Faculty of Law (University of Lisbon) and other executive training institutions. The firm would like to acknowledge the collaboration of Clara Nolasco Lamas.

Author



Francisco Rodrigues Rocha is a professor at the University of Lisbon as well as in the Lusíada Universities of Lisbon (Portugal), Luanda and Benguela (Angola), and a partner at GPA, where he heads the

transportation, maritime and insurance practices, and serves as co-head of compliance. His professional trajectory spans over 15 years, with a sustained focus on insurance, banking and finance.

He possesses advanced expertise in transport law, particularly in disputes arising from complex multimodal operations, and in maritime law, including matters involving shipping agents, freight forwarders, customs brokers, cargo handling and port operations. Francisco frequently lectures at academic and corporate institutions, and is a regular contributor to specialised scholarly and professional publications.

Gouveia Pereira & Associados – Sociedade de Advogados, SP, RL

Edifício Amoreiras Square
Rua Carlos Alberto da Mota Pinto, n.º 17, 3.º B
1070-313 Lisboa
Portugal

Tel: +351213121550
Fax: +351213121551
Email: gpa@gpasa.pt
Web: www.gpasa.pt

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ADVOGADOS
LAW FIRM

Maritime Law in Portugal

The country's potential and its strategic position

A country facing the sea, with a coastline of around 2,500 km, Portugal has the EU's third-largest Exclusive Economic Zone (EEZ), covering 1,727,408 km², as well as deep-water ports and a strategic geographical position at the head of Europe facing the Americas and Africa, together with preferential political relations with a significant group of Portuguese-speaking countries. These factors amount to enormous potential in the sector of maritime resources and activities.

The materialisation of this potential, which remains to a large extent untapped, continues to be an objective of successive governments, including the current one. To this end, efforts have been made in recent years to provide the country with a legal framework that is more conducive to investment in this sector. Measures adopted throughout 2025 are discussed below.

Key legislative developments in Portuguese maritime law

At the legislative level, the following developments in 2025 are worth noting.

- Decree-Law No 36/2025 of 24 March, enacted pursuant to the legislative authorisation granted by Law No 21/2025 of 4 March, which amended the Legal Regime of the Professional Activity of Seafarers, approved by Decree-Law No 166/2019 of 31 October. This amendment sought to address the increase in applications for the recognition of professional certificates of foreign seafarers, reflecting labour shortages, particularly in the fishing sector, by creating a regime intended to be more flexible and expeditious. Following this legal diploma, mention should also be made of Ministerial Order No 468/2025/1 of 24 December, which establishes the types of professional certificates for seafarers, the conditions for their issuance, their validity, the revalidation procedure and the corresponding templates.
- Law No 36/2025 of 31 March, which established a moratorium on deep-sea mining until 2050, amending Law No 17/2014 of 10 April (Framework Law on the Policy for Planning and Management of the National Maritime Space) and Law No 98/2021 of 31 December (Framework Climate Law), seeking to

align Portugal with good environmental practices in the mining sector.

- Law No 45-A/2024 of 31 December, which approved the State Budget for the year 2025 and enshrined two measures with a direct impact on the maritime sector.
 - (a) On the one hand, Article 154 provided that, throughout 2025, the government was to take the necessary steps to launch an international public tender for the establishment of a regular maritime connection, by ferry, for the transport of passengers and roll-on/roll-off (RoRo) cargo between the Autonomous Region of Madeira and mainland Portugal. This provision not only reinforced the importance of maritime territorial continuity, but also bound the government to define the corresponding public service compensation and the operational and logistical conditions indispensable to the viability and stability of that service.
 - (b) On the other hand, Article 316 required the strengthening of the technical means dedicated to the protection of submarine telecommunications cables crossing the maritime space under Portuguese jurisdiction, signalling the priority attributed to the security of critical submerged infrastructure, with implications for the allocation of resources, co-operation with private operators and the possible future development of the applicable regulatory framework.
- Decree-Law No 100/2024 of 4 December, with full effect as from 2025, which introduced the second amendment to Decree-Law No 204/2005 of 25 November, governing the specific stability requirements applicable to RoRo passenger ships, thereby transposing Directive (EU) 2023/946. This legal instrument updated the definitions of “existing ro-ro passenger ship” and “new RoRo passenger ship”, expressly incorporated the most recent versions of the SOLAS Convention, including SOLAS 2020, and comprehensively reconfigured the enhanced stability regime applicable to such vessels, whether newly built or existing ships commencing regular services to ports of member states after that date. It further strengthened the role of the Directorate-General for Natural Resources, Safety and Maritime Services (DGRM) in verifying compliance with the new requirements, in the

certification of vessels and in the enforcement of compliance with said Decree-Law.

Overall, legislative developments were limited in 2025. This may be viewed as a negative aspect, given the number of voices rightly calling for a modernisation of Portuguese maritime law; however, it also represents a very positive element, as it contributes to legal stability and certainty, which are essential for the development of any economic activity, particularly maritime activities, bearing in mind the substantial long-term investments they require.

Developments in commercial ports policy

It is also worth noting the government's approval of the Strategy for Mainland Commercial Ports 2025–2035, known as Portos 5+, through Council of Ministers Resolution No 119/2025 of 24 July.

Among the various initiatives, particular emphasis should be placed on the Portuguese State's intention to launch new port concessions – 15 by 2035 – aimed at attracting investment from both national and international private operators. The amendment to the law at the end of 2024 (Decree-Law No 92/2024 of 25 November), more clearly providing for a maximum term of 75 years, creates more attractive conditions for investors. Assuming the current government remains in office, developments in this area are expected in the short term.

Case law trends in maritime law

2025 was also significant in terms of decisions by the Portuguese higher courts.

At the time of writing, not all judgments relating to 2025 have yet been published, but the following areas may be highlighted by way of illustration:

- arrest of ships, including the arrest of third-party vessels (Lisbon Court of Appeal, 15 July 2025, case No 39/25.3TNLSB.L1-7) and issues of court jurisdiction (Lisbon Court of Appeal, 17 June 2025, case No 31/25.8TNLSB.L1-7);
- ownership of land property located within public domain areas and water resources (Guimarães Court of Appeal, 13 November 2025, case No 5384/23.0T8BRG.G1);
- maritime carriage of goods *stricto sensu*, particularly regarding limitation periods for claims against the carrier, the scope of application of the Hague Rules vis-à-vis Decree-Law No 352/86 (Lisbon Court of Appeal, 9 October 2025, case No 104486/21.5YIPRT.L1-2) and reservations made on bills of lading – specifically “said to contain” reservations in FCL transportation (Lisbon Court of Appeal, 1 July 2025, case No 106/21.2TNLSB.L1-7);
- multimodal transport, notably the application of the regime most favourable to the injured party where the location of the damage is unknown (Lisbon Court of Appeal, 11 September 2025, case No 4681/22.6T8SNT.L1-8), the application of limits under unimodal maritime conventions (Supreme Court of Justice, 15 May 2025, case No 55/16.6T8PST.L1.S1; Supreme Court of Justice, 16 January 2025, case No 1637/23.5T8PTM.E1.S1; Évora Court of Appeal, 8 May 2025, case No 1363/23.5T8PTM.E1; Lisbon Court of Appeal, 26 June 2025, case No 257/23.9T8FNC.L1-6; Supreme Court of Justice, 9 July 2025, case No 913/22.9T8ABF.E1.S1; Évora Court of Appeal, 18 September 2025, case No 2602/24.0T8PTM.E1; Oporto Court of Appeal, 22 September 2025, case No 1626/19.4T8PVZ.P1), and issues relating to the courts' jurisdiction *ratione materiae* and *ratione loci*;
- freight-forwarding contracts, including the status of the freight forwarder as carrier of goods (Oporto Court of Appeal, 10 November 2025, case No 8293/23.9T8PRT.P1), groups integrating a freight forwarder and a customs broker and the duty to render accounts to the client (Oporto Court of Appeal, 12 December 2025, case No 693/24.3T8MTS.P1), breach of ancillary duties concerning the delivery of an extra-EU export certificate (Oporto Court of Appeal, 22 June 2025, case No 1916/20.3T8MAI.P1), and the short limitation period for claims against the freight forwarder and the possibility of its interruption (Oporto Court of Appeal, 23 January 2025, case No 4421/22.0T8PRT.P1);
- marine cargo insurance, in particular subrogation claims by freight forwarders against cargo insurers (Lisbon Court of Appeal, 26 June 2025, case No 80/22.8TNLSB.L1-7);

- shipbuilding, notably the competent national court in light of a jurisdiction clause (Lisbon Court of Appeal, 10 July 2025, case No 9591/23.7T8LSB.L1-6);
- maritime labour, including offshore oil activities and the applicable labour law (Lisbon Court of Appeal, 30 April 2025, case No 7576/23.2T8LSB.L1-4); and
- maritime tourism activities, including passenger accidents occurring during such activities and the applicable law (Lisbon Court of Appeal, 18 November 2025, case No 21/24.8TNLSB.L1-7).

Outlook and perspectives for the maritime sector

Further and better legislative reforms are expected. The Portos 5+ programme nurtures this hope. Portugal also recorded positive economic growth in 2025, and presents itself as an economically and legally stable and secure country. From a legal standpoint, the special relationship with Portuguese-speaking countries and the similarity of legislation with these countries is also a distinctive positive factor. The maritime sector is expected to contribute more to the economy and has all the potential to do so.

SAUDI ARABIA



Law and Practice

Contributed by:

Faisal Daudpota

Daudpota International (in alliance with Khalil Aljehani Law Firm)

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Daudpota International (in alliance with Khalil Aljehani Law Firm) routinely represents clients in ship arrest matters before the courts. From charterparty disputes to ship collisions, the lawyers have handled numerous cases at courts in Pakistan and Saudi Arabia. In 2025, Daudpota International represented a UAE company in the High Court for recovery of money in relation to bunker services provided to the vessel of a Liberian company. In another 2025 case,

the firm represented an Egyptian company (vessel owner), successfully defending against an allegation by a French company of charterparty breach and tort of negligence. Daudpota International assists clients in transactions and cases involving vessel arrests and documentation, bills of lading, collisions, environmental issues, marine financing, marine tariffs, personal Injury, riparian rights, charter agreements, salvage and subrogation.

Author



Faisal Daudpota covers transactional and contentious matters relating to maritime law, competition, intellectual property, data protection, information technology, telecommunications and competition. Mr Daudpota routinely

uses arbitration and other forms of alternative dispute resolution (ADR) as pragmatic ways to meet clients' needs. Mr Daudpota is an expert in counselling clients on recovery claims in many jurisdictions all across the Middle East, as well as internationally, and has managed multiple litigations and instructed counsels in various countries.

Daudpota International (in alliance with Khalil Aljehani Law Firm)

221 Prince Muhamma Bin Abdulaziz Road
Olaya District
Riyadh
Kingdom of Saudi Arabia

Tel: +971 55 951 9972
Email: info@daudpota.com
Web: www.daudpota.com

Daudpota INTERNATIONAL

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

In Saudi Arabia, maritime and shipping disputes are governed by a modern, codified legal framework, primarily the Commercial Maritime Law (2019). The system does not have dedicated maritime courts but instead utilises specialised circuits within the Commercial Courts.

Main Domestic Laws Establishing Maritime Authorities

The legal authority for maritime matters is established through:

- the Commercial Maritime Law (Royal Decree No M/33, 2018) – published in 2019, this is the primary, comprehensive legislation governing maritime navigation, vessel registration, maritime liens, contracts (charterparties, carriage of goods) and collisions;
- the Commercial Courts Law (2020) – empowers specialised commercial circuits within the judiciary to hear maritime disputes;
- the Enforcement Law and its Regulations – governs the procedures for the arrest, detention and forced sale of vessels; and
- the Transport General Authority (TGA) – the primary regulatory body responsible for licensing, inspecting and managing maritime transport and ports.

Common Maritime and Shipping Claims in Practice

In Saudi Arabia, the most common claims filed are related to active trade through the Jeddah, Dammam and Yanbu ports. These include:

- cargo claims (damage/loss) – claims arising from damaged, short-landed or lost cargo under bills of lading or sea waybills;
- ship arrest and maritime liens – proactive arrest of vessels to secure debts, including fuel supply (bunkering), port dues, repairs or crew wages;
- charterparty disputes – claims arising from breaches of time or voyage charter agreements, such as demurrage, off-hire or non-payment of charter hire;

- maritime accidents and collisions – disputes over liability for vessel collisions in territorial waters, damage to port infrastructure or wreck removal;
- salvage claims – claims for rewards by salvor vessels for assisting vessels in distress; and
- marine insurance disputes – disputes related to protection and indemnity (P&I) or hull and machinery (H&M) insurance coverage.

Competent Courts and Authorities

Maritime disputes are adjudicated based on the nature of the claim.

Claim types include:

- substantive commercial disputes (cargo, charter, collision) – commercial courts (specialised maritime circuits) are the competent courts;
- vessel arrest/detention – commercial courts (for orders) and enforcement courts (for sale) are the competent courts;
- administrative violations (fines, licensing, pollution) – the TGA and specialised committees (appeals within 14 days) are the competent authorities;
- maritime labour disputes – labour courts (or commercial courts, depending on the contract nature) are the competent courts; and
- contractual arbitration – the Saudi Center for Commercial Arbitration (SCCA) is the competent authority.

1.2 Port State Control

Saudi Arabia operates a robust port state control (PSC) system, primarily governed by the Riyadh Memorandum of Understanding (Riyadh MoU) on Port State Control, which was signed in 2004 and is designed to harmonise inspection regimes across the Gulf Cooperation Council (GCC) region. The system aims to ensure foreign vessels visiting Saudi ports comply with international safety, environmental and labour standards, acting as a second line of defence against sub-standard shipping.

System and Regulatory Framework

The Riyadh MoU aligns with international standards set by the International Maritime Organization (IMO) and the International Labour Organization (ILO). The system covers the International Convention for the

Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), load lines and the Maritime Labour Convention (MLC).

The system is enforced through the Saudi Commercial Maritime Law (issued 2019), which applies to all foreign vessels in Saudi waters and empowers authorities to enforce safety and environmental standards.

Authorities and Powers

The TGA is the primary body responsible for maritime safety, including PSC.

Powers of port state control officers (PSCOs) include:

- inspections – authorised to board foreign ships to verify certifications, crew competence, structural integrity and working/living conditions;
- detention – if significant deficiencies are found (eg, in navigation, safety or pollution prevention), PSCOs have the power to detain vessels in Saudi ports until rectification;
- rectification – deficiencies must be corrected in the port of inspection or at an agreed repair yard; and
- refusal of access – ships that fail to comply with safety requirements or bypass detention orders can be banned from entering Saudi ports.

Powers in Relation to Marine Casualties

In the event of marine casualties, the TGA has comprehensive powers to ensure safety and environmental protection.

- Seafarer casualties/fatalities: Under the MLC 2006 framework, PSC inspections specifically target the living and working conditions of crew. If deficiencies such as lack of proper rest, inadequate food or unsafe working conditions are found to have contributed to accidents or fatalities, the vessel can be detained.
- Grounding and wreck removal: The Kingdom has acceded to the Nairobi Wreck Removal Convention (2007). Following a grounding, authorities can order the owner to remove the wreck and, if necessary,

take action to ensure the safety of navigation and protect the marine environment.

- Pollution: As a signatory to MARPOL, Saudi authorities have the power to inspect for pollution violations, detain vessels that cause pollution and require evidence of financial security (insurance) for pollution.
- Investigations: the TGA has the authority to investigate accidents occurring in territorial waters and can restrict the movement of vessels involved until investigations are complete.

1.3 Domestic Legislation Applicable to Ship Registration

In Saudi Arabia, the key legislation for ship registration is the Commercial Maritime Law (issued by Royal Decree No M/33 in 2018), which governs vessel nationality, ownership and registration, including bareboat charters. The TGA is the primary governmental body responsible for registering vessels and maintaining the ship registry.

Key pieces of domestic legislation include:

- the Commercial Maritime Law (2018) – replaced the older 1983 law, establishing the legal framework for registering commercial vessels, yachts and offshore rigs;
- the Implementing Regulations of the Commercial Maritime Law – detailed rules covering survey, tonnage measurement, registration procedures and flag-state requirements;
- the Regulation for the Registration of Ships and Marine Units – specific guidelines governing the registration process and documentation; and
- the Maritime Law/Regulations (various updates) – cover safety standards, environmental protection (ballast water/emissions) and navigation permits.

The governmental authorities handling registration are:

- the TGA – as the central regulatory body, the TGA handles the registration, licensing and inspection of vessels, often utilising the “Maritime Gate” portal for applications; and

- the Ministry of Transport (MoT) and logistics services – often works in conjunction with TGA in the registration process.

1.4 Requirements for Ownership of Vessels

Vessels registered in Saudi Arabia must generally be owned by Saudi nationals or companies with at least 51% Saudi ownership, requiring registration with the TGA. While foreign ownership is restricted, joint ventures or specific corporate structures may be permitted. Vessels under construction can be registered, as the law recognises ship construction contracts.

The requirements for vessel registration in Saudi Arabia are as follows:

- ownership – a vessel must be owned either entirely by a Saudi national or by a company where the Saudi capital share is at least 51%;
- registration – all vessels must be registered with the TGA to establish identity, nationality and legal ownership; and
- documentation – owners must provide documents proving ownership and the vessel's technical specifications.

Regarding foreign ownership and registration, the following applies.

- Restrictions: Full foreign ownership of a vessel is generally not permitted for registration under the Saudi flag; it requires majority Saudi ownership.
- Foreign entities: While 100% foreign ownership is allowed in some sectors, it is not universal. However, foreign entities can own/operate vessels, though they may not be able to flag them as Saudi-owned, or they must operate through a locally incorporated company meeting the 51% threshold.
- Bareboat charter: A foreign party may charter a vessel under a bareboat charter arrangement.

Regarding vessels under construction, it is possible to register a vessel that is still under construction. The Commercial Maritime Law requires that ship construction contracts be in writing.

1.5 Temporary Registration of Vessels

Saudi Arabia's Commercial Maritime Law permits the temporary registration of vessels, including bareboat charter registration for up to two years. Dual registration (dual-flag flexibility) is also allowed, enabling foreign vessels chartered by Saudi entities to fly the Saudi flag while suspending their original registration, and vice versa.

Key details regarding vessel registration in Saudi Arabia are as follows.

- Temporary registration: Foreign vessels under a bareboat charter to a Saudi party can be registered temporarily. A temporary certificate can be issued for one or more voyages, or for up to six months (renewable up to two years).
- Dual registration/flagging: The law permits a foreign vessel chartered bareboat to a Saudi entity to be registered in Saudi Arabia, treating it as a Saudi vessel during the charter term. Conversely, a Saudi vessel chartered to a foreign party may suspend its Saudi registration and fly the foreign flag.
- Requirements: Vessels must be registered with the Saudi maritime authority (Public Transport Authority) to operate within the Kingdom's waters.
- Ownership: Generally, to fly the Saudi flag, a vessel must be owned by a Saudi national or entity (at least 51% share for corporate ownership).
- Temporary foreign entity registration: Foreign companies newly operating in the Kingdom may receive temporary registration for their vessels while establishing a permanent commercial registration, typically valid for one year.

1.6 Registration of Mortgages

In Saudi Arabia, the ship ownership and mortgage registry is managed by the TGA and relevant maritime authorities, which serve as the central, albeit not entirely open, repository for legal ownership and vessel encumbrances. Registration is required for legal recognition and priority of mortgages.

1.7 Ship Ownership and Mortgages Registry

While not a public, free-search database like some land registries, information can be verified by interested parties through specific legal processes and official enquiries.

The following applies regarding access to ship registry information.

- Legal standing: The registry acts as conclusive proof of title and mortgage. Registration ensures that mortgages are effective against third parties.
- Verification methods: Information can be obtained through official requests to the TGA, the competent authority for vessel registration.
- Judicial/official access: In cases of debt or arrest, creditor notification and court processes allow for the verification of registered ownership and encumbrances.
- Registration details: The register includes the vessel name, owner details and the nature of the mortgage, allowing for verification of ownership, although not fully public.

Concerning mortgage and ownership registration, the following applies:

- registration duty – the registration of a mortgage is essential to give it effect against third parties;
- application process – ship-owners submit applications to the TGA, providing documents that prove ownership and the vessel's technical specifications; and
- transfer of ownership – any sale or transfer of ownership must be registered to be effective against third parties.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship loan financing in Saudi Arabia is very sophisticated, involving a mix of conventional, Sharia-compliant and sale-leaseback transactions, generally underpinned by the Commercial Maritime Law (Decree No 33, 1440 AH).

Key Terms and Operative Provisions: Debt and Equity

Debt financing (most common)

Pertinent details are as follows:

- structures – conventional term loans and revolving credit facilities are common, often utilising Loan Market Association (LMA) templates;
- Sharia compliance – due to the prohibition of interest (Riba), Murabaha (cost-plus financing) and Ijara (leasing) structures are widely used;
- loan-to-value (LTV) ratios – generally 50–60% of the vessel's value;
- key clauses – specific LTV maintenance covenants require periodic independent valuation reports; and
- regulatory approval – syndicated loans in Saudi Riyal involving foreign banks require prior Saudi Central Bank (SAMA) approval.

Equity financing

The following applies to equity financing:

- joint ventures – preferred for large maritime infrastructure projects;
- ownership requirement – to fly the Saudi flag and access local financing, 51% Saudi ownership is generally required, although exemptions exist; and
- public investment fund (PIF) involvement – PIFs play a significant role in providing equity to develop the local maritime sector.

Ship Mortgages (Key Provisions)

Ship mortgages are a vital, distinct form of security in Saudi Arabia, governed by the 1955 Ship Mortgage Regulations and reinforced by the 2019 Commercial Maritime Law:

- registration – must be registered with the Saudi Ministry of Transport (MoT) at port offices in Dammam or Jeddah to be effective;
- capacity to mortgage – only vessels registered under the Saudi flag can be mortgaged;
- formalities – the mortgage must be an official, written contract, signed by both parties, often requiring authentication by a Chamber of Commerce or notary;
- required documentation – a declaration from the mortgagor (stating no prior liens) and a summary of the mortgage details are required;
- default and enforcement – the mortgagee can enforce the mortgage through Saudi enforcement courts, which may order a public auction; and

- precedence – maritime debts (like crew wages) have priority over ship mortgages.

The most common transactions are:

- sale and leaseback, often structured as an Ijara (leasing) agreement – this is common for ship-owners seeking to free up capital;
- syndicated loans – used for financing large fleet modernisation; and
- Murabaha facilities – common in Islamic banking for vessel acquisitions.

Security packages beyond mortgages include:

- assignment of earnings – lenders frequently require the assignment of charter party income and earnings, usually paid into a controlled bank account;
- earnings account pledge – security over the account where earnings are received;
- insurance policies assignment – assignment of insurance proceeds (H&M, P&I);
- corporate/personal guarantees – often provided by parent companies or owners; and
- promissory notes – frequently used to support the mortgage and facilitate enforcement.

2.2 Ship Leasing

Ship leasing transactions are increasing in Saudi Arabia. The Saudi maritime fleet grew by 32% in 2025, the second-fastest among G20 nations, indicating a massive surge in investment.

Trends in Ship Finance

These include:

- shift in finance sources – there has been a notable shift towards diversified financing, including sale and leaseback, Sharia-compliant structures (such as Ijara) and private debt;
- Chinese leasing houses – Chinese leasing companies have expanded significantly into the market, taking advantage of the gap left by traditional bank lending restrictions and providing alternative capital;
- alternative credit providers – though currently small (2% of debt stock), private capital financing and

alternative credit has grown tenfold since 2020 to reach USD3.7 billion in 2024; and

- bank lending – despite the rise of alternatives, traditional bank loans remain a cornerstone of shipping finance in the region, particularly for established players.

Lessor/Lessee Versus Lender/Borrower

Important points include the following.

- Ownership: In a lease (specifically a sale and leaseback), the lessor is the registered owner of the vessel. In a traditional loan, the ship-owner retains ownership, and the bank holds a mortgage as security.
- Default handling: If a borrower defaults on a loan, the lender must go through legal proceedings to enforce the mortgage. If a lessee defaults on a lease, the lessor (as owner) can typically terminate the charter and take possession of the vessel more easily than a mortgagee, making it a faster, less cumbersome process.
- Relationship: The lessor/lessee relationship is generally closer, resembling a “buyer and operator”, whereas lender/borrower is more of a “creditor and debtor” relationship.

Differences in Enforcement

These include:

- mortgage enforcement – enforcing a mortgage requires legal proceedings and can be affected by the vessel’s condition, or if the mortgagor goes bankrupt;
- lease enforcement – sale and leaseback structures often allow for smoother repossession of assets upon default, particularly under Sharia-compliant Ijara (leasing) agreements; and
- court system: Saudi Arabia has established a specialised execution/enforcement judge (EJ) system for enforcing contracts, especially for authenticated documents like lease agreements.

Sale and Leaseback Transactions

Sale and leaseback transactions are common in Saudi Arabia, particularly for financing new or second-hand tonnage, as they allow owners to improve liquidity and access capital without incurring high debt on their bal-

ance sheets. These are often structured to be Sharia-compliant, frequently using Ijara structures where the owner sells the vessel to a financier and leases it back, with an option to repurchase at the end of the term.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

In Saudi Arabia, the liability of ship-owners and interested parties for pollution and wreck removal is governed by a combination of international conventions ratified by the Kingdom and domestic laws, most notably the Commercial Maritime Law of 2019 (Royal Decree No M/33). The legal framework emphasises strict liability for pollution and wreck removal, with requirements for compulsory insurance.

Applicable international conventions

Saudi Arabia has ratified several key IMO Conventions:

- Nairobi International Convention on the Removal of Wrecks (2007) – ratified by Saudi Arabia, this Convention holds registered owners strictly liable for the costs of locating, marking and removing ships that pose a hazard in their territorial waters or exclusive economic zone (EEZ);
- MARPOL 73/78: Saudi Arabia has acceded to Annexes I–V and the Protocol relating to Annex VI, covering pollution from oil, noxious liquids, sewage and garbage;
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 and 1992 Protocols – governs the liability of tanker owners for oil pollution damage, establishing a strict liability regime and requiring insurance;
- International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention) – ensures compensation for pollution damage caused by spills of oil carried as fuel in ships' bunkers; and
- 1996 Protocol amending the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) – acceded to on 6 April 2018, this framework allows

ship-owners to limit their liability for certain claims, including pollution and wreck removal.

Relevant Domestic Laws

These include the following.

- The Commercial Maritime Law (Royal Decree No M/33, 2019): This is the primary legislation applying to Saudi-flagged vessels and foreign vessels in Saudi waters. It covers vessel registration, ownership, liability and marine insurance.
- Maritime Zones Law (Royal Decree No M/6): Defines Saudi sovereignty and rights over its territorial sea, EEZ and continental shelf, providing the jurisdictional basis for enforcement.
- General environmental regulations: Prohibit unauthorised pollution of territorial waters, the seabed and subsoil.
- Saudi Aramco Oil Ports and Terminals Rules: Specific, stricter rules apply to terminal operations at Ras Tanura, Ju'aymah, etc.

Liability for Pollution

Under CLC and Bunkers Conventions, the registered owner is strictly liable for pollution damage. Ships of 1,000 gross tonnage and above (bunkers), and tankers, must maintain insurance covering their liability. Claimants can take direct action against the insurer.

Liability for Wreck Removal

The registered owner is strictly liable for the costs of locating, marking and removing the wreck if it constitutes a hazard. If the owner fails to remove a wreck, and in urgent cases, the Saudi authorities can remove the wreck and recover costs. The Nairobi Convention requires ships of 300 GT or more to carry a wreck removal insurance certificate.

Limitation of Liability

While Sharia law (the foundation of the legal system) generally allows full compensation, the 2019 Commercial Maritime Law incorporates the 1996 Protocol to the LLMC Convention, which enables ship-owners to cap their liability for wreck removal and pollution claims.

3.2 International Conventions: Collision and Salvage

Saudi Arabia's liability framework blends the Commercial Maritime Law (2019) with international conventions and Sharia principles. The 2019 Maritime Law governs all vessels in Saudi waters. However, Sharia remains the fundamental legal principle, emphasising "full compensation" for harm, which can sometimes override statutory liability caps.

Relevant international conventions include:

- International Convention on Salvage (1989) – regulates rewards based on success and environmental protection efforts (special compensation);
- LLMC 1976/96 Protocol – allows owners to limit liability for claims like collisions based on vessel tonnage; and
- Convention on the International Regulations for Preventing Collisions at Sea (COLREGs) 1972 – used to determine negligence in collision cases.

Regarding collision liability, owners are generally jointly and severally liable for damages unless they prove no negligence occurred. In cases of common fault, liability is split proportionally based on the degree of responsibility.

3.3 Convention on Limitation of Liability for Maritime Claims

The 1996 Protocol amending the LLMC is applicable in Saudi Arabia, which acceded to it on 6 April 2018, with the protocol entering into force for the Kingdom on 5 July 2018.

The status of amendments and legislation is as follows.

- 1996 Protocol: In force since July 2018.
- 2012 Amendments (to the 1996 Protocol): While the 1996 Protocol is in force, there is conflicting information regarding whether the 2012 amendments (which significantly increased limits) have been formally ratified or applied by Saudi courts, as some sources indicate it was not initially adopted. However, the 2019 Maritime Law aims to align with international conventions.

- Domestic legislation: The applicable legislation is the new Commercial Maritime Law, issued under Royal Decree No M/33 dated 5 Rabi' II 1440H (January 2019), which came into effect on 3 July 2019. This law regulates maritime liability, replacing older, outdated regulations.

3.4 Vienna Convention on the Law of Treaties

The 1969 Vienna Convention on the Law of Treaties (VCLT) is applicable in Saudi Arabia. The Kingdom of Saudi Arabia officially acceded to the Convention on 14 April 2003, and it entered into force for the country on 14 May 2003.

The UK Supreme Court's use of the VCLT for treaty interpretation in *MSC Mediterranean Shipping Company SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS "MSC Flaminia"* has several implications for Saudi Arabia.

- Applicability: As a party to the VCLT, Saudi Arabia acknowledges the rules regarding the interpretation of treaties, particularly Articles 31 and 32 (general rules of interpretation, good faith, context, object and purpose), which form part of international law.
- Contextual application: While Saudi Arabia is a party to the 1969 VCLT, its legal system is based on Sharia (Islamic law). When implementing international conventions (such as those regarding maritime claims), the Saudi authorities generally ensure compliance with international obligations while adhering to internal legal principles.
- Judicial interpretation: The principles of treaty interpretation established in the VCLT are used to guide the interpretation of international agreements, including maritime law, in Saudi legal contexts.

3.5 Procedure and Requirements for Establishing a Limitation Fund

To cap liability for maritime or financial claims, parties must file a formal application with a competent Saudi court to deposit a specific sum representing their maximum liability.

- Eligible parties: The fund can be established by liable parties such as ship-owners, charterers and

insurers, or by authorised capital market institutions for investment-related funds.

- **Calculation:** The fund amount is typically calculated based on statutory limits using Special Drawing Rights (SDRs) converted into Saudi Riyals, or based on vessel tonnage for maritime incidents.
- **Mandatory deposit:** To legally constitute the fund, the applicant must lodge a financial deposit or guarantee with the court covering the calculated liability amount.

3.6 Seafarers' Safety and Owners' Liability

Although Saudi Arabia has not ratified the MLC 2006, it has integrated similar standards into its domestic Commercial Maritime Law (2019), which applies to all Saudi-flagged vessels and foreign ships in its waters. This is supplemented by the KSA Labour Law (2005) where specific maritime statutes are silent.

Seafarer protections include:

- **contracts and wages** – written contracts are mandatory for all crew members and must be recorded in the vessel's log;
- **working hours** – work is capped at 14 hours per 24-hour period and 72 hours per week, with a minimum of ten hours of rest daily.
- **welfare** – ship-owners are legally obligated to provide free food and medical care, pay wages during sickness, and cover repatriation costs upon contract expiry or injury; and
- **safety** – the law enforces strict adherence to international competency standards (the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers – STCW), requiring crew members to be medically fit and at least 18 years old.

4. Cargo Claims

4.1 Bills of Lading

Saudi Arabia is not a signatory to international conventions like the Hague-Visby, Hamburg, or Rotterdam Rules. Instead, carriage by sea is governed principally by domestic legislation. The primary authority is the Commercial Maritime Law (2019), which applies to all vessels in Saudi waters. This is supported by the

2013 Carriage of Goods by Sea Rules and the Electronic Transactions Regulation (2007), which makes electronic bills of lading legally binding.

Key provisions include:

- **mandatory details** – bills of lading must list specific particulars, including the goods' weight, marks, and the names of the shipper and consignee;
- **liability limits** – compensation for loss or damage is capped unless the value of the goods is explicitly stated in the bill; and
- **time bar** – legal actions regarding cargo damage generally must be initiated within one year.

4.2 Title to Sue on a Bill of Lading

Under the Saudi Commercial Maritime Law, the lawful holder of the bill of lading – whether a named consignee or an endorsee – possesses the primary right to claim delivery and sue the carrier for loss or damage.

A shipper may sue if they still hold the bill or have suffered the loss directly. Additionally, cargo insurers acquire the right to sue via subrogation once they have indemnified the cargo owner.

Saudi courts recognise the assignment of the title to sue, typically executed by endorsing and transferring the bill. While valid between parties without the carrier's consent, the assignment only binds the carrier (debtor) if they are officially notified or explicitly accept it.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Under the 2019 Maritime Law and Hague-Visby principles, carriers are liable for cargo loss, damage or delay from receipt to delivery – unless they can prove the cause was force majeure, shipper fault or "perils of the sea". Liability is strict if the vessel was unseaworthy and the owner failed to exercise due diligence.

Liability is typically capped at 666.67 SDR per package or 2 SDR per kilogram (whichever is higher), unless the cargo's value was declared before shipment.

The contractual and actual carrier are distinguished thusly:

- contractual carrier – the party issuing the bill of lading (often a charterer or forwarder) bears primary responsibility to the cargo owner; and
- actual carrier – the ship-owner physically performing the transport may still be liable directly under tort law, or jointly and severally with the charterer, particularly regarding vessel seaworthiness.

4.4 Misdeclaration of Cargo

Under the Saudi Maritime Commercial Law (Article 79) and the Civil Code (2023), shippers are liable for damages resulting from inaccurate declarations of goods in the bill of lading.

- Dangerous goods: Shippers face strict liability for misdeclaring dangerous cargo, covering costs for vessel contamination, container damage and emergency response.
- Recoverable damages: Carriers can file recourse actions to recover compensation paid to third parties (eg, cargo owners), as well as surveyor fees, legal costs and lost profits resulting from the breach.
- Judicial approach: Saudi courts strictly enforce the contract of carriage. If a carrier proves a discrepancy (eg, weight exceeding the declared amount) or inadequate packaging, the shipper is generally held responsible for the resulting losses.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Maritime cargo claims generally lapse 365 days after delivery (or when delivery was due). Air cargo limits are significantly tighter: 14 days for damage, 21 days for delay and 120 days for total loss from the air waybill date.

A broader five-year limitation period applies to general commercial suits under the Commercial Courts Law. Under the Civil Transactions Law (2023), limitation periods are rigid but may be interrupted if the defendant admits liability, or suspended due to force majeure or a “lawful excuse” (such as bona fide negotiations making filing impossible).

Statutory liability limits may be voided if it is proven that the carrier acted with intent or gross negligence.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Saudi Arabia is not a party to international arrest conventions (1952 or 1999); instead, arrests are governed entirely by domestic laws rooted in Sharia principles.

The primary statute is the Commercial Maritime Law (2019), which replaced older Ottoman-based laws. Procedural aspects are handled under the Enforcement Law and the Law of Procedure Before Shari’ah Courts.

- Requirements: A ship can only be arrested for a specific “maritime debt”, as defined in Article 75. Applications are filed online with Commercial Courts, which must respond within three days.
- Scope: Arrests of “sister-ships” (same registered owner) are permitted, but arrests of “associated ships” (common control/different owner) are generally not.
- Release: To release a vessel, the defendant must typically provide a bank guarantee from a local Saudi bank; courts may also demand counter-security from the applicant to cover potential wrongful arrest damages.

5.2 Maritime Liens

Saudi Arabia recognises maritime liens as privileged debts that take priority over registered mortgages and attach directly to the vessel, surviving changes in ownership.

- Scope: These liens typically secure claims related to crew wages, salvage and maritime torts (including crew injury indemnities).
- Distinction: The jurisdiction distinguishes between these high-priority maritime liens and broader maritime claims (such as contractual charterparty disputes), which do not carry the same privileged status.
- Time bar: A maritime lien is valid from the moment the claim arises but is generally extinguished after one year unless the creditor files a lawsuit or arrests the vessel within that period.

5.3 Liability in Personam for Owners or Demise Charterers

Owner Versus Charterer Liability

Generally, a creditor can only arrest a vessel if the registered owner or demise (bareboat) charterer is personally liable for the debt. Debts incurred by time charterers typically do not justify an arrest unless they generate a specific maritime lien.

Maritime Liens (“Guilty Vessel”)

A ship can be arrested regardless of the owner’s personal liability if the claim constitutes a maritime lien (eg, crew wages, collision damage, salvage). These “privileged debts” attach directly to the vessel itself rather than the owner.

Sister Versus Associated Ships

Saudi law permits the arrest of sister ships (vessels sharing the exact same registered owner). However, arresting associated ships (different owners within the same fleet or management) is generally not possible.

5.4 Unpaid Bunkers

A bunker supplier in Saudi Arabia can arrest a vessel for unpaid fuel as a valid maritime claim, but success depends on who ordered the fuel and the supplier’s status.

Owner Versus Charterer Liability

Arresting a vessel is straightforward if the ship-owner ordered the bunkers. However, if a charterer ordered them, the supplier faces significant challenges. A charterer’s debt does not automatically create a lien against the vessel unless the supplier can prove the charterer had specific authority to bind the vessel owner.

Supplier Status

A physical supplier (who actually delivered the fuel) generally has a stronger claim than a contractual supplier (a middleman or trader). The physical supplier is better positioned to prove the fuel was provided on the vessel’s credit.

Authority to Bind

Charterers typically lack the inherent authority to bind the vessel for necessities like fuel. If the supplier knew

the charterer was ordering for their own account, the right to arrest the owner’s ship may be negated.

5.5 Arresting a Vessel

Arresting a vessel is an expedited process under the Saudi Maritime Law 2019, typically concluded within 48–72 hours via the Commercial Court’s online portal.

Mandatory Documentation

Applicants must submit an apostilled power of attorney (POA) and a formal affidavit with supporting evidence (contracts, invoices). Crucially, all foreign documents must be translated into Arabic by a certified translator.

Urgency and Security

The claimant must provide evidence that the debtor intends to remove the ship or will not settle. Additionally, the court often requires a security deposit (counter-security) to cover potential damages if the arrest is later found to be wrongful.

Next Steps

To maintain the arrest, a substantive lawsuit regarding the debt must be filed within a strict timeframe (typically days) following the arrest order.

5.6 Arresting Bunkers and Freight Vessels

The 2019 Commercial Maritime Law permits the arrest of vessels for maritime debts (eg, unpaid charter fees or supplies). Courts typically issue warrants within three days, and sister-ship arrests are allowed if the owner is the same.

Bunkers (Fuel)

Arresting fuel independently is generally not possible under standard law. Unpaid suppliers usually arrest the vessel itself, as bunker claims qualify as maritime debts.

Cargo

Seizing cargo is possible but difficult; it generally requires the cargo to be owned by the party liable for the maritime debt, often arising when a carrier fails to deliver goods.

5.7 Sister-Ship Arrest

Saudi Arabia permits the arrest of a sister ship to secure a maritime debt, provided it shares the same registered owner as the debtor's vessel.

- Procedure: Claimants apply via the commercial court's online system, with decisions typically rendered within three days.
- Limitations: Courts generally do not pierce the corporate veil. Therefore, arresting associated ships (vessels with different registered owners but similar management) is generally prohibited.
- Time limit: To maintain the arrest, the claimant must initiate substantive legal proceedings within ten days of the order.

5.8 Other Ways of Obtaining Attachment Orders

Beyond ship arrests, creditors in Saudi Arabia can secure claims through precautionary attachments (*saisie conservatoire*) under the Enforcement Law.

- Precautionary attachment: Creditors can petition the court on an ex-parte basis (without prior notice) to attach a debtor's assets – such as cargo or equipment – if they prove a credible claim and a risk of asset dissipation.
- Bank and property freezes: EJs can order the freezing of bank accounts to prevent fund transfers and attach movable property like machinery.
- Third-party and investment assets: Attachment orders can extend to real estate, corporate shares and even funds owed to the debtor by third parties (garnishment).
- Pledge (Rahn): Parties can also create a Rahn (pledge or mortgage) over movable or immovable assets to secure a debt in accordance with Sharia principles.

5.9 Releasing an Arrested Vessel

Vessels arrested in Saudi Arabia can be released by depositing a security determined by the court, typically via a local Saudi bank guarantee, or through an amicable settlement. While P&I club letters of undertaking (LOUs) are sometimes accepted, they are not guaranteed to be accepted by the court, and a local bank guarantee is more likely to secure a swift release.

Regarding options to release an arrested vessel in Saudi Arabia:

- the owner must deposit the security amount determined by the court (usually not exceeding the value of the ship) to obtain a release order;
- amicable settlement – an agreement between the parties can lead to the arresting party submitting a request to the court to release the vessel;
- grievance/objection – the defendant can file a grievance against the arrest order, arguing for its release; and
- timeframe – release typically takes up to 72 hours from submission of the security.

Acceptable security types include the following.

- Local bank guarantee: This is the most secure and readily accepted form of security by Saudi courts.
- Foreign bank guarantee: These are generally accepted, provided they are in conformity with the approved form, and an Arabic translation is provided.
- P&I club LOU: While common in international maritime law, in Saudi Arabia, a P&I club LOU is not guaranteed to be accepted. It is generally only accepted if the claimant specifically agrees to it.
- Cash deposit: Cash can be deposited with the court.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial Sale and Maintenance Liability

The judicial sale of vessels is governed by the Commercial Maritime Law (2019) and executed through public auctions overseen by enforcement courts.

- Procedure and release: Claimants apply for arrest warrants via the *Najiz* portal (with a three-day response time). Crucially, to release a vessel, defendants must provide a bank guarantee from a local Saudi bank; P&I club LOUs are not accepted.
- Public versus private sale: Private sales are generally prohibited to ensure transparency. However, a court may order a sale *pendente lite* (before final judgment) if the vessel is rapidly deteriorating or endangering third parties.

- **Creditor liability:** The party seeking the arrest is financially responsible for the vessel's maintenance (including port fees and crew expenses) during detention and must usually provide an undertaking to cover these costs when applying.

5.11 Insolvency Laws Applied by Maritime Courts

Saudi Arabia's Bankruptcy Law (2018) establishes a framework analogous to US Chapter 11, prioritising corporate rescue over liquidation.

- **Automatic stay:** Procedures like financial restructuring trigger a mandatory moratorium, preventing creditors from taking legal action against the debtor or their assets to avoid piecemeal dismantling of the company.
- **Prohibition on arrest:** Consequently, maritime courts are generally prohibited from arresting or selling a vessel owned by a debtor once restructuring has commenced.
- **Creditor recourse:** Instead of pursuing an independent in rem arrest, creditors – including those with maritime liens – must submit their claims to the bankruptcy trustee or the commercial court overseeing the insolvency.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Saudi courts award damages for wrongful arrest if the detention is arbitrary, lacks legal justification or results from malicious prosecution, following the Sharia principle of “no harm” to restore the victim's prior state.

Grounds for Liability

Liability arises from detaining someone without a warrant (unless caught in flagrante delicto), violating procedural time limits, or initiating malicious prosecution based on fabricated allegations. Additionally, a final acquittal establishing innocence or illegal detention regarding private debts can trigger liability.

Types of Compensation

These include:

- **material damages** – covers financial losses like lost income and legal fees;

- **moral damages** – compensates for emotional distress, defamation and damage to reputation;
- **daily compensation** – courts often award a specific amount for each day of unjust imprisonment; and
- **judicial costs** – the Court of Grievances may impose legal costs on the responsible party, whether a private entity or government authority.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Maritime passenger claims in Saudi Arabia are governed by the Commercial Maritime Law (2019), alongside the LLMC Convention (1976/1996 Protocol) and Sharia Law where statutes are silent.

- **Time limits:** Claims arising from passenger carriage contracts and marine insurance generally have a limitation period of two years.
- **Liability limits:** Under the LLMC/1996 Protocol, a ship-owner's liability for personal injury or death is capped at 175,000 SDR multiplied by the vessel's passenger capacity. This limit is virtually unbreakable – unless it is proven that the owner acted with personal intent or recklessness to cause the loss.
- **Legal status:** Claims for passenger injury or death are officially classified as “maritime debts” under Article 75 of the Commercial Maritime Law.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Courts in Saudi Arabia generally recognise and enforce law and jurisdiction clauses stated in bills of lading, but this is subject to significant limitations based on public policy, Sharia principles and mandatory local laws.

With the modernisation of the Saudi legal system, courts are more likely to respect party autonomy and exclusive jurisdiction clauses (eg, in favour of London or other international courts) to ensure international

procedural comity, provided they do not conflict with Saudi law.

Key aspects of enforcement in Saudi Arabia include:

- respect for forum selection – Saudi commercial courts often respect clauses directing disputes to foreign courts if the parties are professional entities (eg, importers) and the clause is clearly part of the contract;
- mandatory Saudi law – even if a foreign law clause is present, Saudi courts will apply Saudi law to mandatory provisions, particularly regarding liability for cargo damage, and will not apply foreign substantive law;
- Sharia compliance (public policy) – a foreign judgment or clause that contravenes Sharia principles, such as the payment of interest (riba), will not be enforced;
- reciprocity – for foreign judgments or arbitration awards arising from these clauses to be enforced in Saudi Arabia, there must be reciprocity, meaning the foreign country must also enforce Saudi judgments; and
- exclusive jurisdiction limitations – if the defendant resides in Saudi Arabia or the dispute involves assets located in the Kingdom, Saudi courts may refuse to relinquish jurisdiction despite a contrary clause.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Courts in Saudi Arabia generally recognise and enforce law and arbitration clauses of a charterparty that are incorporated by reference into a bill of lading, provided specific legal requirements are met. Under the Saudi Arbitration Law (Royal Decree No M/34), a reference in a bill of lading to an arbitration clause in a charterparty is considered a valid, written arbitration agreement if the reference clearly incorporates the clause.

Key requirements for recognition and enforcement in Saudi Arabia include:

- clear reference – the bill of lading must expressly refer to the charterparty and specifically indicate

that the arbitration clause, along with other terms, is incorporated;

- written agreement – the arbitration clause must be in writing, which is satisfied by the reference in the bill of lading;
- non-signatory binding – while a holder of a bill of lading is often not a signatory to the charterparty, Saudi courts may uphold the clause if the incorporation is clear, often treating the bill of lading as an independent contract that binds the holder;
- Sharia compliance – the arbitration agreement must not violate Sharia principles or public policy; and
- validity challenges – Saudi courts adhere to the principle of “competence-competence”, meaning the arbitral tribunal, rather than the court, generally determines its own jurisdiction and the validity of the arbitration clause in the first instance.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention is applicable in Saudi Arabia, which acceded to it in 1994, typically with a reciprocity reservation. Foreign arbitral awards are enforceable, primarily governed by the Enforcement Law (Royal Decree No M/53) and the 2012 Arbitration Law (Royal Decree No M/34), provided they do not violate Sharia principles.

Key aspects of arbitration law in Saudi Arabia include the following:

- applicable convention – the 1958 New York Convention is in force;
- primary domestic law – the Arbitration Law (Royal Decree No M/34 of 2012), which is based on the UNCITRAL Model Law;
- enforcement mechanism – the Enforcement Law (Royal Decree No M/53 of 2012) (and its Implementing Regulations) governs the recognition and enforcement of foreign awards;
- public policy exception – foreign awards must comply with Islamic Sharia principles, as enforcement may be refused if it violates public policy; and
- competent authority – the Enforcement Court is responsible for enforcing foreign awards.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Saudi courts generally grant provisional vessel arrests to secure maritime debts, even if the underlying contract mandates foreign arbitration or jurisdiction.

- **Legal authority:** Under the Saudi Arabian Maritime Law (Royal Decree No M/33), arrests are treated as provisional measures to secure a claim rather than a final judgment on the dispute. Commercial courts typically issue arrest warrants within three days of an application.
- **Procedural timeline:** To maintain the arrest, the claimant must file the substantive lawsuit in the agreed foreign forum and validate the arrest in Saudi courts, typically within eight days.
- **Key requirements:** Applicants must establish a valid maritime debt (eg, unpaid supplies, charter-party breach) and provide counter-security (usually a local bank guarantee) to cover potential damages if the arrest is deemed wrongful. All documents must be translated into Arabic and accompanied by an apostilled POA.

7.5 Domestic Arbitration Institutes

Saudi Arabia has a premier domestic arbitration institution that handles maritime claims, along with a specialised legal framework for the maritime industry.

The SCCA

The SCCA is the primary institution for domestic and international arbitration in Saudi Arabia, including maritime disputes. While the SCCA handles general commercial disputes, it is explicitly noted as a venue for settling maritime disputes, aiming to create a safe environment for both foreign and domestic parties in this sector.

The SCCA operates under rules modelled on the UNCITRAL Arbitration Rules, which allow for the appointment of arbitrators with specific subject matter expertise, including maritime law. The SCCA provides expedited procedures for less complex cases, which can be useful for maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Saudi courts generally uphold foreign jurisdiction and arbitration clauses, supported by the Arbitration Law (2012, amended 2023).

- **Dismissal of proceedings:** Under Article 11, if a lawsuit is filed in breach of an arbitration clause, the court must dismiss the case, provided the defendant raises the objection before submitting any other defence. Courts also respect foreign jurisdiction clauses unless they violate Sharia or public policy.
- **Mandatory referral:** Article 12 obliges courts to refer parties to arbitration if a valid agreement exists, even if the dispute is currently pending before the court.
- **Interim measures:** To prevent asset disposal, parties can apply to Saudi courts for precautionary attachment (freezing orders) or use emergency arbitrator procedures while proceedings are pending.
- **Competence-competence:** Saudi law adopts the principle that the arbitral tribunal has the authority to determine its own jurisdiction, allowing it to confirm its mandate even if parallel court proceedings have been initiated.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Tax Relief for Saudi Shipping Companies

Unlike some jurisdictions, Saudi Arabia does not utilise a "tonnage tax" regime, but instead offers structural tax incentives and a low-tax environment:

- **zero-rated VAT** – international transportation services for passengers and goods, including vessel leasing, are subject to 0% VAT;
- **logistics zone incentives** – companies established in the Special Integrated Logistics Zone (SILZ) are eligible for a 0% corporate income tax rate for up to 50 years on qualifying maritime activities;
- **regional headquarters (RHQs)** – multinational companies setting up RHQs can access 0% income

- tax on qualifying income and 0% withholding tax for up to 30 years; and
- standard regime – mainland companies are generally subject to 20% corporate tax (or 2.5% Zakat for GCC-owned entities), with provisions to deduct operating expenses and vessel depreciation from taxable income.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under the Civil Transactions Law (2023) and Sharia principles (specifically Jawaih), non-performance is excused as force majeure only if an event is external, unforeseeable and renders performance impossible rather than just difficult or expensive:

- qualifying events – valid grounds include severe natural disasters (Jawaih), government bans or port closures, acts of war or piracy, and major non-negligent infrastructure failures;
- excluded scenarios – routine port congestion, predictable weather and subcontractor defaults typically do not qualify as force majeure; and
- protocol – to invoke this defence, the affected party must provide prompt notification to the counterparty immediately following the event.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Saudi Arabia has incorporated and implemented the IMO 2020 sulphur content regulations.

- Implementation status: According to Circular No 21 of 2019, the Saudi Ports Authority (MAWANI) mandated compliance with the MARPOL Annex VI Regulation 14, requiring that from 1 January 2020, all international (Saudi/non-Saudi) ships entering Saudi Arabian territorial waters must use fuel oil with a sulphur content not exceeding 0.50% mass by mass (m/m).
- Limits: The limit is 0.50% m/m for vessels operating in Saudi territorial waters and calling at its ports, unless they are fitted with an approved exhaust gas cleaning system (EGCS/scrubber). A

ban on the carriage of non-compliant fuel oil (fuel with sulphur content >0.50%) came into force on 1 March 2020, unless scrubbers are installed.

- Responsible authority: The Saudi Ports Authority (MAWANI) is responsible for enforcing these limits.
- Enforcement actions: While specific, detailed public reports of recent punitive actions were not highlighted in the search results, the regulatory framework in place empowers the authorities to take actions against ships that fail to comply with the 0.50% sulphur limit or fail to manage non-compliant fuel correctly. The region has seen active measures to prepare for and enforce these regulations, including restrictions on the discharge of wash water from scrubbers in some Middle Eastern ports.

9.3 Trade Sanctions

Legal Basis

Instead of a single sanctions law, Saudi Arabia enforces sanctions through a combination of Royal Orders, Ministerial Decrees, and specialised legislation on anti-terrorism and anti-money laundering.

Enforcement

The State Security Presidency and Ministry of Interior collaborate with international bodies (like the UN Security Council) to target terrorism financing and money laundering. Penalties typically include asset freezes, criminal prosecution and travel bans.

International Alignment

While the Kingdom does not officially adopt all unilateral Western sanctions (eg, US/EU), its financial system strictly adheres to international compliance standards. Regarding the Ukraine conflict, Saudi Arabia has not sanctioned Russia but maintains high scrutiny on secondary sanction risks within its banking sector.

9.4 International Conflict

International conflicts like Houthi attacks in the Red Sea have significant commercial and legal implications in Saudi Arabia, causing shipping reroutes, increased insurance premiums and potential contractual disputes. Key impacts include invoked force majeure, frustration of contracts and rising war risk premiums, leading to higher logistics costs and delays.

Key commercial and legal implications in Saudi Arabia include the following.

- Shipping and carriage contracts: The Houthi attacks have led to, at minimum, a 20% increase in journey times, as ships avoid the Suez Canal and detour around the Cape of Good Hope. This causes severe, prolonged delays and potential non-delivery or late delivery of goods.
- Force majeure and frustration: Suppliers may invoke force majeure clauses to excuse delays, while contracts might be argued as frustrated if performance becomes impossible, though this is a high threshold under Saudi legal principles.
- War risk insurance: Shipping insurance premiums have spiked due to the high-risk, unpredictable nature of attacks, increasing operational costs for firms shipping to/from Saudi ports.
- Deterioration of goods: Extended transit times due to rerouting (often an additional 10–14 days) pose significant risks for perishable goods and time-sensitive cargo, potentially leading to increased claims for cargo damage.
- Constructive total loss: If a vessel is seized or trapped for an extended period, it may lead to claims of constructive total loss under marine insurance policies, though this is less common than temporary delays and damage.
- Economic impact: The disruption has forced the rerouting of 40% of Europe-bound crude oil via the Cape of Good Hope, increasing transportation costs by roughly USD1 million per voyage.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

There is no relevant legal information that has not been dealt with in the foregoing sections.

Trends and Developments

Contributed by:

Faisal Daudpota

Daudpota International (in alliance with Khalil Aljehani Law Firm)

Daudpota International (in alliance with Khalil Aljehani Law Firm) routinely represents clients in ship arrest matters before the courts. From charterparty disputes to ship collisions, the lawyers have handled numerous cases at courts in Pakistan and Saudi Arabia. In 2025, Daudpota International represented a UAE company in the High Court for recovery of money in relation to bunker services provided to the vessel of a Liberian company. In another 2025 case,

the firm represented an Egyptian company (vessel owner), successfully defending against an allegation by a French company of charterparty breach and tort of negligence. Daudpota International assists clients in transactions and cases involving vessel arrests and documentation, bills of lading, collisions, environmental issues, marine financing, marine tariffs, personal injury, riparian rights, charter agreements, salvage and subrogation.

Author



Faisal Daudpota covers transactional and contentious matters relating to maritime law, competition, intellectual property, data protection, information technology, telecommunications and competition. Mr Daudpota routinely

uses arbitration and other forms of alternative dispute resolution (ADR) as pragmatic ways to meet clients' needs. Mr Daudpota is an expert in counselling clients on recovery claims in many jurisdictions all across the Middle East, as well as internationally, and has managed multiple litigations and instructed counsels in various countries.

Daudpota International (in alliance with Khalil Aljehani Law Firm)

221 Prince Muhamma Bin Abdulaziz Road
Olaya District
Riyadh
Kingdom of Saudi Arabia

Tel: +971 55 951 9972
Email: info@daudpota.com
Web: www.daudpota.com

Daudpota INTERNATIONAL

Fundamentals of Ship Arrest in Saudi Arabia

Statutory architecture of ship arrest: Royal Decree M/33

The legal framework for ship arrest in Saudi Arabia is now explicitly codified in Articles 74–81 of the Commercial Maritime Law (Royal Decree M/33). Unlike the broad discretionary powers exercised under the old regime, the new law establishes a rigid, criteria-based system for the detention of vessels.

Concept of “maritime debt” (Article 75)

The cornerstone of any ship arrest application in Saudi Arabia is the existence of a maritime debt. The Saudi legislator has adopted a “closed-list” approach, similar to that found in the 1999 International Convention on the Arrest of Ships. Article 75 of the Commercial Maritime Law provides an exhaustive enumeration of what constitutes a maritime debt. A claim must fall squarely within one of these categories to justify an arrest; a general commercial debt against a ship-owner that does not specifically relate to the vessel’s operation or navigation is insufficient grounds for a ship arrest warrant.

The categories defined in Article 75 include, but are not limited to, the following.

- **Operational damages:** Claims arising from damage caused by a ship, whether by collision, pollution or other form of marine casualty (Article 75 (1)). This reflects the Kingdom’s strict stance on environmental protection and port safety.
- **Chartering and carriage:** Disputes arising from contracts for the use or hire of a ship (charterparties) or contracts for the carriage of goods (bills of lading) (Article 75 (3), (4)). This is critical for cargo interests and charterers seeking security for breach of contract.
- **Supplies and necessities:** Claims for goods, materials, provisions, bunkers and equipment (including containers) supplied to the ship for its operation or maintenance (Article 75 (10)). This category is the most frequently litigated, as seen in the case studies regarding fuel and agency services.
- **Construction and repair:** Costs related to the building, rebuilding or repair of a ship, including dock charges (Article 75 (11)).

- **Crew wages:** Wages and other sums due to the Master, officers and other members of the vessel’s complement in respect of their employment on the ship (Article 75 (12)).
- **Disbursements:** Master’s disbursements and disbursements made by shippers, charterers or agents on behalf of the ship or its owner (Article 75 (13)).
- **Ownership disputes:** Disputes as to the title to or ownership of a ship (Article 75 (14)), or disputes between co-owners regarding the possession, employment or earnings of a ship (Article 75 (15)).

The specificity of this list serves a dual purpose: it provides certainty to maritime creditors regarding their rights while simultaneously protecting ship-owners from frivolous arrests based on unrelated corporate debts. As will be seen in the analysis of Case No 4470343937, the courts adhere strictly to this list, requiring plaintiffs to explicitly map their claims to specific subsections of Article 75.

Sister-ship arrest and ownership dynamics (Article 76)

Article 76 of the Commercial Maritime Law introduces a potent tool for creditors: sister-ship arrest. The law stipulates that a creditor may arrest:

- the specific ship in respect of which the maritime debt arose; or
- any other ship that is owned by the person who was the owner of the ship in question at the time the maritime claim arose.

This provision is designed to prevent ship-owners from evading liability by moving the specific vessel involved in the dispute out of the jurisdiction while other assets remain. However, the Saudi application of this rule is nuanced. The “associated ship” arrest – arresting a ship owned by a different company that has the same beneficial owner as the debtor – is generally not recognised in Saudi Arabia, unlike in jurisdictions like South Africa. The corporate veil is rarely pierced in the Kingdom of Saudi Arabia (KSA) unless explicit fraud is proven. The statutory language focuses on the “registered owner”, compelling creditors to provide definitive proof of ownership linkage between the vessels.

However, the definition of “owner” for the purposes of liability can extend to the “operator” or “charterer” in specific contexts regarding the arrest itself, though perhaps not the final judgment. The law permits the arrest of a ship for a debt of the charterer if the creditor can prove a maritime lien, or if the charterer effectively had control over the navigation and management of the vessel, thereby incurring the debt on the ship’s behalf.

Procedural nexus: precautionary seizure (hajz tahafudhi)

In Saudi legal terminology, a ship arrest is a form of precautionary seizure (*hajz tahafudhi*). It is an interim, protective measure governed not only by the Maritime Law but also by the broader Civil Procedure Law (Article 205 et seq) and the Commercial Courts Law (Article 36).

The judicial test for arrest

To successfully obtain an arrest warrant, a claimant must satisfy the Commercial Court on three distinct elements.

- **Prima facie claim (fumus boni iuris):** The claimant must present documents (invoices, contracts, delivery receipts) that demonstrate the apparent validity of the debt. The standard is not “beyond reasonable doubt” but rather the “likelihood of success” on the merits.
- **Urgency and risk (periculum in mora):** There must be a credible threat that the debtor will dissipate assets or that the vessel will leave the jurisdiction, rendering enforcement of a future judgment impossible. In the context of foreign vessels, the mere fact that the ship is preparing to sail is often accepted by Saudi courts as sufficient evidence of urgency.
- **Counter-security:** Perhaps the most significant practical hurdle is the requirement for the claimant to post security. This is intended to indemnify the ship-owner against damages should the arrest be deemed wrongful. As evidenced in Case No 298 of 1439H, the courts often require a certified check or bank guarantee covering the entire value of the claim before issuing the warrant.

Case Law Analysis: The Crucible of Commercial Court Jurisprudence

The transition from the board of grievances to the specialised commercial courts has generated a body of case law that illustrates the practical application of these statutory principles. Four pivotal cases that highlight different aspects of the maritime debt regime are examined here.

Al Maha and the doctrine of privileged debts: Case No 4470343937 (1444H) – Jeddah Commercial Court

Context

This case represents a textbook example of a “supplies and necessities” claim under Article 75 (10) of the Maritime Law. The plaintiff, a shipping agent, had provided fuel, provisions, water and crew wages to the Tanzanian-flagged vessel *Al Maha* at the request of its captain. When the owners failed to pay the outstanding balance of roughly SAR1.2 million, the agent arrested the ship.

Legal arguments

The plaintiff grounded their claim on the assertion that these expenses constituted not just a maritime debt, but a privileged debt (maritime lien). They argued that under Article 76, such debts attach directly to the vessel, granting the creditor a right of pursuit (*haq al-hatabbu*) that survives changes in ownership or management. The defendants attempted to deflect liability by claiming they had delegated the ship’s operation to a third-party manager via a private agreement and were thus not personally liable.

Judicial reasoning and insight

The Jeddah Commercial Court rejected the owner’s defence, affirming the in rem nature of the maritime debt. The court’s reasoning underscores a critical trend in Saudi jurisprudence: commercial reality trumps private arrangements. The court relied on the invoices stamped by the captain – the ship’s legal representative – as conclusive evidence of the debt. The court held that the captain’s signature binds the vessel and its owners, regardless of internal management contracts of which the supplier may not be aware.

The judgment obligated the owners to pay over SAR825,000 and confirmed the validity of the arrest. This decision reinforces the security of suppliers in Saudi ports, confirming that the vessel itself acts as the ultimate guarantor of its operational debts. The privileged debt status effectively pierced the operational veil the owners attempted to construct.

Tugboat dispute and the owner/operator divide: Case No 298 of 1439H – Madinah General Court (First Commercial Circuit)

Context

This case highlights the complexities arising when a vessel is chartered. A shipping agent provided services to a foreign tugboat docked in Yanbu. The agent sued both the operator (charterer) and the registered owner for unpaid fees of approximately SAR456,000. The agent obtained a precautionary arrest against the tugboat.

Legal arguments

The registered owner (Defendant 2) intervened, arguing a lack of privity. They presented the charter party agreement, which explicitly assigned responsibility for port fees and agency costs to the operator (Defendant 1). The owner argued the arrest of their asset for the charterer's debt was "malicious" and demanded its release. Conversely, the plaintiff argued that under GCC Port Regulations and Article 154 of the Commercial Court Law (regarding privileged debts), the agent has a right to proceed against the ship regardless of the internal charter arrangements.

Judicial reasoning and insight

The court's final judgment reveals a sophisticated distinction between procedural security and substantive liability.

- **Arrest validity:** The initial arrest was valid because the debt was a maritime debt attached to the vessel's operation, justifying the detention to prevent the loss of rights.
- **Substantive liability:** However, in the final judgment on the merits, the court dismissed the claim against the owner, ruling they lacked standing (*sifah*) regarding the debt because the contract for

services was with the operator. The court ordered the heirs of the operator to pay the debt.

- **Outcome:** The arrest was ordered lifted after the judgment became final.

Implications

This case establishes a critical precedent: while a ship can be arrested to secure a claim involving a charterer (forcing the owner to intervene), the Saudi courts will ultimately respect the corporate and contractual separation between owner and charterer regarding payment liability, unless a specific statutory lien overrides the contract. The owner's asset is held hostage to the process, but the owner's bank account is technically protected from the final judgment if the charterer is the sole debtor.

"Eight-day rule" (Article 79)

Article 79 of the Maritime Law imposes a strict deadline: a creditor who obtains an arrest order must file the substantive lawsuit regarding the validity of the debt within eight days of serving the arrest minutes. Failure to strictly adhere to this timeline renders the arrest void ab initio.

In Case No 4470343937, the plaintiff explicitly pleaded compliance with this rule, noting the timeline between the arrest order (Order 4430289064) and the filing of the substantive claim. The court's validation of the claim underscores that this is a jurisdictional hard line. Unlike some jurisdictions where extensions might be granted, Saudi courts treat this window as absolute to prevent indefinite detention of assets without trial.

Security and counter-security

The form of security is a critical operational detail.

- **For arrest:** Plaintiffs typically must post security (counter-security) to cover potential damages to the defendant. In Case 298/1439, the plaintiff deposited a certified check for the full claim amount (SAR456,454).
- **For release:** To lift an arrest, defendants must provide security. In Case 4470412950, a defendant attempted to lift an arrest by offering a real estate title deed. The Jeddah Commercial Court summarily rejected this, ruling that Article 81 implies liquid financial security (cash or bank guarantee).

Illiquid assets like real estate do not provide the immediate recourse required by the statute. This is a vital lesson for foreign entities: P&I club letters of undertaking (LOUs) are generally not accepted by Saudi courts unless the plaintiff voluntarily agrees to them; the courts default to demanding unconditional bank guarantees from local Saudi banks.

SINGAPORE



Law and Practice

Contributed by:

Mathieu Christophe Rajoo, Probin Dass and Tan Hui Tsing

DennisMathiew

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DennisMathiew was founded in 2005 by two shipping lawyers in Singapore, Dennis Tan and Captain Mathiew Christophe Rajoo. Leveraging their knowledge and experience, primarily in shipping, oil and gas, as well as the logistics business globally, Dennis and Mathiew have been providing legal services in these areas ever since. DennisMathiew's core business focus remains shipping, with capabilities cutting across the traditional wet and dry divide. The firm

handles all aspects of shipping matters, from advising on transactions and purchases, claims and casualties to recoveries and litigation. Clients benefit from the firm's cross-experience, which is brought to bear when providing legal advice on disputes and transactions internationally. The firm has a robust disputes practice, and its lawyers regularly appear before international arbitration tribunals and the Singapore court as counsel.

Authors



Mathiew Christophe Rajoo is a co-founder of DennisMathiew, and specialises in shipping and admiralty law. Before being admitted as an advocate and solicitor, he served on board container ships and oil tankers

as deck officer. He is experienced in wet work and frequently investigates maritime casualties. Mathiew handles commercial transactions that have a maritime flavour, such as sale and purchase of vessels, marine assets and businesses. He advises on agreements regarding offshore construction work, including joint venture and consortium agreements. He also has experience in drafting shipbuilding contracts and settling disputes. Mathiew advises insurers and assureds regarding their rights and obligations, and continues to appear as counsel in court and before arbitral tribunals.



Probin Dass has acted for some of the largest financial institutions and advised on disputes involving letters of credit and bills of exchange, claims under credit insurance policies and

cargo claims pursuant to bills of lading including ship arrest in various jurisdictions. He has also advised on the enforcement of other security rights such as mortgages, personal and corporate guarantees, share charges, accounts charges, and pledges against both solvent and insolvent entities. He also regularly advises judicial managers and liquidators on the administration and liquidation of insolvent entities.



Tan Hui Tsing is a partner at DennisMathiew. She graduated from Bristol University in 1994 (LLB Hons) and obtained her Master's in Maritime Law from the University of Southampton in 2004. Hui Tsing is regularly instructed by marine underwriters and recovery agents in respect of cargo/cargo recovery claims. She is also known amongst the local offices of P&I clubs and is frequently instructed to act for their members. Hui Tsing receives direct instructions from ship-owners, advising and representing them in carriage and charterparty issues and claims.

DennisMathiew

7500A Beach Road
#14-324 The Plaza
199591
Singapore

Tel: +65 6227 2373
Email: mathiew@dennismathiew.com
Web: www.dennismathiew.com

DennisMathiew
Lawyers

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic laws establishing the authorities of the maritime and shipping courts in Singapore are:

- the High Court (Admiralty Jurisdiction) Act 1961;
- the Maritime and Port Authority of Singapore Act 1996;
- the Merchant Shipping Act 1995; and
- the Merchant Shipping (Maritime Labour Convention) Act 2014.

The General Division of the High Court of Singapore has jurisdiction to hear maritime cases, and there are High Court judges assigned to hear maritime cases. Appeals from the General Division of the High Court are made to the Court of Appeal. Common maritime claims include those relating to vessel collisions, breach of charterparty obligations, cargo damage, bills of lading and demurrage.

1.2 Port State Control

The Maritime and Port Authority of Singapore (MPA) is the port authority, port regulator and port planner, and essentially regulates port activities in Singapore.

For pollution, the Prevention of Pollution of the Sea Act 1990 gives the MPA the power to take measures to prevent pollution, such as denying entry or detaining ships.

For wreck removal, the Wreck Removal Convention, which has been enacted in Singapore via the Merchant Shipping (Wreck Removal) Act 2017, requires owners of vessels over 300 gross tonnage (GT) to take out insurance or provide other financial security to cover the costs of wreck removal, capped at an amount equal to the limits of liability under the application limitation regime. As a port entry requirement, owners will have to carry a Wreck Removal Convention State certificate (“WRC State certificate”) to show that they have obtained adequate insurance coverage or other financial security to cover liability for wrecks. All Singapore-registered ships over 300 GT, therefore,

must carry on board a WRC State certificate, which can be obtained by applying to the MPA Registry Department.

Pursuant to Shipping Circular No 8 of 2023, all incidents involving Singapore-registered ships, including but not limited to death, occupational accident or injury affecting seafarers, loss of persons from a ship, loss or abandonment of ship, security breaches, material damage to a ship, stranding or disabling of ship, involvement of the ship in a collision, damage to marine infrastructure that could endanger the safety of the ship, severe or potential damage to the environment brought about by damage of the ship, and detention by foreign authorities, must be reported to the MPA.

1.3 Domestic Legislation Applicable to Ship Registration

The MPA handles the domestic registration of vessels. An overview of an application for registration as a Singapore ship can be found via the [MPA website](#). The relevant domestic legislation includes the Merchant Shipping (Registration of Ships) Regulations.

1.4 Requirements for Ownership of Vessels

Owners of Singapore-flagged ships must be Singapore citizens/permanent residents or bodies corporate incorporated in Singapore with a minimum paid-up capital sum of SGD50,000. Owners of a Singapore-flagged ship must also appoint a commercial manager whose residence is in Singapore. Vessels that are still under construction cannot be registered.

1.5 Temporary Registration of Vessels

In addition to the usual (permanent) registration, provisional registration of a vessel is permitted. Provisional registration is valid for one year, without the possibility of extension. The vessel must be transferred to the permanent register before the end of this period. No fee is charged for the transfer.

Dual flagging is not permitted. Singapore-flagged vessels that are found to be dual-flagged will be deregistered as the vessel will not be allowed to remain in the [Singapore Registry of Ships](#).

1.6 Registration of Mortgages

A first priority statutory mortgage (in the form prescribed in the Merchant Shipping Act 1995) must be registered with the Singapore Registry of Ships.

A charge under Section 131 of the Companies Act 1967 must also be registered with the Accounting & Corporate Regulatory Authority within 30 days of the creation of the first priority statutory mortgage.

Documents required for the registration of a mortgage include an instrument of mortgage. If the vessel has a provisional registration where the original document of title to ownership has not been submitted, the mortgage will only be recorded upon confirmation by the mortgagee that they have signed the original documents.

1.7 Ship Ownership and Mortgages Registry

Information regarding the ship and her mortgage status is available to the public, and this information may be obtained upon application and payment of a prescribed fee.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

The key terms are principal/loan amount, tenor/term, interest rate, repayment schedule, covenants, representations and warranties of the borrower's condition, conditions precedent that have to be satisfied by the borrower before it is entitled to draw on the loan, covenants on the borrower and events of default. The most common structure is the sale and leaseback structure. Other security packages aside from mortgages are assignment of earnings (charter hire or freight), corporate and personal guarantees, assignment of insurances, assignment of charters, security in the form of shares in the ship owning company.

2.2 Ship Leasing

Ship leasing transactions are increasing in Singapore as the Maritime Sector Incentive – Maritime Leasing Scheme, implemented by the Maritime Port Authority of Singapore, provides tax concessions on qualifying leasing income for up to five years. Furthermore, management fees of asset-owning entities are awarded

concessionary tax rates of 10% on qualifying management income, encouraging companies to base ship financing operations in Singapore. Additionally, the Approved Shipping Financing Arrangement (Ship) Award ("AFSA (Ship)"), also implemented by the Maritime Port Authority of Singapore, provides support for ship owners, operators and lessors on interest and qualifying related payments made in respect of qualifying financing arrangements obtained to finance the purchase and construction of vessels. An ASFA (Ship) company will enjoy withholding tax exemption on qualifying financing arrangements entered into on or before 31 December 2031 to finance the purchase and construction of vessels.

While traditional bank lending remains significant, alternative credit providers and private capital are increasingly used where bank risk profiles are not met. Chinese leasing houses in particular are dominating sale and leaseback deals as key players holding substantial shipping assets and offering competitive lease terms.

The key differences between the lessor/lessee and lender/borrower relationship is that the lessor owns the vessel and the lessee has rights of use, as compared to the lender/borrower relationship where the borrower owns the vessel. Therefore, the lessor enforces rights under the lease contract while the lender enforces mortgage and security rights. Both these rights give rise to in rem claims/arrests under the purview of the General Division of the High Court pursuant to provisions set out in the High Court (Admiralty Jurisdiction) Act 1961. The arrested vessel may serve as security for arbitration proceedings.

Sale and leaseback arrangements are common in Singapore.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The main sources of law dealing with wreck removal in Singapore may be found under Part 9 of the Mer-

Merchant Shipping Act 1995 and the First Schedule to the Merchant Shipping (Wreck Removal) Act 2017, which gives effect to the Nairobi International Convention on the Removal of Wrecks, 2007 (for all Singapore-registered ships over 300 GT).

Pollution

As for pollution from a vessel, the International Convention for the Prevention of Pollution from Ships, 1973 (Annex I to Annex V) and the 1997 Protocol to the International Convention for the Prevention of Pollution from Ships (Annex VI) have been ratified by Singapore. The Singapore Parliament has thus included provisions to give effect to the International Convention for the Prevention of Pollution from Ships, 1973 as modified and added to by the Protocol of 1978 (MARPOL).

The Prevention of Pollution of the Sea Act 1990 empowers the MPA to take preventive measures against pollution. In addition, the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act 1998 – which gives effect to the International Convention on Civil Liability for Oil Pollution Damage, 1992 and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 – addresses liability for oil pollution. The Merchant Shipping (Civil Liability and Compensation for Bunker Oil Production) Act 2008 – which was enacted to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 – prescribes the penalty for bunker oil pollution.

3.2 International Conventions: Collision and Salvage

Collision

The Merchant Shipping (Prevention of Collisions at Sea) Regulations incorporate the International Regulations for Preventing Collisions at Sea, 1972, the latter being set out in the Schedule to the Merchant Shipping (Prevention of Collisions at Sea) Regulations.

The rules contained in the International Regulations for Preventing Collisions at Sea, 1972 apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.

Salvage

The statute regulating salvage of vessels in Singapore is to be found in Part 9 of the Merchant Shipping Act 1995.

With effect from 24 July 2021, the Merchant Shipping Act 1995 was amended to implement the International Convention on Salvage, 1989, except for salvage pertaining to the following:

- fixed or floating platforms, or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources; and
- warships or other non-commercial vessels owned or operated by a state and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that state decides otherwise.

3.3 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims (LLMC 1976) is applicable in Singapore. Singapore has also ratified the LLMC 1996 Protocol, including the 2012 Amendments (other than paragraphs 1 (d) and 1 (e) of Article 2 of the Convention). The applicable limits will be those of the 2012 Amendments. The applicable limits came into operation on 29 December 2019, applying to liability arising out of any occurrence that took place after 29 December 2019.

3.4 Vienna Convention on the Law of Treaties

Singapore has not ratified the 1969 Vienna Convention on the Law of Treaties (VCLT); however, Singapore's domestic law and practice align significantly with the VCLT's general principles regarding the interpretation of treaties.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Article 11 (2) of the LLMC 1976 permits the constitution of a limitation fund, either by depositing the sum or by producing a guarantee acceptable under the legislation of the state party where the fund is constituted and considered to be adequate by the court or other competent authority.

Pursuant to amendments to the Rules of Court in 2018, a party wishing to constitute a limitation fund can do so by making payment into court under an order thereof, or by producing a letter of undertaking (LOU) from a protection and indemnity (P&I) club acceptable to the court (Order 33 Rule 37 of the Rules of Court 2021). This brings Singapore in line with the UK position. The limitation fund can be set up by the “ship-owner”, as defined in Article 1 of the Convention; this includes the owner, charterer, manager and operator of the vessel.

To establish a limitation fund, a summons application must be made, together with a supporting affidavit. Where an LOU is to be used, it would be prudent to annex the draft LOU to the application, and the supporting affidavit will need to demonstrate the P&I club’s financial ability to meet its obligations under the LOU.

The limitation fund is calculated according to the amended Convention on Limitation of Liability for Maritime Claims 1996 Protocol regime (2012 amendments).

The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows.

Claims for Loss of Life or Personal Injury

These are as follows:

- 3.02 million units of account for a ship with a tonnage not exceeding 2,000 tonnes; and
- for a ship with a tonnage in excess of 2,000 tonnes, in addition to the amount mentioned in the foregoing bullet point:
 - (a) for each tonne from 2,001 to 30,000 tonnes, 1,208 units of account;
 - (b) for each tonne from 30,001 to 70,000 tonnes, 906 units of account; and
 - (c) for each tonne in excess of 70,000 tonnes, 604 units of account.

Other Claims

Other claims include:

- 1.51 million units of account for a ship with a tonnage not exceeding 2,000 tonnes; and
- for a ship with a tonnage in excess of 2,000 tonnes, in addition to the amount mentioned in the foregoing bullet point:
 - (a) for each tonne from 2,001 to 30,000 tonnes, 604 units of account;
 - (b) for each tonne from 30,001 to 70,000 tonnes, 453 units of account; and
 - (c) for each tonne in excess of 70,000 tonnes, 302 units of account.

However, if the ship is licensed as a harbour craft under the Maritime and Port Authority of Singapore Act 1996, limitation shall be as if the aggregate of units of account in relation to a claim for loss of life or personal injury or other claims for a ship with tonnage not exceeding 2,000 tonnes referred to the sum insured under the policy of insurance for third-party risks required by the Port Master in relation to that harbour craft.

If the ship has a tonnage of less than 300 tonnes, limitation in relation to a claim for loss of life or personal injury shall be 166,667 units of account and 83,333 units of account in relation to other claims.

3.6 Seafarers’ Safety and Owners’ Liability

The Maritime Labour Convention is applicable in Singapore. The local legislation enacting and giving effect to this convention is the Merchant Shipping (Maritime Labour Convention) Act 2014. The Work Injury Compensation Act 2019 also applies, subject to modification prescribed for the application to the seafarer, to claims for compensation resulting from injuries suffered arising out of and in the course of employment of seafarers.

4. Cargo Claims

4.1 Bills of Lading

The Hague–Visby Rules are applicable and are found in the Schedule of the Carriage of Goods by Sea Act 1972.

4.2 Title to Sue on a Bill of Lading

Under Section 2 (1)(a) of the Bill of Lading Act 1992, it is the lawful holder of the bill of lading who has the right to sue the carrier under a contract of carriage. A person shall be regarded as having become the lawful holder of a bill of lading wherever they have become the holder of the bill in good faith (Section 5 (2) of the Bill of Lading Act 1992).

In this regard, Section 5 (2) of the Bill of Lading Act 1992 provides three categories of persons who would be considered holders of the bill of lading:

- the person with possession of the bill who is identified as the consignee of the goods to which the bill relates;
- the person with possession of the bill of lading as a result of the completion, by delivery of the bill, of any endorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill; and
- the person with possession of the bill as a result of any transaction by virtue of which they would have become a holder as defined in the foregoing two bullet points, had the transaction not been effected at the time when possession of the bill no longer gave the right to possession of the goods to which the bill relates.

Thus, this will depend on the construction of, and endorsements on, the bill of lading.

For the Singapore legal position on whether a bill of lading is a document of title, see the recent Singapore Court of Appeal decision in *The “Luna” and another appeal* [2021] 2 SLR 1054.

Title or right of suit in a straight consigned bill of lading – ie, a bill of lading where the goods are specified for delivery to a named party – is not transferrable. In contrast, title or right of suit in a bill of lading where the consignee is not named (eg, “to order” a bill of lading) may be transferred by endorsement.

4.3 Ship-Owners’ Liability and Limitation of Liability for Cargo Damages

A ship-owner may be found liable in contract (depending on the terms of the contract) or in negligence for cargo damage (depending on whether damage sus-

tained by the cargo was caused by negligence on the part of the ship-owner and whether the shipowner owed a duty of care to the party alleging loss). Following the Singapore High Court decision in *Wilmar Trading Pte Ltd v Heroic Warrior Inc* [2019] SGHC 143, a party who may not be the owner of the cargo may claim for cargo damage if it can be shown that the ship-owner owed a duty of care to them.

The limitation of liability for cargo damage would be governed by the LLMC 1976 (as amended by the 1996 Protocol). The general limits of liability are set out in **3.5 Procedure and Requirements for Establishing a Limitation Fund**.

Where contracts of carriage incorporate the Hague–Visby Rules, Article IV Rule 5 (a) limits the carrier’s liability for cargo damage to whichever is the higher of:

- 666.67 units of account per package(s) or units(s); or
- 2 units of account per kilogram of gross weight.

4.4 Misdeclaration of Cargo

There are no reported cases in Singapore that deal with the misdeclaration of cargo.

However, Article III Rule 5 of the Hague–Visby Rules states that the shipper shall be deemed to have guaranteed to the carrier the accuracy of cargo information at the time of the shipment and that the shipper shall indemnify the carrier for losses arising from the inaccuracy of such particulars.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Article III Rule 6 of the Hague–Visby Rules (as enacted by the Carriage of Goods by Sea Act), the limitation period for cargo damage is one year from delivery or the date on which the cargo should have been delivered. That said, parties can mutually agree to extend the limitation period.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

There is no international convention that governs the arrests of vessels in Singapore. Singapore is not party to the 1952 Arrest Convention. As such, the Singapore High Court (Admiralty Jurisdiction) Act 1961 remains applicable.

5.2 Maritime Liens

Maritime liens that are recognised in the Singapore jurisdiction include:

- a damage lien arising out of damage done by a ship;
- Master and crew's wages; and
- claims for salvage.

There is a list of claims that attract a statutory lien set out in the Singapore High Court (Admiralty Jurisdiction) Act 1961. As per the High Court (Admiralty Jurisdiction) Act 1961, a vessel can be arrested for claims that attract a maritime lien or a statutory lien. Crew injury may attract a statutory lien pursuant to Section 3 (1)(f) of the High Court (Admiralty Jurisdiction) Act 1961. 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, including contracts for chartering a ship, may attract a statutory lien pursuant to Section 3 (1) (h) of the High Court (Admiralty Jurisdiction) Act 1961.

5.3 Liability in Personam for Owners or Demise Charterers

It is a requirement that the owners or demise charterers be liable in personam. When applying to obtain the warrant of arrest, the arresting party must identify the party who would be liable in personam in the action (Section 4 of the High Court (Admiralty Jurisdiction) Act 1961).

5.4 Unpaid Bunkers

A vessel can be arrested for unpaid bunkers under Section 3 (1)(l) of the High Court (Admiralty Jurisdiction) Act 1961 for "any claim in respect of goods or materials supplied to a ship for her operation or maintenance".

However, Section 4 (4) of the High Court (Admiralty Jurisdiction) Act 1961 must be satisfied in order to obtain a warrant of arrest, namely that:

- the bunkers must have been ordered/purchased by the ship-owner or charterer of the vessel when the cause of action arose; and
- the purchaser remains the beneficial owner of the ship with respect to all the shares therein or the demise charterer of the vessel at the time the writ is issued.

In this regard, a charterer who purchases bunkers does not bind the vessel; to proceed against the vessel, the charterer shall have to be owner or demise charterer of the target vessel for arrest. This is because the action in rem shall only proceed if the person who would be liable in an action in personam was, when the cause of action arose, the owner or demise charterer of that ship. Alternatively, the action in rem may proceed against any ship owned by the charterer.

5.5 Arresting a Vessel

Substantively, in order to arrest a vessel, Sections 3 and 4 of the High Court (Admiralty Jurisdiction) Act 1961 must be satisfied. Essentially, the arresting party's claim must come under a category of claim relating to the ship as set out in Section 3 of the High Court (Admiralty Jurisdiction) Act 1961.

The arresting party must also identify the relevant person who would be liable in personam and show that this relevant person was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship (Section 4 (4)(b) of the High Court (Admiralty Jurisdiction) Act 1961). The arresting party must also show that the relevant person is, at the time the writ is issued, the beneficial owner of the ship in respect of all the shares therein or the demise charterer of the ship (Section 4 (4)(c) of the High Court (Admiralty Jurisdiction) Act 1961). If the writ is issued against another ship, at the time when the writ is issued, the relevant person must be the beneficial owner of this other ship (Section 4 (4)(d) of the High Court (Admiralty Jurisdiction) Act 1961).

Procedurally, an affidavit in support of the application for the warrant of arrest must be filed and served,

and a full disclosure of all relevant facts is required in this supporting affidavit because the application is *ex parte*.

In general, the Singapore court does not require original, notarised or legalised documents. On 18 January 2021, Singapore acceded to, and became a contracting party to, the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. The Apostille Act 2020 therefore came into operation on 16 September 2021 and, as a result, Singapore and other contracting parties have waived the requirement for legalisation of public documents by replacing legalisation with the use of apostilles. As such, copies will suffice for an application to arrest a vessel, and the authenticity of the document can be dealt with/objected to later.

The Sheriff may request that the arresting party place a deposit to cover the Sheriff's anticipated expenses in maintaining the vessel while under arrest because the arresting party is obliged to maintain the vessel during the period of arrest.

5.6 Arresting Bunkers and Freight

See 5.4 Unpaid Bunkers.

It is possible to arrest a vessel for a claim for unpaid freight as it relates to carriage of goods in a ship, and this is likely to fall under Section 3 (1)(h) of the High Court (Admiralty Jurisdiction) Act 1961.

5.7 Sister-Ship Arrest

Vessels under the same registered ownership as the offending vessel may be arrested. However, vessels within the same group or belonging to an affiliate – but not under the same registered ownership as the offending vessel – cannot be arrested.

5.8 Other Ways of Obtaining Attachment Orders

A plaintiff may apply for, and obtain, a Mareva injunction or freezing order in respect of the defendant's assets. A worldwide Mareva injunction or freezing order can also be obtained. However, the procedure for, and the effect of, a Mareva injunction or freezing order in respect of a vessel is not the same as arresting a vessel.

5.9 Releasing an Arrested Vessel

A ship may be released upon the provision of alternative security in several forms, including:

- an LOU from a P&I club;
- a bank guarantee from a first-class bank in Singapore; or
- payment into court.

5.10 Procedure for the Judicial Sale of Arrested Ships

The practice of the Singapore courts is to consider applications for the judicial sale of ships if security is not provided, so as to avoid depreciating value of a ship under continual arrest. The sale of a vessel *pendente lite* is possible. The arresting party is liable for maintaining the vessel at all times while under arrest.

Under Order 33 Rule 22 of the Rules of Court 2021 (previously Order 70 Rule 21 of the Rules of Court 2014), where the court has ordered the ship to be sold in an action *in rem* against a ship, any party who has obtained, or obtains, judgment against the ship or proceeds of its sale may apply to the court by summons for an order determining the order of priority of the claims against the proceeds of sale of the ship.

The order of priorities is as follows:

- port dues;
- Sheriff's costs and expenses;
- plaintiff's legal costs of arrest;
- maritime liens that arose prior to arrest;
- possessory liens;
- maritime liens post-arrest;
- mortgagee's claim; and
- claims by other claimants having statutory liens over the vessel.

Generally, in actions against the proceeds of sale of the ship, costs have the same priority as the claim in respect of which they have been incurred. See the decision of *The "Songa Venus"* [2021] 2 Lloyd's Law Rep 365 [2020] SGHC 74, in which the court also held that a similar result would have been obtained under Order 29 Rule 6 of the Rules of Court 2014 – under which the court might order a possessory lien holder to surrender the property in question to its owner,

upon the owner paying into court the sum claimed by the possessory lien holder together with interests and costs. Thus, the court held that it was just and equitable, as well as principled, to accord the costs the same priority as the possessory lien holder.

Private sales have been allowed. The applicant has to identify the existence of “powerful special features” or “special circumstances”, but this is an exception rather than the norm: see *The Turtle Bay* [2013] SGHC 165.

5.11 Insolvency Laws Applied by Maritime Courts

In 2017, Singapore adopted some aspects of the Chapter 11 United States Bankruptcy Code, including:

- an automatic moratorium that starts from the date of the moratorium application; and
- a worldwide moratorium.

Where there is a moratorium for a scheme of arrangement in place, the court may restrain further proceedings from being commenced or continued. However, in relation to in rem proceedings, Section 64 (12) of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) read together with Section 4 of the Insolvency, Restructuring and Dissolution (Prescribed Arrangements and Proceedings) Regulations 2020 carves out an exception to the commencement (but not the continuation) of admiralty proceedings. This means that creditors will be able to file an in rem writ against a vessel, but will not be able to serve the writ or arrest the vessel.

In *The “Ocean Winner”* [2021] 4 SLR 526, the Singapore High Court dealt with Section 64 (8)(c) to (d) of the IRDA, which prohibits the commencement of any proceedings against the company, or any execution, distress or other legal processes against the property of the company during the automatic moratorium period, without the leave of court.

In that case, the plaintiff did not obtain leave of court to file the writs against four vessels that belonged to a company under judicial management. The court found that the filing of the writs only created a statutory lien

in favour of the plaintiff and merely created the security interest for the plaintiff; it did not yet invoke the admiralty jurisdiction. In that limited sense, the action did not substantively “commence” until service of the writs. Hence, the filing of the in rem writ crystallised the plaintiff’s security interest, which is differentiated from a typical civil action where the claimant’s right to bring their claim already exists. In this regard, the court observed that the moratorium in a scheme of arrangement was never intended by parliament to prevent a plaintiff’s security interest from even being created, because the purpose of the scheme of arrangement was simply to give the company “breathing space”.

The court also found that the filing of the writs was not “against the company” (pursuant to Section 64 (8)(c), IRDA) because it was an action against the res. The filing of the writs also did not constitute an “execution, distress or other legal process” under Section 64 (8)(d) of the IRDA, because the filing of the in rem writ merely created the statutory lien (ie, the security interest in the ship) and did not involve an element of enforcement.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The arresting party may be liable for damages when the arrest is a “wrongful arrest”. In such a case, the defendant would have to show that the plaintiff had carried out the arrest mala fide or with gross negligence so as to imply malice on the part of the arresting party resulting in losses to the defendant. If the defendant is successful in showing wrongful arrest, the warrant of arrest may be set aside, the security put up by the defendant (such as the LOU) shall be returned and damages may be claimed against the arresting party.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The LLMC 1976 as amended by the 1996 Protocol governs “claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage” (Article 1 (b), LLMC 1976).

Pursuant to Section 8 of the Maritime Conventions Act 1911, the time bar for claims against a vessel or the ship-owners for damage or loss – inter alia, for loss of life or personal injuries suffered by persons on board the vessel – would be two years from the date of loss or injury.

Under Article 7 of the LLMC 1976, “In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship’s certificate”.

A claim for personal injury of a passenger may attract a statutory lien pursuant to Section 3 (1)(f) of the High Court (Admiralty Jurisdiction) Act and may be brought against the vessel as a maritime claim.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Singapore courts generally recognise jurisdiction clauses that are expressly stated in the bill of lading.

Generally, the court retains discretion as to whether to stay proceedings or not where there is an exclusive jurisdiction clause incorporated in the bill of lading. As the court of appeal held in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] SGCA 65, “Exclusive jurisdiction clauses are ubiquitous provisions in international commercial contracts... Regardless of the reason for the choice of the agreed forum, an exclusive jurisdiction clause has full contractual force unless and until it is invalidated”.

Accordingly, the court’s discretion should be exercised in favour of a stay of proceedings brought in breach of an exclusive jurisdiction clause, unless the applicant can find a “strong cause” for resisting a stay based on exceptional circumstances (*Amerco Timbers Pte Ltd v Chatsworth Timber Corp Pte Ltd* [1977–1978] SLR(R) 112; *The “Eastern Trust”* [1994] 2 SLR(R) 511 at [8]).

As held in *Amerco Timbers* (which endorsed *The Eleftheria* [1969] 1 Lloyd’s Rep 237), the factors that the court would consider in deciding whether there is a “strong cause” to refuse a stay are as follows:

- the country in which the evidence on the issues of fact is situated or more readily available, and the effect thereof on the convenience and expense of trial as between Singapore and foreign courts;
- whether the law of the foreign court applies and, if so, whether it differs from Singapore law in any material respects;
- the country either party is connected to, and how closely;
- whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages; and
- whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:
 - (a) be deprived of security for their claim;
 - (b) be unable to enforce any judgment obtained;
 - (c) be faced with a time bar not applicable in Singapore; or
 - (d) for political, racial, religious or other reasons, be unlikely to get a fair trial.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Singapore courts recognise and enforce an arbitration clause of a counterparty, so long as the clause is expressly stated in the bill of lading. It is well established that a clause merely purporting to incorporate the terms of a charterparty without express reference to the arbitration clause may not be sufficient to incorporate the arbitration clause (this is a principle reiterated in *The “Navios Koyo”* [2021] SGCA 99 at [21]).

There is Singapore case law to suggest that general wording may be insufficient to incorporate an ancillary charterparty arbitration clause, and that the same result must follow with regard to the charterparty jurisdiction clause (*The “Dolphina”* [2012] 1 SLR 992). Parties should make clear in the bill of lading that it is subject to an arbitration clause in the charter.

Where an arbitration clause has been expressly incorporated into the charterparty, court proceedings that had been commenced to arrest the vessel may be

stayed upon an application for the same by any party to the arbitration agreement at any time after appearance – and before filing pleadings/taking any other step in the court proceedings. The power of the court to grant a stay is found at Section 6 (1) of the International Arbitration Act 1994.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Singapore is a party to the 1958 New York Convention, and the International Arbitration Act 1994 gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Pursuant to the International Arbitration Act 1994, some grounds to resist enforcement include:

- a party's lack of capacity to agree to arbitrate;
- an invalid arbitration agreement is involved;
- a party is not given proper notice or is unable to present their case;
- the award goes beyond the scope of the arbitration agreement;
- the composition of the tribunal or procedure is not in compliance with the agreement or *lex arbitri*;
- the award is not yet binding;
- the award is set aside or suspended by a competent authority;
- the subject matter of the dispute is not arbitrable; and
- the enforcement is against the state's public policy.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Section 7 of the International Arbitration Act 1994 provides that vessels may be arrested as security for a foreign arbitration. However, the Singapore court has held in *DSA Consultancy (FZC) v The "Eurohope"* [2017] 5 SLR 934 that a vessel cannot be arrested in Singapore as security for foreign court proceedings.

7.5 Domestic Arbitration Institutes

The Singapore Chamber of Maritime Arbitration specialises in maritime claims in the jurisdiction.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

The defendant can apply for a stay of proceedings in favour of the arbitration/jurisdiction clause under Section 6 (1) of the International Arbitration Act 1994; see 7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading.

However, a court is also at liberty to impose certain conditions as it may think fit for a stay granted under Section 6 (2) of the International Arbitration Act. For example, in *Splosna Plovba International Shipping and Chartering d.o.o. v Adria Orient Line Pte Ltd* [1998] SGHC 289, the court imposed that security of USD50,000 be provided for arbitration in London. In *KVC Rice Intertrade Co Ltd v Asian Mineral Resources Pte Ltd and another suit* [2017] 4 SLR 182, the condition imposed was that the defendant was not permitted to raise objections to the jurisdiction of the President of the Singapore International Arbitration Centre to appoint an arbitrator if parties were unable to agree to the appointment of an arbitrator. In *The "Navios Koyos"* [2021] SGCA 99, the question was whether the stay of court proceedings ought to be granted unconditionally or on condition upon a waiver of the time bar defence. The court found, *inter alia*, that the imposition of such a condition would deprive the respondent of an accrued and substantive defence; hence, the stay was granted unconditionally.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

Profits derived from the operation of a Singapore-registered vessel are exempt from Singapore income tax. The exemption applies to the profits gained from the operation of activities outside the limits of the port of Singapore, as set out at Section 13A(1) read with Section 13A(16) of the Income Tax Act 1947. These activities include:

- the carriage of passengers, mail, livestock or goods outside the limits of the port of Singapore;
- towing or salvage operations outside the limits of the port of Singapore;

- the charter of ships outside the limits of the port of Singapore;
- the use outside the limits of the port of Singapore of the ship as a dredger or seismic ship, or for offshore oil or gas activity;
- the use outside the limits of the port of Singapore of the ship for offshore renewable energy activity or offshore mineral activity; and
- finance leasing of the ship for use outside the limits of the port of Singapore – but only where the income in question is derived from the finance leasing on or after 12 December 2018 and is not derived by the shipping enterprise as part of a business of trading in ships or constructing ships for sale.

For foreign vessels, tax exemption applies to income derived from the carriage of passengers, mail, live-stock or goods uplifted from Singapore, except where that carriage arises solely from trans-shipment from Singapore, or is only within the limits of the port of Singapore (Section 13A(1) read with Section 13A(16) of the Income Tax Act 1947).

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Whether an event constitutes force majeure depends on the contractual definition of force majeure between parties and whether the event falls within such definition.

As to whether an event constitutes frustration, it would have to be an external event beyond the control of contracting parties, and without the default of either party, which renders the contractual obligation incapable of being performed because the circumstances in which performance if called for would render it a thing radically different from that which was undertaken by the contract: see *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

As Singapore is party to MARPOL, the MPA has enforced the IMO 2020 regulations.

Limit on Sulphur Content of Fuel Oil

The MPA has amended its pre-arrival notification (PAN) to reflect the requirements for reporting on the use of compliant fuel in accordance with the IMO 2020 Fuel Oil Sulphur Limit post 1 January 2020. The MARPOL Annex VI Regulation stipulates that, after this date, the sulphur content of any fuel oil used on board ships shall not exceed 0.50% mass by mass (m/m).

The revised PAN will require ships calling at the port of Singapore to declare their method of compliance – ie, whether the ship will be using compliant fuel (sulphur content not exceeding 0.50% m/m) or an exhaust gas cleaning system (scrubber). Ships using non-compliant fuel (sulphur content exceeding 0.50% m/m) are also required to declare this and provide reasons for using non-compliant fuel.

Enforcement Actions

The MPA will inspect Singapore-registered ships as well as foreign-registered ships in the port of Singapore. Compliance with the IMO 2020 requirements will be part of the MPA's flag state control and port state control inspections to ensure ships are compliant with the relevant statutory regulations.

9.3 Trade Sanctions

Singapore has enacted domestic regulations that implement trade sanctions imposed by UN Security Council resolutions. These domestic regulations are enacted by the Minister of Home Affairs pursuant to the United Nations Act 2001. Singapore currently implements trade sanctions against:

- the Central African Republic;
- the Democratic People's Republic of Korea;
- the Democratic Republic of the Congo;
- Iran;
- Iraq;
- Lebanon;
- Libya;
- Somalia;
- South Sudan;

- Sudan; and
- Syria.

Specific measures have also been imposed on Russia under the Strategic Goods (Control) Order 2021 to constrain Russia's capacity to conduct its war in Ukraine and cyber aggression. All items under the Military Goods List are prohibited for export to Russia, as well as certain items in Category 3 (Electronics), Category 4 (Computers) and Category 5 (Telecommunications and Information Security). There are also financial measures targeted at designated Russian banks, entities and activities in Russia and fund-raising activities benefiting the Russian government.

The primary authority responsible for enforcing Singapore's trade sanctions is Singapore Customs, which has wide investigation powers under the Regulation of Imports and Exports Act 1995 (RIEA), including the power to:

- compel an importer/exporter or their agent to produce trade documents on demand;
- search vessels, aircraft and vehicles;
- examine any package, box, chest or other article in Singapore where a reasonable suspicion exists that it is being imported/exported contrary to Singapore's trade sanctions, and to remove the article to a police station or examination station if more convenient; and
- arrest without warrant any person where there is reasonable suspicion that the person has committed an offence under the RIEA (including failure to comply with Singapore's trade sanctions) – and search the person and seize articles as evidence.

9.4 International Conflict

The Singapore-flagged oil tanker *MTM "Rio Grande"* had been stranded in the port of Mykolaiv when the Russian invasion of Ukraine began, likely causing supply chain disruptions and crew issues. The war in Ukraine has also given rise to frustration of contracts resulting from sanctions imposed by Singapore against Russian entities and certain trades, as well as actual hostilities between Ukraine and Russia. These cases have largely been arbitrated.

Meanwhile, the Singapore-flagged vessels "*Propel Fortune*" and "*Maersk Hangzhou*" were among those subject to Houthi attacks. As at end 2025, vessels are once again crossing the Suez Canal, a sign that disruptions linked to the Gaza war could be easing.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The working language in Singapore is English, and while oral evidence may be adduced in a foreign language in court (subject to interpretation at a hearing in court), all documents submitted in the course of litigation in Singapore need to be translated into English by a certified translator for use in court.

SOUTH KOREA



Law and Practice

Contributed by:

Woorin Sung and Hee Kyung Jeong
D&A LLC

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D&A LLC was founded in 2009 through the merger of Daeryook and AJU. D&A LLC has grown into one of South Korea's leading law firms, with a deep bench of more than 300 professionals, strengthening its expertise and expanding its services. The firm is widely recognised for its capabilities in corporate restructuring and insolvency, tax, international arbitration, energy and infrastructure, and maritime law. D&A's shipping practice provides comprehensive legal services covering bills of lading and air waybills, letters of credit transactions, maritime casualties, international

cargo loss and damage, charter contracts, shipbuilding and ship financing, and the insolvency of shipping and shipbuilding companies. D&A serves as a trusted legal adviser and representative for a number of clients, including the Ministry of Oceans and Fisheries (MOF), the Korea Coast Guard, Incheon Port Authority, Busan Port Authority, Yeosu Gwangyang Port Authority, Korea National Oil Corporation, Qatar Fuel, Korea Western Power Co, Ltd and Hanjin Shipping Co, Ltd.

Authors



Woorin Sung (partner) graduated from Korea Maritime & Ocean University with a degree in Navigation Science, joined STX Pan Ocean in 2008 and served for three years as a ship's officer on cargo, container and

oil tankers. He is among the few Korean attorneys with seafaring experience. His practice focuses on maritime accidents, including vessel sinkings, fires and collisions, and subsequent post-accident measures, as well as charterparty and carriage disputes, bills of lading and marine insurance. He advises public authorities and state-owned entities, including the MOF and port authorities, on shipping, logistics and maritime regulatory matters.



Hee Kyung Jeong (associate) focuses on shipping and aviation matters. She was admitted to the Korean Bar in 2022 and leverages her background in global economics in shipping and ship finance matters. Her experience

includes maritime accidents, such as vessel collisions and onboard fires, cargo loss or damage, and disputes relating to the operation and use of port facilities. She provides legal advice to global transportation and logistics companies on shipping matters. Jeong has particular expertise in ship finance, advising companies and financial institutions on financing structures, security interests, and the drafting and review of financing agreements in domestic and cross-border transactions.

D&A LLC

7-16F, 19F, Donghoon Tower
317 Teheran-ro
Gangnam-gu
Seoul 06151
Republic of Korea

Tel: +82 2 563 2900
Fax: +82 3016 5201
Email: pr@draju.com
Web: www.draju.com/en/main/main.html

D&A LLC

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Currently, South Korea does not have dedicated maritime and shipping courts. However, discussions on the establishment of such courts have been underway since 2015. Following the recent passage of a bill on the establishment of maritime and shipping courts by the National Assembly, their creation is now regarded as a realistic possibility.

The approach most actively under consideration is that maritime and shipping courts in Busan and Incheon would each have jurisdiction over first-instance proceedings, with appeals to be heard by the high courts in the same manner as other general cases.

As of December 2025, however, no legislation establishing such courts has entered into force. In the meantime, specialised divisions exclusively handling maritime and shipping cases are in operation within the Seoul Central District Court and Busan District Court.

The most common maritime and shipping disputes in South Korea include:

- cargo claims, including claims for loss of, damage to, or shortage of cargo;
- disputes arising during vessel navigation, including collisions, groundings, and accidents occurring during berthing and mooring operations;
- disputes concerning the suspension or reduction of charter hire, including issues as to the applicability of off-hire events;
- disputes relating to shipbuilding defects, or under-performance or defects in the sale of vessels; and
- personal injury or fatality claims involving seafarers.

1.2 Port State Control

Port state control (PSC) in South Korea is overseen by the Ministry of Oceans and Fisheries (MOF), while enforcement is carried out by the regional offices of oceans and fisheries with jurisdiction over the relevant ports. These regional offices review PSC-related data

for incoming vessels, including information under the New Inspection Regime (NIR), select vessels for priority inspection and conduct initial inspections.

Where deficiencies are identified during an initial inspection, the relevant regional office conducts a more detailed inspection of the vessel's facilities and overall safety management systems prior to issuing an inspection report. If a critical deficiency is identified that may endanger the safety of seafarers or the vessel, or cause marine pollution, the vessel may be prohibited from departing until the deficiencies have been rectified.

1.3 Domestic Legislation Applicable to Ship Registration

The ship registration system in South Korea has a dual structure.

- **Administrative registration:** Governs matters relating to the acquisition and maintenance of a vessel's nationality, as well as the issuance of certificates of nationality. This regime is established under the Ship Act, which sets out the requirements for Korean national vessels, the acquisition and loss of nationality, the description of vessels and the basic framework for administrative registration.
- **Legal registration:** Provides public notice of legal rights in vessels, such as ownership and mortgages. This regime is governed by the Ship Registry Act, which provides for the public notice of legal relations concerning vessels, including transfers of ownership and the creation of vessel mortgages.

Administrative registration is handled by the MOF, while legal registration is carried out by the courts and their registry offices.

1.4 Requirements for Ownership of Vessels

Under the Ship Act of Korea, eligibility to own a vessel of the Republic of Korea is limited to:

- a citizen of South Korea;
- a commercial corporation established under the laws of South Korea; and
- a corporation whose principal office is located in South Korea and whose representative (or, in the

case of joint representatives, all such representatives) is a citizen of South Korea.

With respect to a vessel under construction, a mortgage may be registered with the registry office having jurisdiction over the shipbuilding site. However, separate registration of a transfer of ownership is not permitted in respect of such a vessel.

1.5 Temporary Registration of Vessels

The South Korean legal system does not provide for a temporary vessel registration system. That said, a limited mechanism for the grant of temporary nationality does exist. As a matter of principle, dual registration is prohibited in South Korea. Accordingly, the owner of a vessel that has lost its Korean nationality under the Ship Act is required to apply for deregistration.

1.6 Registration of Mortgages

The creation and registration of vessel mortgages fall within the jurisdiction of the courts. Specifically, such matters are handled by the district courts and their registry offices having jurisdiction over the vessel's port of registry or the shipbuilding site.

To create a mortgage over a vessel, the applicant is required to submit:

- documents evidencing the cause of registration, such as a vessel mortgage agreement; and
- documents relating to the mortgage creator, including the applicant's certificate of seal impression.

1.7 Ship Ownership and Mortgages Registry

Information regarding ownership and mortgages over a vessel is publicly available. Where a third party that is neither the vessel owner nor a mortgagee seeks to obtain a copy of a vessel's registry record, that party must attend the relevant registry office in person and submit an application including the vessel's identification number and the applicant's personal information. Unlike real estate registries, online issuance of such copies is generally not available.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Ship finance in South Korea is primarily conducted through loan financing led by financial institutions, with equity investment typically included as a supplementary component. Most transactions are undertaken to finance the acquisition, construction or operation of vessels, and the vessels themselves are commonly used as the principal collateral.

The key terms and conditions of such financing agreements include:

- loan amount and drawdown conditions;
- interest rate;
- repayment structure;
- events of default and acceleration; and
- collateral.

In addition to a ship mortgage, multiple forms of additional collateral are typically required. Such additional collateral commonly includes:

- security assignment over receivables (known as *yangdo-dambo* under Korean law) arising from charterparty agreements, insurance proceeds, freight, etc;
- the creation of a pledge over the shares of the vessel-owning company;
- the creation of a pledge over deposit accounts; and
- the transfer of rights under repayment guarantees.

2.2 Ship Leasing

In South Korea, ship leasing transactions have gradually increased in recent years. This trend is driven by stricter risk management by traditional commercial banks in ship finance, volatility in shipbuilding and shipping cycles, and increased funding needs arising from rising vessel prices and expanded investment in environmentally friendly vessels.

Chinese leasing houses have been expanding their share in the international ship finance market. In Korea, however, there are also calls for the adoption of restrictive measures against Chinese leasing companies.

In a loan structure, the borrower retains ownership of the vessel, and the lender structures its recovery through security interests such as a ship mortgage. In a lease structure, on the other hand, ownership of the vessel is held by a separate owner, with the shipping company holding the right to use and operate the vessel. While a mortgagee is entitled to priority repayment upon compulsory execution against the vessel under applicable law, compulsory execution in the event of a lease default depends on the contractual structure of the transaction.

Sale and leaseback transactions have been on the rise in Korea.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

International conventions applicable in South Korea with respect to oil pollution include the International Convention on Civil Liability for Oil Pollution Damage (CLC, 1992), the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND, 1992) and the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001). In addition to these conventions, South Korea has enacted and enforces the Compensation for Oil Pollution Damage Guarantee Act, which is in force and governs matters related to oil pollution damage caused by oil tankers. With respect to wreck removal, the Marine Environment Management Act and the Sea Traffic Safety Act provide the legal basis for the rights and obligations of relevant parties.

3.2 International Conventions: Collision and Salvage

South Korea applies standards for vessel navigation methods and duties of care in navigation in accordance with the Convention on the International Regulations for Preventing Collisions at Sea (COLREGs, 1972). Certain provisions of COLREG are directly incorporated into domestic legislation in force in South Korea, including the Ship Safety Act, and South

Korea's maritime safety laws generally reflect COLREGs' navigation rules in regulating vessel navigation.

The Commercial Act of South Korea also provides for matters relating to vessel collisions in its maritime chapter. In addition, where a vessel collision is not governed by the Commercial Act, the provisions on tort liability under the Civil Act may apply.

While South Korea is not a party to the International Convention on Salvage (1989), its principles are largely reflected in the basic framework governing salvage under the Commercial Act, which sets out key aspects of salvage relationships, including the constitutive requirements for the establishment of salvage, and the calculation methods and limits related to salvage remuneration.

3.3 Convention on Limitation of Liability for Maritime Claims

South Korea is not a party to the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) and its 1996 Protocol. Nevertheless, the Commercial Act of South Korea establishes a regime governing the limitation of ship-owners' liability, and the Act on the Procedure for Limiting the Liability of Shipowners sets out the matters necessary for limitation proceedings. More specifically, South Korean law provides for, inter alia, the scope of limitation, the applicable limits of liability, the constitution of a fund and related procedures.

3.4 Vienna Convention on the Law of Treaties

As South Korea is a party to the Vienna Convention on the Law of Treaties, the Convention constitutes an international treaty that is applicable and binding in South Korea. Treaties that are duly concluded and promulgated have the same legal effect as domestic laws in South Korea; accordingly, the Vienna Convention operates within the South Korean legal order as a governing norm setting out the general principles of treaty interpretation. However, as South Korea is not a party to the LLMC, it is difficult to conclude that the reasoning and holdings of the UK Supreme Court in a relevant case would be applied in the same or a similar manner in South Korea.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Under the Commercial Act of South Korea, the commencement of limitation proceedings of liability may be sought by ship-owners, charterers, ship managers, operators, the general partners of corporate ship-owners, and, subject to certain conditions, ship masters, pilots, etc.

An application for such proceedings is initiated by filing an application for the establishment of a limitation fund for a vessel. The application must be supported by written materials setting out, inter alia, details of the incident, the applicable limit of liability, the grounds for the limited claims and the identities of the limited creditors. Applicants are required to prove not only the occurrence of the incident, but also that the aggregate amount of the limited claims exceeds the relevant limit of liability. Upon such application, the court may issue a deposit order directing the applicant to deposit with the court an amount equivalent to the applicable limit of liability, together with interest calculated at an annual rate of 6%. The deposit may be substituted by the submission of a deposit bond. Once limitation proceedings are commenced following the deposit, an administrator is appointed, and a reporting period and an investigation date are fixed and publicly announced. Upon commencement of the proceedings, limited creditors are, in principle, entitled to receive dividends within the scope of the fund, and the exercise of their rights against the applicant's assets outside the fund is restricted.

The limitation of liability is calculated pursuant to the Commercial Act of South Korea, which, under separate provisions, prescribes the applicable limits of liability by reference to the nature of each claim and the tonnage of the vessel.

3.6 Seafarers' Safety and Owners' Liability

South Korea is a party to the Maritime Labour Convention (MLC, 2006), and the rights and safety of seafarers in South Korea are governed by the Seafarers Act and the Ship Safety Act. In particular, the Seafarers Act plays a central role in regulating seafarers' rights and safety. It aims to guarantee the basic livelihood of seafarers by regulating matters concerning

their duties, service, working conditions, employment security, welfare, education and training.

4. Cargo Claims

4.1 Bills of Lading

South Korea is not a party to the Hague-Visby Rules or the Rotterdam Rules. Matters relating to the carriage of goods by sea and bills of lading are governed by the Commercial Act of South Korea.

4.2 Title to Sue on a Bill of Lading

To bring an action based on a bill of lading in South Korea, a person must be the lawful holder of the bill of lading. When a carrier issues and delivers a bill of lading to the consignor, the consignor becomes the initial lawful holder of the bill of lading, and any person who can demonstrate that they have acquired the substantive rights from the previous lawful holder through an uninterrupted series of endorsements, or by other means, may exercise rights as the lawful holder of the bill of lading. However, the assignment of the title to sue alone, without the transfer of the bill of lading itself, is not recognised under South Korean law.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Under South Korean law, ship-owners are, in principle, liable for damages arising from the loss of, damage to or delay in the delivery of the goods, unless they can prove that neither they, their seafarers nor other employees of the vessel neglected to exercise due care in relation to the goods. Ship-owners may claim a limitation of liability for cargo loss or damage in accordance with the provisions on limitation of liability under the Commercial Act of South Korea. However, the extent of such liability does not differ depending on whether the ship-owner acts as the actual carrier or the contractual carrier.

4.4 Misdeclaration of Cargo

The Commercial Act of South Korea provides that a consignor who enters a false or inaccurate statement in a waybill is strictly liable for any damage resulting therefrom to the carrier. At present, there is no judicial precedent in South Korea that directly addresses the misdeclaration of cargo.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The Commercial Act of South Korea provides that damage claims against a carrier arising from the loss of, damage to or delay in the delivery of goods shall be extinguished if no judicial claim is brought within one year from the date on which the cargo was delivered, or should have been delivered, to the consignee. This time bar reflects a partial adoption of the Hague-Visby Rules and is intended to ensure the swift conclusion of legal relations in marine transport. Although this period constitutes an exclusion period, it may be extended by agreement between the parties.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

South Korea is not a party to the International Convention on Arrest of Ships (1999). In South Korea, ship arrest is effected pursuant to procedures for provisional attachment of vessels under the Civil Execution Act. Such provisional attachment is conceptually distinct from the independent arrest action recognised under English law. Nevertheless, under South Korean civil law, a vessel may be arrested through general civil execution and preservative procedures provided for in the Civil Execution Act.

5.2 Maritime Liens

Article 777 (1) of the Commercial Act of South Korea enumerates the types of claims that give rise to maritime liens over vessels, which include the following:

- litigation costs incurred for the common benefit of creditors, taxes imposed on the vessel in connection with the voyage, pilotage dues, towage fees, and expenses for the maintenance and inspection of the vessel and its appurtenances after the final entry into a port;
- claims arising out of employment contracts of crew members or other employees of the vessel;
- salvage claims arising from maritime rescue operations and claims relating to contributions in general average; and
- claims for damages arising from collisions or other navigational accidents, damage to navigational facilities, port facilities or sea routes, and compen-

sation for death or personal injury suffered by crew members or passengers.

Indemnities for injuries to crew members constitute claims giving rise to maritime liens over the vessel. However, as a general principle, claims arising out of a time charterparty do not give rise to maritime liens over the vessel.

Claims giving rise to maritime liens take priority over other rights over the vessel, such as ship mortgages. However, other vessel-related claims that are not expressly enumerated by law are not accorded such priority. Claims giving rise to maritime liens may serve as a strong basis for ship arrest. By contrast, where a ship arrest is sought on the basis of a general maritime claim, the existence of the claim must be established, and the requirements under the Civil Execution Act or those applicable to other preservative measures must be satisfied.

5.3 Liability in Personam for Owners or Demise Charterers

Provisional attachment is, by its nature, an execution against an obligor's property; accordingly, a provisional attachment over a vessel requires that the obligor be the owner of the vessel subject to ship arrest. However, in the enforcement of security interests based on ship mortgages or maritime liens, the obligor's personal liability is not determinative; rather, the key issue is whether the relevant security interest has been lawfully established over the vessel. Once a ship mortgage or maritime lien has been lawfully constituted over a vessel, neither the identity of the vessel owner nor the existence of the owner's personal liability is taken into account. In particular, claims giving rise to maritime liens are understood as liabilities that are inseparably attached to a specific vessel. Accordingly, when a creditor exercises its rights under such a claim, the relevant vessel may be subject to enforcement regardless of whether the vessel owner bears any personal liability.

5.4 Unpaid Bunkers

Bunker supply claims do not constitute claims giving rise to maritime liens under the Commercial Act of South Korea. Accordingly, it is generally not permitted to commence an auction immediately solely on the

basis of unpaid bunker charges. In practice, bunker suppliers rarely hold direct security interests, such as ship mortgages, over the relevant vessel.

In cases of unpaid bunker charges, bunker suppliers therefore typically resort to provisional attachment as the means of effecting ship arrest. In such cases, the key requirements are whether the supplier holds a direct monetary claim against the obligor and whether the obligor is the owner of the vessel subject to arrest.

In bunker transactions, it is common for the contractual supplier and the physical supplier to be separate entities. However, the courts do not recognise standing to apply for provisional attachment merely on the basis that a party is the physical supplier; only a party holding a direct claim against the obligor is entitled to apply for provisional attachment over the vessel. In addition, where the obligor is merely a charterer and not the owner of the vessel, the vessel does not form part of the obligor's property, and provisional attachment over the vessel is therefore not permitted. This applies regardless of whether the bunkers were used by the relevant vessel.

5.5 Arresting a Vessel

To effect a ship arrest, a power of attorney and supporting materials must be submitted to the court. Specifically, the supporting materials include documents evidencing the preserved rights, namely documents establishing the basis of the claim (eg, contracts, bills of lading and charterparties) and documents demonstrating the necessity for preservative measures, such as materials relating to the obligor's financial status. In practice, it is generally sufficient to submit copies of such materials that have been notarised and apostilled or authenticated by consular legalisation. As a general rule, documents filed with the courts should be accompanied by Korean translations. However, where the matter is urgent, it is permissible to submit translations of only part of the materials on an interim basis.

5.6 Arresting Bunkers and Freight

In South Korea, bunkers on board a vessel are deemed to constitute independent movable property separate from the vessel and are therefore subject to provisional attachment. Moreover, freight constitutes

a monetary claim and is likewise subject to provisional attachment.

5.7 Sister-Ship Arrest

In South Korea, ship arrest is permitted only where there is a direct nexus between the claim and the vessel. As a general rule, sister-ship arrest, under which another vessel is arrested, is not permitted.

5.8 Other Ways of Obtaining Attachment Orders

In South Korea, in addition to ship arrest, creditors may apply for various preservative measures under the Civil Execution Act for the purpose of preserving their claims, including the following:

- provisional attachment over property owned by the obligor, such as real estate and movable property registered in the obligor's name;
- provisional attachment over claims, including claims, deposit claims, freight claims and charter hire claims held by the obligor against third parties; and
- provisional disposition, which, in cases involving non-monetary claims prohibits the disposal of specific property or the transfer or creation of rights.

5.9 Releasing an Arrested Vessel

Options available in South Korea to interested parties for the release of an arrested vessel include the following:

- repayment of the underlying debt on the merits;
- cancellation of the provisional attachment by the provision of collateral; and
- filing an objection to the provisional attachment order.

Under the Civil Execution Act of South Korea, the court recognises the release of provisional attachment only through the deposit of "marketable securities recognised by the court". Since a letter of undertaking (LOU) issued by a P&I club does not constitute such court-recognised marketable securities, it is not accepted by South Korean courts as collateral for the release of a vessel.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial Sale Procedure

In South Korea, the sale of an arrested vessel is conducted in accordance with the provisions governing the enforcement of security interests under the Civil Execution Act. The procedure consists of the following steps:

- provisional attachment of the vessel;
- the court's decision to commence compulsory execution;
- appraisal of the vessel and determination of the sale conditions;
- public notice of tender and bidding;
- determination of the successful bidder and issuance of a sale permission;
- payment of the purchase price; and
- distribution of the proceeds.

South Korean law does not permit the private sale of arrested vessels, and a vessel may be sold only through court-supervised auction procedures.

Vessel Maintenance During Arrest

A court-appointed administrator or the enforcement authority supervises the maintenance of an arrested vessel until its sale. The costs incurred for such maintenance are satisfied with priority from the sale proceeds.

Priority Ranking of Claims

The Civil Execution Act of South Korea sets out the general principles governing the priority ranking of distributions, and these principles apply *mutatis mutandis* to judicial sales of vessels. Under the Act, distribution priority follows the order of (i) costs of execution, (ii) maritime liens, (iii) ship mortgages and (iv) general claims.

Maritime liens themselves are subject to an internal order of priority, which may be briefly summarised as follows.

- First priority: Claims arising out of employment contracts of seafarers; tonnage tax, light dues and other public charges imposed on the vessel in con-

nection with navigation; pilotage dues; and salvage claims relating to the vessel, passengers or cargo.

- Second priority: Claims for damages arising from death or personal injury caused by the navigation of the vessel.
- Third priority: Harbour dues, water dues, pilotage dues, towing fees, anchorage fees, and expenses incurred for the supervision and maintenance of the vessel at ports.
- Fourth priority: Claims arising out of employment contracts of the shipmaster, officers and other employees of the vessel.

5.11 Insolvency Laws Applied by Maritime Courts

A rehabilitation proceeding under the Debtor Rehabilitation and Bankruptcy Act of South Korea functionally corresponds to Chapter 11 of the United States Bankruptcy Code. Upon commencement of the rehabilitation proceeding, all authority over the debtor company is exercised by the court-appointed administrator, and the debtor company is prohibited from disposing of its assets, including vessels, until the rehabilitation proceeding is completed.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

There is no separate statutory provision under South Korean law that expressly governs the wrongful arrest of a vessel. Accordingly, where an arrest effected through provisional attachment is found to be wrongful, liability is determined in accordance with the general principles of tort liability, provisional attachment and compulsory execution under the Civil Act of South Korea.

Where a creditor who has applied for a preservative measure, such as provisional attachment or provisional disposition, loses the action on the merits after the execution of the measure, South Korean courts presume, in the absence of countervailing evidence, that the creditor acted with intent or negligence. In such cases, unless special circumstances exist, the creditor is liable under the Civil Act of South Korea to compensate for damages causally connected to the execution of the preservative measure.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

South Korea is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, and maritime passenger claims are governed by the domestic legal framework, primarily the Commercial Act of South Korea, rather than by international conventions. While the Commercial Act regulates liability for passenger carriage by sea and the carrier's duty of safety, it does not prescribe a separate limitation period for claims arising from the death or personal injury of passengers. Accordingly, the limitation period for such passenger claims is determined in accordance with the general principles of the Civil Act of South Korea, under which a three-year extinctive prescription applies where liability is established as a tort.

The Commercial Act of South Korea limits the carrier's aggregate liability to an amount calculated by multiplying a fixed unit amount by the number of passengers that the vessel is authorised to carry under its vessel certificate.

In addition, claims for damages suffered by passengers arising from a vessel's collision or other navigational accidents are secured by maritime liens under the Act.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

South Korean courts, in principle, recognise and enforce governing law and jurisdiction clauses stated in bills of lading. In addition, where a bill of lading contains a governing law and jurisdiction clause, and the holder acquires the bill without raising any objection, the prevailing view is that an agreement on the governing law is deemed to have been formed between the parties.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

South Korean courts do not automatically regard a law and jurisdiction clause in a charter party as being incorporated into a related bill of lading. Rather, such incorporation is recognised only where certain requirements are satisfied, including:

- whether the holder of the bill of lading could reasonably have been aware of the contents of the charterparty; and
- whether the incorporation wording clearly indicates that the arbitration clause is incorporated.

In practice, there is a case in which the court has denied the incorporation of a governing law and arbitration clause into a bill of lading, even though the charterparty itself was governed by English law, on the grounds that the bill of lading contained no provision stating that the arbitration clause was incorporated into the bill of lading or that the general terms of the charterparty were incorporated therein.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

South Korea is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention, 1958), and its provisions apply directly in South Korea. The recognition and enforcement of foreign arbitral awards are carried out in accordance with the Arbitration Act of South Korea. However, recognition or enforcement may be refused on an exceptional basis only where one of the limited grounds for refusal set out in the Convention is established.

In practice, South Korean courts have maintained an arbitration-friendly approach and tend to interpret the grounds for refusing the recognition and enforcement of foreign arbitral awards strictly and narrowly.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

South Korean courts may order the provisional attachment (arrest) of a vessel even where a claim is subject to the jurisdiction of foreign arbitration pursuant to a law and jurisdiction clause. In South Korea, the issue of jurisdiction over the merits of a dispute is distinct

from the availability of preservative measures, and South Korean courts therefore permit the provisional attachment of vessels or other assets located in South Korea for the purpose of preserving claims, even where foreign arbitration is contemplated or ongoing.

7.5 Domestic Arbitration Institutes

The primary arbitration institution in South Korea is the Korean Commercial Arbitration Board (KCAB), which administers a broad range of commercial and international arbitration cases. The KCAB operates a specialised institute dedicated to maritime, shipbuilding and shipping-related disputes.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Where court proceedings are commenced in breach of a foreign jurisdiction or arbitration clause, the defendant may raise an objection based on lack of jurisdiction or the existence of a valid arbitration agreement. Such objections are procedural in nature, and if the court upholds the defendant's objection, the action filed by the plaintiff may be dismissed without prejudice.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The Act on Restriction on Special Cases Concerning Taxation provides special rules for the calculation of the corporate tax base applicable to shipping companies, under which shipping companies in South Korea are subject to the tonnage tax system until 31 December 2029. The tonnage tax system was introduced in 2005 to enhance the international competitiveness of the shipping industry, and its extension has been reviewed and determined every five years.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

A mere delay in the delivery of cargo, or a significant delay in loading or discharging operations, is not automatically regarded as force majeure. In general, force majeure is recognised only where certain requirements are satisfied, including:

- the relevant circumstance was unforeseeable at the time the agreement was entered into;
- the circumstance arose from an external cause beyond the parties' control and management; and
- performance became impossible despite the taking of reasonable measures. For instance, events such as war, port closure imposed by the state or large-scale natural disasters may constitute force majeure in South Korea.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

South Korea has implemented IMO 2020 and incorporated its sulphur content limits for fuel oil used on board ships into domestic law by amending the Marine Environment Management Act. Accordingly, South Korea applies the sulphur content restrictions not only to vessels engaged in international navigation, but also to vessels calling at South Korean ports or navigating within South Korea's territorial waters or other areas under its jurisdiction.

The sulphur content of fuel oil used on board ships operating in South Korea's maritime jurisdiction is capped at 0.5% m/m, which corresponds to the global standard under IMO 2020. Meanwhile, South Korea has enacted and implemented the Special Act on the Improvement of Air Quality in Port Areas with the aim of improving air quality in and around port areas. Pursuant to this Act, South Korea has designated emission control areas (ECAs) for sulphur oxides (SOx) and particulate matter, primarily around major ports, including Busan, Incheon and Ulsan. For vessels navigating or anchoring in such ECAs, a more stringent sulphur content limit of 0.1% m/m applies.

The primary authorities responsible for the enforcement and supervision of the IMO 2020 sulphur content limits in South Korea are the MOF and the Korea Coast Guard. In practice, compliance is regularly monitored through PSC inspections, which include fuel oil sampling, verification of bunker delivery notes (BDNs) and review of fuel changeover records. Under the relevant laws and regulations, the use of fuel oil exceeding the applicable sulphur content limits or the submission of false or inaccurate records may result in not only administrative sanctions but also criminal penalties.

9.3 Trade Sanctions

South Korea has incorporated and implemented United Nations Security Council (UNSC) resolutions agreed upon by the international community, together with the resulting trade and economic sanctions, within its domestic legal framework. However, South Korea does not currently have a single, comprehensive general law governing the overall implementation of UNSC resolutions and sanctions. Instead, depending on the nature and scope of the sanctions, the relevant authorities have given domestic effect to such measures through the enactment and enforcement of administrative rules, including public notices and directives.

In this regard, there have been ongoing calls for the enactment of a general law that would explicitly govern the domestic implementation of UNSC resolutions and sanctions, and related bills have been under discussion in the National Assembly since 2021. However, at present, it remains uncertain whether such a general law will ultimately be enacted. Meanwhile, the implementation of individual sanctions continues to be carried out primarily pursuant to existing sector-specific laws, such as the Foreign Trade Act and the Foreign Exchange Transactions Act, as well as administrative measures adopted thereunder.

In response to the Russia–Ukraine war, South Korea has aligned itself with the international sanctions framework and introduced trade and economic sanctions against Russia, including financial sanctions. In particular, measures have been implemented to

restrict or suspend financial transactions with major Russian financial institutions, which have had a material impact on foreign exchange transactions and cross-border payments in practice. Notably, as with other sanctions regimes in South Korea, these measures are implemented not on the basis of a comprehensive general statute, but primarily through government policy decisions and administrative measures adopted by the relevant authorities.

9.4 International Conflict

South Korea incorporates and implements trade and economic sanctions agreed upon by the international community within its domestic legal framework. Sanctions adopted pursuant to resolutions of the UNSC are implemented directly in South Korea through the Constitution of the Republic of Korea and the Act on Implementation of UNSC resolutions. Such sanctions are given effect through measures including foreign exchange controls, export and import restrictions, asset freezes and limitations on financial transactions. In addition, South Korea tends to align its policies with international sanctions regimes led by major countries and regions, such as the United States and the European Union, and accordingly operates transaction-specific regulatory and licensing regimes pursuant to relevant domestic laws, including the Foreign Trade Act and the Foreign Exchange Transactions Act.

To ensure the effectiveness of international trade sanctions, administrative authorities and the judiciary in South Korea co-operate through regulatory enforcement and sanctions. In addition, South Korean law provides institutional mechanisms under which transactions that would otherwise be subject to sanctions may be exceptionally permitted through prior authorisation or exemption approvals.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

No response has been provided in this jurisdiction.



Law and Practice

Contributed by:

José Antonio Domínguez, Mikel Garteiz-Goxeaskoa, Enrique Ortiz and Irantzu Sedano Beitia
Aiyon Abogados SLP

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Contributed by: José Antonio Domínguez, Mikel Garteiz-Goxeaskoa, Enrique Ortiz and Irantzu Sedano Beitia, Aiyon Abogados SLP

Aiyon Abogados SLP is a boutique law firm formed by top-tier lawyers who are highly experienced in litigation, arbitration, negotiation and contract-drafting. The firm offers assistance in any port and court in Spain, through its four offices in Bilbao, Madrid, Algeciras and Cadiz. The firm's main areas of practice are shipping (both dry and wet), transport, international trade and insurance law. Aiyon Abogados is known for its excellent emergency response capabilities.

Regular clients include ship-owners, charterers, large trading companies, freight-forwarders (NVOCC), P&I clubs, defence clubs, H&M insurers, cargo insurers, tug companies, port terminals and ship agents. Aiyon is a member of the Spanish MLA and other relevant professional associations. The firm regularly co-operates with the Spanish Maritime Institute and with many universities, including Deusto, Basque Country, La Laguna and Cadiz.

Authors



José Antonio Domínguez holds a law degree and a master's degree in port company management and maritime law, respectively. He also holds an STCW OOW Certificate for working as a deck officer on passenger and

RoRo vessels. José joined the Bar Association in 2008 and has since provided both contentious and non-contentious advice to clients in all kinds of maritime disputes, including high-profile cases. He became a partner at Aiyon Abogados in 2015. He is a regular lecturer at Spanish universities and provides training sessions for import/export companies and private entities.



Enrique Ortiz started in the maritime sector in 1998, working for a P&I club correspondent in Spain. He specialised in maritime and insurance law during his traineeship at several P&I clubs and law firms based in

London. Previously a senior associate at a Spanish shipping firm, Enrique joined Aiyon Abogados as a partner in 2015. His areas of expertise are maritime, transport and insurance law. He deals with all kinds of transactions, litigation and claims involving the interests of insurance companies, ship-owners and cargo interests. Enrique is a member of the Bar Association of Cadiz.



Mikel Garteiz-Goxeaskoa qualified as a Spanish lawyer in 2000. He was previously a senior associate in a leading maritime law firm, and became a partner at Aiyon Abogados in 2015. During his professional

practice, Mikel has acquired considerable experience in a broad number of cases dealing with cargo claims, charterparty claims, salvage, collisions, ship arrest, cargo lien, marine pollution, project cargo carriage contracts drafting and revision, ship-building and offshore construction contract drafting, and other areas. He collaborates regularly with universities and international publications.



Irantzu Sedano Beitia was admitted to the Bar Association in January 2021 and joined the Bilbao office of Aiyon Abogados in October 2019. Her practice focuses on maritime law and commercial matters. She has

developed experience across a broad spectrum of maritime work, including ship arrests and other precautionary measures, recovery actions, insurance claims, sanctioning proceedings, marine pollution matters, cargo-related claims and a wide range of shipping-related disputes.

Aiyon Abogados SLP

Plaza de Venezuela, 1
Principal, Dcha Dcha
48001
Bilbao
Spain

Tel: +34 94 434 02 35
Fax: +34 94 497 82 09
Email: info@aiyon.es
Web: www.aiyon.es



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Spain does not have courts that specialise exclusively and permanently in maritime and shipping matters in the strict sense of a separate maritime judiciary. Maritime and shipping disputes have been adjudicated within the ordinary civil judicial system, principally by the *Seccion de lo Mercantil de los Tribunales de Instancia* (Mercantile Sections), which under Article 87.6 of the *Ley Orgánica del Poder Judicial* have competence over disputes involving maritime law, among other commercial matters (general carriage of goods, corporate, insolvency, etc).

On 3 April 2025, *Seccion de lo Mercantil* replaced the previous *Juzgados de lo Mercantil* (Mercantile Courts) after the entry into force of the Organic Law 1/2025, of 2 January, on measures to improve the efficiency of the Public Justice Service.

Common claims filed before the Mercantile Sections of the *Tribunales de Instancia* are cargo claims, collisions, claims arising from ship construction or repair contracts, contractual disputes, stevedore damages to the ship or the cargo and marine insurance disputes. Ship arrest is also a common application dealt with by the Mercantile Sections.

Salvage and emergency towing claims, however, may be heard before the Maritime Arbitration Conseil (an

administrative body) if there is an agreement for such between salvors and ship-owners. In the absence of such an agreement and following the Second Additional Disposition of the Spanish Shipping Act 2014 (SSA), the Mercantile Sections would also have jurisdiction for salvage and emergency towing claims. It should be noted that, until the Maritime Arbitration Conseil's Regulation is enacted, the Conseil's functions will be exercised by the Central Maritime Courts (a Navy body).

Claims related to labour issues, such as seafarers' claims related to their employment contract, labour rights, personal injury affecting crew and others, are subject to the jurisdiction of the Labour Sections of the *Tribunales de Instancia*, according to Article 9.5 of the *Ley Orgánica del Poder Judicial*.

Cases concerning marine sanctioning proceedings derived from breach of maritime regulations (the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), etc), port dues and/or against the Spanish Maritime Administration are subject to the Contentious Administrative Sections following Article 9.4 of the *Ley Orgánica del Poder Judicial*.

1.2 Port State Control

Royal Decree 1737/2010 approves the Regulation that establishes the inspections of foreign vessels in Spanish ports. These inspections are carried out to ensure compliance with international and European Conventions and Regulations for the safety of life at

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sea, marine and environmental protection, and life and work standards for seafarers, all within the frame of the Paris Memorandum of Understanding (MOU).

The competent authority for foreign vessel inspections is the Ministry of Transport and Sustainable Mobility, through the Harbour Master Offices in each port.

Groundings and wreck removal outside internal waters are also subject to the powers of the Ministry of Transport and Sustainable Mobility through the Harbour Master Offices, whereas grounding and wreck removal within internal waters are subject to the relevant Port Authority. In both cases, the competent authorities have the power to request salvage or wreck-removal operations from the owner or its insurer. If owners or insurers do not comply with this request, the competent authorities are empowered either to sink the vessel or to remove the wreck, all at the owner's/insurer's expense, without the possibility of claiming limitation of liability. Authorities would have a lien on the recovered property and can sell it to recover the costs incurred.

In order to prevent marine pollution, the Harbour Masters and Port Authorities are empowered to visit, inspect and arrest vessels within Spanish jurisdictional waters, and to initiate judicial actions or any other action they deem necessary to protect the environment.

As a state party to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), Spain has developed the National Marine Response Plan and the National Shore Protection Plan to prevent and fight pollution at sea and onshore under the powers of the Ministry of Transport and Sustainable Mobility and Coastal Directorate, which will co-ordinate the response to pollution with the assistance of the Spanish salvage public company (SASEMAR), the Army, the police, fire fighters, scientific public agencies, etc. Costs for this response will be claimed against the polluter.

1.3 Domestic Legislation Applicable to Ship Registration

Ship registration is regulated by the State Port and Merchant Navy Act (ie, the Royal Legislative Decree

2/2011), the SSA and Royal Decree 1027/1989, which regulates ship registration and the Maritime Registry.

All vessels or naval artefacts in Spain, including Mobile Offshore Renewable Units (MORU) must be entered on two registries of different natures:

- the Marine Administrative Registry; and
- the Registry of Movable Goods, where ownership, mortgages and encumbrances will be registered.

The Marine Administrative Registry is in the charge of the Ministry of Transport and Sustainable Mobility, and is located in the different Harbour Master Offices. The Registry provides for the register of ships or naval artefacts through a list system that depends on the activity to be performed by each ship. The Registry of Movable Goods, however, is in the charge of the Ministry of Justice.

The Special Registry of Ships and Shipping Companies of the Canary Islands (known as the REBECA), which provides for important tax allowances and corporate benefits, is also worth mentioning.

1.4 Requirements for Ownership of Vessels

Under the Spanish Ports Act, only individuals or companies domiciled in Spain or in any of the European Economic Area (EEA) countries can own a Spanish-flagged vessel, provided that they have a representative within Spanish territory. For companies domiciled outside the EEA, the Spanish flag is only accessible if the vessel is registered under the REBECA.

Title to ownership (sale contract) shall be in writing, and ownership will be acquired with the delivery of the vessel after the contract of sale purchase. However, in order to register the ownership of the vessel, the sale contract needs to be contained in a public deed.

Vessels under construction are registered in the Marine Administrative Registry within list nine, which is a temporary registration. Once the construction has finished, the vessel is registered in the appropriate list according to the purpose of the vessel, and the temporary registration is closed.

Vessels under construction can also be registered in the Registry of Movable Goods. In fact, registration in the Registry of Movable Goods is compulsory when the vessel under construction is subject to a mortgage.

1.5 Temporary Registration of Vessels

Temporary registration of vessels under the Spanish flag is permitted when a foreign-flagged vessel is under a bareboat charterparty and the charterer has its domicile in Spain. The temporary registration will last for the duration of the charterparty.

Similarly, Spanish-flagged vessels chartered by a person domiciled outside Spain may be temporarily registered in the country of the charterers for the duration of the charterparty.

Spain does not permit dual registration: vessels registered in Spain may fly only the Spanish flag. Temporary registration of a foreign vessel in Spain will only take place after the Registry is satisfied that the vessel has been suspended from its original flag.

1.6 Registration of Mortgages

The constitution, modification or cancellation of a mortgage or encumbrance on a vessel or on a naval artefact must be recorded in the Registry of Movable Goods in the charge of the Ministry of Justice. The mortgage agreement may be granted by means of a private contract or a notarial deed. The mortgage agreement must identify:

- the parties;
- the loan guaranteed by the mortgage;
- the date of payment of capital and interest;
- the description and identification of the vessel/ naval artefact;
- the value of the vessel/naval artefact;
- if two or more vessels/naval artefacts are mortgaged, the amount for which each vessel/naval artefact is mortgaged; and
- any other contractual provision to which the parties have agreed.

1.7 Ship Ownership and Mortgages Registry

The Registry of Movable Goods and the Maritime Registry are public. Any person may obtain informa-

tion from their records by applying to the registry and paying register dues for that information.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

In Spain, typical ship financing combines bank credit with a naval mortgage registered on the Movable Property Registry, together with an additional guarantee package (insurance covers, liens on freights, mother company guarantees, etc). In new buildings, private shipbuilder associations grant additional guarantees to facilitate financing, together with public entities (such as the *Instituto de Crédito Oficial*).

There is also a typical Tax Lease structure that aids investment in new buildings with more effective taxation. This usually requires a lease-type agreement.

Finally, some new buildings are eligible for public aids or loans (at low rates or without the need for additional guarantees) if they incorporate cleaner energy technologies or other advanced technologies.

2.2 Ship Leasing

Ship leasing has traditionally coexisted with traditional bank lending as part of the tax lease structure. Although there is no lease database publication, there is no indication that ship leasing is gaining ground. On the contrary, traditional bank lending remains dominant, based on the availability of local builders association's additional guarantee schemes.

Under Spanish law, the main difference between a lessor and a borrower lies in ownership: the lessor retains title to the vessel, whereas the lessee operates it. By contrast, a lender holds only a credit claim secured by a mortgage, with the borrower retaining both ownership and operational control of the vessel.

Mortgage enforcement is a more structured remedy under Spanish law, whereas the lessor might have a remedy based on the International Convention on Arrest of Ships (the "Arrest Convention 1999"), which would require a prior court declaration of the right before enforcement can be obtained.

Contributed by: José Antonio Domínguez, Mikel Garteiz-Goxeaskoa, Enrique Ortiz and Irantzu Sedano Beitia, Aiyon Abogados SLP

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Spain is a member state of:

- the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC Convention);
- the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IOPC Fund);
- the 2003 Supplementary Fund Protocol; and
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER).

The civil liability of owners and interested parties in the event of pollution is also regulated by the SSA, although the application of the above-mentioned Conventions is preferential over domestic law. Articles 386, 388, 389 and 391 of the SSA regulate a strict liability regime for the owner of the polluting vessel, its right to limit liability and its obligation to take out civil liability insurance covering liability for pollution.

As for wreck removal, Spain is not a party to the International Convention on the Removal of Wrecks (the "2015 Nairobi Convention"). Accordingly, wreck removal is regulated by Articles 369 to 383 of the SSA and by Article 304 of the Spanish State Ports and Merchant Navy Act.

Spanish domestic law establishes owners' direct liability for wreck removal and provides that the administration costs arising from wreck-removal activities are privileged. Owners do not have a right to limit liability under the Convention on Limitation of Liability for Maritime Claims (LLMC 76/96) in accordance with the Reservation made by Spain to this Convention for wreck-removal claims.

3.2 International Conventions: Collision and Salvage

Regulation of Collisions

Collisions are regulated by the 1910 Collision Convention and other related Conventions, such as the International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in the matter of

Collisions or other Incidents of Navigation, made in Brussels in 1952, or the 1972 International Regulations for Preventing Collisions at Sea (COLREGs). In Spanish domestic law, collisions are regulated in Articles 339 to 346 of the SSA.

Regulation of Salvage

Salvage is regulated by the 1989 International Convention on Salvage and Articles 357 to 368 of the SSA.

3.3 Convention on Limitation of Liability for Maritime Claims

Setting aside specific liability regimes to be applied in Spain, such as the Hague-Visby Rules, the CLC, the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea of 13 December 1974 (the "Athens Convention"), BUNKER, etc, owners are entitled to limit their liability in accordance with the 1976 International Convention on Limitation of Liability and its 1996 Protocol. The SSA grants ship-owners and carriers the right to opt for the application of the LLMC 76/96 limit or the applicable specific limit.

The SSA also regulates the limitation of liability in Articles 392 to 405, referring to the LLMC 76/96 as the applicable regime.

3.4 Vienna Convention on the Law of Treaties

The recent judgment of the UK Supreme Court in *MSC Mediterranean Shipping Company SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS "MSC Flaminia"* highlights the structural importance of the rules on treaty interpretation laid down in the 1969 Vienna Convention on the Law of Treaties as an essential instrument for ensuring a uniform, coherent and internationally consistent interpretation of multilateral conventions, particularly in highly harmonised fields such as maritime law.

In the Spanish jurisdiction, the Vienna Convention is fully applicable. Spain acceded to the Convention in 1972, and it entered into force in 1980. Accordingly, the provisions of the Vienna Convention have normative status and binding force, and are not confined to a mere interpretative or doctrinal role.

In this context, the general rules of treaty interpretation set out in Articles 31 to 33 of the Vienna Conven-

tion constitute the primary hermeneutic framework applied by Spanish courts. These rules require treaties to be interpreted in good faith in accordance with the ordinary meaning of their terms, in their context and in light of their object and purpose, allowing them to use supplementary means of interpretation only where the result is ambiguous, dark or manifestly absurd. This methodological approach is particularly significant in the field of international maritime law, where an autonomous and uniform interpretation of treaty concepts is essential to preserve legal certainty and the predictability of commercial relations.

Spanish case law, both at Supreme Court level and in lower courts, has consistently relied on the rules of the Vienna Convention when interpreting international treaties in force in Spain (albeit often implicitly).

In this respect, the approach adopted by the UK Supreme Court in the *MSC Flaminia* case, in expressly relying on the interpretative rules of the Vienna Convention to construe the LLMC 76/96, is fully compatible with the interpretative methodology applicable in Spain.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Articles 403 to 405 of the SSA regulate the owners' right to establish a limitation fund, which must be constituted by placing the amount of the limitation (including the interests accrued as of the date of the incident) before the competent court or providing security to the court's satisfaction. Once the fund has been constituted, claimants cannot pursue their claims against any other asset. The constitution of the fund will also give rise to the release of any ship arrest (for the same claim). The release will be ordered by the court in which the fund has been constituted.

3.6 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention has been in force in Spain since 20 August 2013 with the publication in the Spanish official gazette of the instrument of ratification. Spain has also enacted the 357/2015 Royal Decree, by which Spain incorporates Directive 2013/54/EU of the European Parliament and of the Council, of 20 November 2013, concerning certain

flag state responsibilities for compliance with and enforcement of the Maritime Labour Convention.

The Spanish Statute of Workers, which applies to any general worker, is also applicable to seafarers working onboard Spanish-flagged vessels.

4. Cargo Claims

4.1 Bills of Lading

Spain is a member state of the Hague-Visby Rules, which apply to cargo claims under bills of lading. Where the Hague-Visby Rules are not directly applicable, the SSA remits the regulation of liability regimes for all cargo claims to the Hague-Visby Rules, irrespective of whether the carriage is contracted under a bill of lading.

Regulation of the carrier's liability for loss, damage or delay can be found in Articles 277 to 285 of the SSA.

It must be noted, however, that the First Final Disposition of the SSA provides that the SSA will adapt to the Rotterdam Rules if these come into force in the future, in which it is expected that all carriage of goods by sea contracts will be subject to their regime.

4.2 Title to Sue on a Bill of Lading

Title to sue under a bill of lading corresponds to the lawful holder of the bill of lading. According to Article 251 of the SSA, valid transfer of the bill of lading entails the transfer of rights and actions to the transferee, except for the jurisdiction and arbitration clauses. See 7.1 **Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**.

Spanish law does allow the assignment of rights, including the transfer of title to the goods and/or the right to claim for cargo damages. In this regard, one of the most common cases of assignment occurs when the cargo insurer compensates the cargo interest and subrogates into their position. Subrogation entails the assignment of the title to sue in favour of the insurer.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

A carrier may be liable for partial or total loss or damages to the cargo, and for delays. The carrier's liability regime, including limitation, extends to both the contractual and the actual carrier, which are considered to be jointly and severally liable towards the holder of the bill of lading.

Unless the nature and value of the goods have been declared by the shipper before shipment, a carrier may limit its liability to an equivalent of 666.67 special drawing rights (SDR) per loss or damaged package, or two SDR per kilogramme of gross weight of the goods actually lost or damaged, whichever is the higher.

The carrier's liability for delay will be limited to two and a half times the amount of freight charged for the affected cargo, with the maximum limit equivalent to the freight charged for the complete cargo.

The right to limit liability does not apply in the case of wilful misconduct or gross negligence of the carrier.

Carriers are entitled to opt for the aforementioned limitation of liability regime or to apply the limitation of liability regime under the LLMC 76/96.

4.4 Misdeclaration of Cargo

The carrier can establish a claim for damages against the shipper for misdeclaration of cargo, as established in Article 260 of the SSA. Other remedies are the right to discharge the cargo in certain circumstances and the right to destroy it in the case of dangerous goods (following Article 232 of the SSA). Up to January 2026, no relevant judgments have addressed the application of these SSA provisions.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar to file a claim for lost or damaged cargo is one year. This time limit applies to both contractual and tort claims.

Under the Hague-Visby Rules, this time bar can be extended by agreement of the parties (ie, a time extension) but it cannot be interrupted by a letter of demand addressed to the respondent. If the claim is

not filed within that one-year period or within the time extension, the action is time-barred. The nature of the one-year period of the Hague-Visby Rules has been confirmed by a Supreme Court judgment of 5 February 2026.

Under Article 286 of the SSA, however, and notwithstanding the statutory remission to the provisions of the Hague-Visby Rules, this one-year time bar has been interpreted in Spanish case law as potentially subject to interruption by a letter of demand. Law on the following basis: where the Hague-Visby Rules apply directly, the one-year time bar is not subject to interruption, whereas where the Hague-Visby Rules apply by remission of the Spanish Maritime Navigation Act, the limitation period may, in principle, be subject to interruption by an extrajudicial demand, in accordance with the general rules on prescription under Spanish law.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Spain is a member state of the 1999 Arrest Convention, which was signed in Geneva on 12 March 1999 and came into force on 14 September 2011.

The domestic law that covers ship arrest in Spain is the SSA, in its Articles 470 et seq, alongside the provisions regulating general conservatory measures that can be found in the Spanish Code of Civil Procedure 1/2000 (Articles 721 et seq).

5.2 Maritime Liens

Spain is a member state of the 1993 International Convention on Maritime Liens and Mortgages (Geneva, 6 May 1993) (the "Lien Convention"), which has been in force in Spain since 5 September 2004.

Articles 122 et seq of the SSA provide that maritime liens are governed by the 1993 Lien Convention. Accordingly, and pursuant to Article 4.1 of the Convention, maritime liens arise for:

- crew wages and related sums, including repatriation and social insurance;

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- loss of life or personal injury directly connected with the operation of the vessel (subject to Article 4.2 (a)–(b));
- salvage reward;
- port/canal/waterway and pilotage dues; and
- tort claims for physical loss or damage caused by the operation of the vessel, excluding cargo, containers and passengers' effects (subject to Article 4.2 (a)–(b)).

Under Article 124 of the SSA, any liens recognised outside the Convention (under domestic law, EU rules or other treaties applicable in Spain) rank below mortgages and other registered charges. The government has considered amending the SSA to add supplies and repairs in Spanish ports as maritime liens. Spain distinguishes between maritime liens (claims that “follow” the vessel and may be enforced in rem notwithstanding changes of ownership/flag) and maritime claims (ie, those listed in Article 1 (1) of the 1999 Arrest Convention), which permit ship arrest and include, beyond liens, a wider set of claims (eg, charterparty and carriage disputes, cargo damage, general average, towage/pilotage, bunkers/supplies/services, ship construction/repair, port dues, disbursements, insurance premiums, commissions/agency fees, ownership/co-ownership disputes, mortgages/charges, and ship sale disputes).

Consequently, chartering liabilities qualify as maritime claims enabling arrest.

5.3 Liability in Personam for Owners or Demise Charterers

In order to arrest a vessel under Spanish law, its owners or demise charterers must have in personam liability for the maritime claim. Exceptions to this principle are maritime liens: when a claim is a maritime lien, the claimant may arrest the offending vessel even if its owner or demise charterer is not liable in personam for the claim.

5.4 Unpaid Bunkers

Bunker supply to a vessel is considered a maritime claim and the bunker supplier (contractual or actual supplier) can arrest the vessel for unpaid bunkers by virtue of Article 1.1) of the 1999 Arrest Convention,

provided that these bunkers were purchased by the ship-owner or by the demise charterer.

Bunkers ordered by a charterer would not enable the claimant to arrest the vessel following Article 3.3 of the Arrest Convention, as a claim for unpaid bunkers is not considered a lien and does not create an in rem action against the vessel. However, in cases in which the terms and conditions of the actual supplier establish a direct action against the ship-owner or demise charterer and these terms and conditions have been accepted by the Master by signing the “bunker receipt”, Spanish courts have agreed to arrest the vessel. The charterer cannot bind the vessel by ordering bunkers without the Master's acceptance, which would be binding on the owner.

5.5 Arresting a Vessel

The arrestor must appoint a court agent (also known as a procurator) and must be assisted by a lawyer in the arrest proceedings. The court will require a notarial power of attorney (POA) evidencing that appointment. If the power of attorney is issued before a foreign public notary, it will need to be legalised.

Under the SSA, a mere allegation of the maritime claim would suffice for the arrest application. It is, however, advisable to submit prima facie evidence of such a claim with the arrest petition. Any document submitted to the court must be translated into Spanish. Free translations of both the POA and evidence will suffice for this purpose.

In practice, the arrest petition, including the POA and any other document, will be presented electronically by the procurator to the court. Accordingly, the documents will be presented as copies.

The SSA requires the arrest petitioner to provide counter-security, prior to the court enforcing the arrest, which shall amount to a minimum of 15% of the maritime claim. This counter-security is provided to guarantee possible damages in the case of wrongful arrest. In most cases, the counter-security requested by Spanish courts is limited to this 15% of the maritime claim and is only occasionally increased when the court considers that there are other relevant factors that may give rise to the need to set a higher

guarantee (eg, passenger vessels or when the vessel to be arrested is subject to a regular line).

5.6 Arresting Bunkers and Freight

The Arrest Convention is applicable only to ship arrest, and not to bunker or freight arrest.

The arrest of bunkers or freight is regulated by the provisions of the Spanish Code of Civil Procedure regarding conservatory measures. These provisions require the claimant not only to provide counter-security but also to present a *prima facie* case of claim (*fumus boni iuris*) and proof of the *periculum in mora*, or danger in delay. In practice, since a bunker arrest entails detaining a vessel without a claim against its owner or maritime lien, Spanish courts are reluctant to agree to bunker arrest.

5.7 Sister-Ship Arrest

Any other ship owned by the debtor, also known as a sister-ship, can be arrested under Spanish law in accordance with Article 3.2 of the Arrest Convention, as referred to by Article 475 of the SSA. Accordingly, a court may arrest not just the offending ship, but also other ships owned by the company liable for the claim, provided that this company was the owner or demise charterer of the offending ship when the claim arose.

5.8 Other Ways of Obtaining Attachment Orders

Other ways to obtain security would be regulated by the provisions for conservatory measures of the Spanish Code of Civil Procedure and would include the attachment of assets (other than a vessel) or rights, injunctions, etc.

5.9 Releasing an Arrested Vessel

The first and quickest option to release an arrested vessel is by placing security before the court. The type of security – eg, Letter of Undertaking (LOU) of a protection and indemnity insurance (P&I) club – can be agreed with the arresting party, and this agreement should be respected by the court. If an agreement on the security is not possible, in order to release the vessel, security must be placed before the court in any of the means admitted by Spanish Procedural Law. This would include a cash deposit or an unconditional – and unlimited in duration – bank guarantee issued by

a first-class Spanish bank. A P&I club LOU will not be admitted by the Spanish courts if the arresting party has not agreed to do so.

The second way to obtain the vessel's release involves disputing the arrest order on the basis that it is a wrongful arrest – ie, that it does not comply with the requirements of the Arrest Convention. This second possibility takes longer than the first (several weeks or even months), because the court will schedule a hearing prior to deciding on the issue.

The third possibility would involve the arresting party not complying with their obligation to commence and file the proceedings on the merits before the competent court/arbitrator within the period of time granted by the Spanish court. This period is usually 20 to 90 days and will depend on where the competent court is located. If Spain has jurisdiction, the period will be only 20 days. The period starts from the date the arrest order was notified to the owners (usually via the Master or ship agents and served by the court via the Harbour Master).

5.10 Procedure for the Judicial Sale of Arrested Ships

Under Spanish law, the arrest does not give the claimant the legal right to seek direct enforcement against the vessel.

The procedure for judicial sale of the arrested ship is subject to the commencement of recognition (when the judgment or award has been issued by a foreign – non-European – jurisdiction or international arbitration) and enforcement proceedings of the final judgment or award on the merits of the claim.

The enforcement proceedings of a (national or recognised foreign) judgment or award against any asset located in the Spanish territory are regulated by the Spanish Code of Civil Procedure, and the subsequent judicial sale of the vessel is regulated by Articles 480 to 486 of the SSA, which mandate the observance of the Lien Convention provisions and, subsidiarily, the Spanish Procedural Rules.

Pursuant to Article 636.3 of the Spanish Code of Civil Procedure, the court will order the sale of the vessel

through a public auction, which may be conducted either by a specialised body or directly by the court. Within the framework of the court proceedings, the parties involved (namely, the claimants/creditors and the debtor) retain the option to reach an agreement regarding the sale of the vessel. Such an agreement, however, must be approved by the court and accepted by any third party holding an interest in the vessel.

The order granting the judicial sale of the vessel must be served to:

- the authorities and vessel's Registrar of the flag state;
- the registered owner;
- the holder of a nominative mortgage or charge duly recorded; and
- any holders of mortgages/charges duly recorded, maritime lien or *hypothèques* that put the court/ authority on notice of them.

Provided that the recipients of such notifications are known, the aforementioned service containing all particulars of the auction (place, date, proceedings, circumstances, etc) shall be made in writing at least 30 days before the date of the auction.

Any holder of a maritime lien can appear in the auction proceedings to safeguard, defend or assert a third-party preference claim.

Upon the sale of the vessel at public auction, all the mortgages, *hypothèques*, charges, maritime liens and claims will be cancelled.

The sale of the vessel can be delegated to a specialised body, usually a Port Authority or a broker.

During the arrest, the vessel must be maintained by the arrested party. Spanish courts will not require the arresting party to pay the costs of maintenance of the vessel during the arrest. Furthermore, the port where the vessel is retained will look after the safety of the port and may take measures to guarantee such safety, at the ship-owner's expense.

Ranking of Claims

Pursuant to Article 386 of the SSA, the following costs and expenses take preference over the list of liens contained in the Lien Convention:

- any wreck-removal expenses that must be settled to the Spanish Maritime Authorities; and
- the cost and expenses arising out of the ship-arrest proceedings and her subsequent sale, including maintenance of the vessel and those crew wages accrued from the moment the arrest is in place, and any other sums as referred to in Article 4.1.a) of the Lien Convention.

Second, any remaining funds shall be distributed up to their full and final settlement, according to their preference ranking set forth in the Lien Convention. Any possible remaining balance (after all credits have been paid) will be returned to the owner.

According to the Lien Convention, maritime liens take priority over registered mortgages.

5.11 Insolvency Laws Applied by Maritime Courts

Spain's insolvency laws regulate the reorganisation or liquidation of a company in financial distress, similar to Chapter 11 of the United States.

Mercantile courts are competent to adjudge not only maritime matters but also insolvency matters.

Once bankruptcy protection has been requested and bankruptcy proceedings initiated, a court cannot enforce against any asset owned by the debtor outside the bankruptcy proceedings. Accordingly, any individual enforcement will be stopped.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

A court will order the arresting party to pay for damages or costs caused by the arrest and to run with all legal costs in the following three scenarios:

- if the arrest is in dispute and it is finally lifted by the arresting court after the hearing, as set forth in Article 741.2 of the Spanish Procedural law;

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- if the arresting party fails to initiate the proceedings on the merits in due time before the competent court or in arbitration, as set forth in Article 730.2 of the Spanish Procedural law; and
- if the claim on the merits is dismissed in full, as provided by Article 745 of the Spanish Procedural law.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Passenger claims in Spain are regulated by international conventions, European regulations and domestic laws.

International Conventions

Spain is a member state of the Athens Convention and the 2002 Protocol to that Convention, which provide a liability and insurance regime for passenger claims and their luggage. They apply to international carriage when the ship is flagged in a state party, the contract of carriage has been made in a member state, or the place of departure or destination is in a state party.

EU Regulations

The European Union has adopted Regulation (EC) 392/2009 of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents. This Regulation expands the provisions of the 1974 Athens Convention, as amended by the 2002 Protocol, to domestic carriage within member states for ships of Classes A and B when:

- the ship is flying the flag of a member state;
- the contract of carriage has been made in a member state; or
- the place of departure or destination is a member state.

Domestic Laws

The contract of carriage of passengers by sea is regulated by Articles 287 et seq of the SSA. The SSA applies to both international and domestic carriage of passengers and their luggage by sea and provides, in Article 298, that carriers' liability shall be regulated by the 1974 Athens Convention, as amended by the

Protocols to which Spain is a party, the Regulations of the European Union and the SSA.

The Spanish Constitution establishes that international conventions duly ratified by Spain and European regulations are not only directly applicable, but they also prevail and take preference over domestic law in the event of conflict. Therefore, while the three sources of law are currently directed to the 1974 Athens Convention, as amended by the 2002 Protocol, this has not always been the case, and conflict of law rules may have to be considered when deciding the applicable law in the future.

Time Limit to File a Claim

The time limit for any action for damages arising out of the death of or personal injury to a passenger, or for the loss of or damage to luggage, is two years. This time limit is the same for actions under the Athens Convention, the European Regulation or the SSA.

This two-year period may be interrupted and renewed by a letter of demand or by acknowledgement of liability.

Limitations on Liabilities Available to the Owners in Respect of a Passenger's Claim

A carrier's liability for the loss suffered as a result of the death of or personal injury to a passenger is limited to 400,000 SDR per person on each distinct occasion.

In the death of or personal injury to a passenger as a result of a shipping incident, the carrier shall be liable up to 250,000 SDR, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or force majeure, or was wholly caused by an act or omission by a third party with the intent to cause the incident. If and to the extent that the loss exceeds this limit, and up to a limit of 400,000 SDR, the carrier shall be further liable unless the carrier proves that the incident occurred without their fault or neglect.

For death or personal injury not caused by a shipping incident, the carrier will be liable if the incident was due to the fault or neglect of the carrier. The burden of proof lies with the passenger.

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Spain has not exercised the option to increase the limits of liability in the case of death or personal injury.

Liability of the carrier for the loss of or damage to cabin luggage is limited to 2,250 SDR per passenger, per carriage. Liability of the carrier for the loss of or damage to vehicles, including all luggage carried in or on the vehicle, is limited to 12,700 SDR per vehicle, per carriage. For other types of luggage, liability shall not exceed 3,375 SDR per passenger, per carriage.

A deductible amount not exceeding 330 SDR for a vehicle and 149 SDR for other luggage may be agreed between the carrier and the passenger.

The limits of liability may be increased by agreement between the carrier and the passenger.

Maritime Lien or Maritime Claim

Spain has ratified the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (dated 6 May 1993), Article 4.1.(b) of which establishes that claims in respect of loss of life or personal injury occurring in direct connection with the operation of the vessel shall be secured by a maritime lien on the vessel. This provision includes all personal injury or loss of life claims arising from the Athens Convention. However, a claim either in tort or contract for loss or damage to passengers' effects is not recognised as a maritime claim.

Both claims for loss of life or personal injury and claims for loss or damage to passengers' effects would be considered maritime claims following Article 1.1, Sections (b) and (h) of the Arrest Convention.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Validity of Jurisdiction Clauses Stated in Bills of Lading

Subject to the provisions of international conventions in force in Spain and European regulations, which prevail over Spanish domestic law, the SSA establishes that jurisdiction clauses in bills of lading – whether to

a foreign jurisdiction or foreign arbitration – are considered null and void unless they are negotiated separately and individually.

Furthermore, even in cases where the shipper named in the bill of lading may have negotiated a clause submitting any dispute to a foreign jurisdiction or international arbitration separately and individually with the carrier, Article 251 of the SSA establishes that the conveyance of the bill of lading to the consignee implies the conveyance of all the rights and actions of the shipper, except for any arbitration or jurisdiction agreement, which requires the express and written consent of the transferee or holder of the bill of lading.

Exceptions to the above are those submission clauses that refer any dispute under a bill of lading to the jurisdiction of a court of a member state of the European Union. Such clauses are considered valid between the parties to the contract of carriage, shipper/consignee and carrier, even if not separately and individually negotiated, based on Article 25 of Regulation (EU) No 1215/2012, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

An ECJ judgment dated 25 April 2024 (in the cases C-345/22 to C-347/22) confirmed that jurisdiction clauses in bills of lading are enforceable under EU law if they are validly agreed by the shipper and the carrier. The validity of these clauses is governed by the law of the member state whose courts are designated in the clause. For a jurisdiction clause to be enforceable against a third party, such as the consignee, the latter must have subrogated in all rights and obligations of the shipper under the contract of carriage. The determination of whether such subrogation occurs must be judged by the national law applicable to the contract, as determined by private international law. Furthermore, the ECJ has established that Spanish courts must disregard Articles 468 and 251 of the SSA when they are in conflict with Article 25 of Brussels I bis.

In accordance with the above findings, the Court of Appeals of Pontevedra, which had to apply Spanish law to determine the effects of the conveyance of the bill of lading to a consignee, conceded in its judgment dated 16 September 2024 that Article 25 of Brussels I

bis eliminates the requirement for the consignee and third-party holder of the bill of lading to express their consent individually and separately.

Validity of Law Clauses Stated in Bills of Lading

Law clauses stated in bills of lading are recognised by Spanish courts and are enforceable against both the shipper and the holder of the bill of lading. Having said this, the fact that a bill of lading remits to foreign legislation does not imply that the analysis of the validity of a potential foreign jurisdiction or international arbitration clause should be made from the perspective of such a law (eg, Barcelona Court of Appeals judgment No 1463/2019, dated 23 July 2019).

If an action is brought before a Spanish court, the court will apply Spanish conflict of law provisions to determine the validity of the jurisdiction clause. If the court decides that Spain is competent to hear the matter, the Spanish court may and will apply the provisions of a foreign legislation (to the merits of the claim) if the parties have agreed to that legislation. It will be for the parties to provide evidence of the content of that legislation for the Spanish court to apply. This is usually done by means of two sworn affidavits issued by jurists.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

An international arbitration clause incorporated into a bill of lading will have to be separately and individually negotiated by the shipper and the consignee in order to be valid. To date, there are no definitive judgments addressing the implications of Articles 468 and 251 of the SSA in the specific context of international arbitration clauses included in bills of lading.

It must be noted, however, that the SSA requires only individual and separate negotiation of a submission clause when they pertain to international jurisdiction or arbitration. It does not impose this requirement for domestic jurisdiction or arbitration clauses, suggesting that, in principle, such clauses should be considered valid between a carrier and the consignee. There is, however, no consolidated case law to this effect to date. Furthermore, even if a domestic jurisdiction or arbitration clause is considered to be valid against the shipper in principle, this does not necessarily extend

to the holder of the bill of lading, and the question yet to be answered by Spanish courts is whether a domestic jurisdiction or arbitration clause will also need to be negotiated separately and individually by the holder of the bill of lading in order to be valid towards them.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Spain for international arbitration.

Spain has also enacted the Arbitration Act (Law 60/2003) for domestic arbitration and for international arbitration, which adapts the UNCITRAL Model Law on International Commercial Arbitration.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Following the 1999 Arrest Convention, a ship may be arrested in Spain for the purpose of obtaining security, notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract or otherwise, the maritime claim is to be adjudicated in a state other than Spain. Article 474 of the SSA also confirms this principle.

If the vessel is arrested in Spain, however, Spanish courts will be considered to have jurisdiction over the claim unless the parties validly agree or have validly agreed to submit the dispute to a court of another state that accepts jurisdiction, or to arbitration.

7.5 Domestic Arbitration Institutes

Spain does not have a dedicated domestic arbitration institute specialising in maritime claims. Therefore, parties seeking arbitration typically engage the general arbitration services provided by the Arbitration Courts of the Chambers of Commerce or other non-specialised arbitration institutions. The Spanish Maritime Law Association is currently promoting arbitration in maritime matters in collaboration with the Madrid International Arbitration Center–Ibero-American Arbitration Center (CIAM-CIAR), which offers an independent service for the resolution of international disputes

Contributed by: José Antonio Domínguez, Mikel Garteiz-Goxeaskoa, Enrique Ortiz and Irantzu Sedano Beitia, Aiyon Abogados SLP

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

When a claim is prosecuted in Spain in breach of a foreign jurisdiction or arbitration clause, the defendant may file a motion to dismiss for lack of jurisdiction (a *Declinatoria*). The time bar to file such a motion is ten working days from the date of service of the claim. Once the *Declinatoria* has been filed, the deadline to present points of defence is stalled and will only resume after the court's ruling, if it dismisses the motion. Upon receipt of the motion, the court will give the claimant five working days to file a response, and will make a ruling after examining both parties' arguments.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies Spanish Tax Lease System

The Spanish tax lease system is currently regulated by the Spanish Corporate Income Tax Law 16/2012, which entered into force on 1 January 2013.

Basically, the Spanish tax lease is a system of accelerated and anticipated depreciation of assets acquired through financial leasing, including any kind of vessel of sea transport (passengers, tugs, fishing, dredgers, barges, platforms, boats/yachts, etc) manufactured in or out of Spain, provided that it is not manufactured in series/mass and that its manufacturing period is at least one year. This new tax lease system is not subject to prior approval by the Spanish Tax Administration.

Tonnage Tax in Spain

The Spanish Tonnage Tax regime is an alternative tax system to the regular rules of taxable profit determination for companies that usually produce a tax benefit for the taxpayer. Under this regime, (qualifying) shipping companies can calculate their shipping-related profits for Corporation Tax purposes. The shipping-related profits are calculated based on the tonnage of the (qualifying) ships used in the company's shipping trade.

The tonnage tax system in Spain is regulated by the Spanish Corporate Tax Act, 27/2014.

This tax system is voluntary and subject to previous authorisation by the Spanish Directorate General for Taxation.

The main requirements to be met by the shipping companies and their vessels, in order to be taxed on the bases of a tonnage tax system, are as follows.

- Qualifying companies:
 - (a) must be registered in any of the Spanish shipping registries (including the REBECA in the Canary Islands);
 - (b) must include shipping management of owned and chartered vessels as part of their business activity; and
 - (c) must conduct the technical and crew management of the vessels themselves, and assume complete responsibility derived from the nautical operation of the vessel(s) and ISM Code (IMO Resolution A 741).
- Qualifying ships:
 - (a) must be operated from Spain or any country of the European Union; and
 - (b) must be seagoing vessels for sea transport, carriage of goods or passengers, rescue vessels and other services that must be rendered at sea (tugs and dredgers have some specific requirements).

This system will not apply if:

- all vessels are not registered in Spain or any other country of the European Union;
- the vessels are intended, directly or indirectly, for fishing, recreational or sports activities; or
- certain circumstances derived from or in connection with particular European regulations occur at the same time at the shipping company.

Spanish Shipping Registry of the Canary Islands

For those shipping companies whose vessels are registered in the REBECA, Spanish Law 19/1994 for the modifications of the Canary Islands' economic regime and tax system establishes a corporate tax rebate of

90%, together with other tax advantages such as bonuses in Social Security.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under Spanish law, pursuant to Article 1105 of the Civil Code, non-performance of a shipping contract in maritime law – such as late delivery, non-arrival of a chartered vessel or slow cargo operations – may be excused as force majeure if caused by extraordinary, unforeseeable and unavoidable events, such as severe weather, natural disasters or similar events. In addition, under the *rebus sic stantibus* principle, fundamental and unforeseeable changes in maritime circumstances altering the contractual equilibrium may justify seeking modification, withdrawal or termination of the contract.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Spain has implemented IMO 2020, which limits the sulphur content of fuel oil used on board ships from 3.5 to 0.5% m/m (mass by mass). The authorities responsible to enforce sulphur content limitations are the Directorate General of the Merchant Navy (DGMM) and the Harbour Master Offices that are subordinated to the DGMM.

According to Articles 10 and 11 of Royal Decree 61/2006 (as amended by Royal Decree 290/2015), there are two limits:

- a limit of 0.10% m/m for vessels within Spanish ports or operating in territorial waters and exclusive economic zone (EEZ) waters within the emission control areas (ECAS); and
- a limit of 0.5% m/m for territorial waters and EEZ waters outside the emission control areas (ECAS).

However, Spain does not have any ECAS at the present time. Therefore, the current limit is 0.10% m/m for vessels at Spanish ports and 0.5% m/m for vessels operating in Spanish territorial waters or in waters within the Spanish jurisdiction.

Should a Harbour Master detect an infringement of these limits, normally in the course of a Port State Control inspection, a sanctioning proceeding will be initiated against the Master and ISM Manager of the vessel, which may result in a penalty of up to EUR120,000.

The Spanish Marine Authorities are very active in monitoring sulphur content in marine fuel oils, and penalties have already been imposed for breaching the limit.

9.3 Trade Sanctions

Spain implements all the international trade sanctions of both the UN and the EU. Spain does not have an autonomous sanctions regime.

The international trade sanctions adopted by the EU are implemented and/or adopted through national measures. The national competent authorities are responsible for establishing internal sanctions in the case of violation of restrictive measures, granting exceptions, receiving and co-operating with other member states and acting as a liaison with the sanctions' committees. The Spanish competent authorities are the Secretariat of Commerce and the Secretariat of Treasury, both belonging to the Ministry of Economic affairs, and the Secretariat of Taxes, belonging to the Ministry of Finance and Civil Service.

As part of the European Union, Spain has implemented all the sanctions imposed by the EU upon Russia and Belarus, which complement and extend the sanctions imposed between 2014 and 2020, and which were based on EU Regulation 833/2014 of 31 July.

9.4 International Conflict

The war in Ukraine and Spain's enforcement of trade sanctions have compelled Spanish companies to source suppliers and loading ports outside Russia, increasing costs and prompting cancellations or renegotiations of supply, affreightment and logistics contracts. In Spanish chartering practice, Ukraine and Russia are designated war risk areas, leading to amendments in charterparties to exclude these regions from trading limits. Standard clauses are commonly incorporated to address these risks, such

as BIMCO CONWARTIME 2004 for time charters and BIMCO VOYWAR 2004 for voyage charters.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Certain jurisdiction-specific regulatory and procedural features that characterise the Spanish maritime legal framework are of particular relevance.

Regulatory Framework for Recreational Boating

The Spanish legal system has moved towards modernising and consolidating the regulatory framework applicable to recreational vessels, clearly distinguishing between commercial activities and private leisure use. This framework establishes specific requirements relating to maritime safety, crew certification, technical standards for vessels and navigational control, while promoting the digitalisation of administrative procedures concerning registration, insurance and the authorisation of recreational activities.

In this context, the DGMM Resolution of 17 July 2025 sets out the conditions to be met by recreational vessels and craft for the temporary conversion from private to commercial use, ensuring that only vessels meeting the required safety and certification standards may provide commercial services, thereby protecting users and ensuring compliance with safety and environmental regulations.

Electronic Ship Clearance Regime (RONM)

Royal Decree 186/2023 of 21 March, approving the Regulation on the Organisation of Maritime Navigation (RONM), introduced a new electronic ship clearance regime, which has been in force since 15 August 2025. This system unifies and digitalises the administrative procedures governing the arrival, stay and departure of vessels in Spanish ports, eliminating the need for physical documentation and significantly reducing administrative burdens. It enables interoperability between Harbour Masters' offices, Port Authorities and operators, enhancing legal certainty, traceability and operational efficiency, and aligning Spanish prac-

tice with international standards on maritime safety and the facilitation of maritime traffic through real-time control and streamlined procedures.

Pending Legislative Initiatives

There are legislative proposals currently under consideration involving amendments to both the State Ports and Merchant Marine Act and the Maritime Navigation Act, aimed at simplifying procedures, strengthening environmental sustainability and adapting the legal framework to new technologies. However, these initiatives have not yet been approved and remain stalled, so their practical impact is limited for the time being.

Recent and Forthcoming International Conventions

At the international level, reference should be made to the United Nations Convention on Negotiable Cargo Documents (New York, 2025), also known as the Accra Convention on Negotiable Cargo Documents. Although the Convention has been adopted within the framework of the United Nations, it is not currently in force, without prejudice to its relevance as an indicator of the ongoing development of uniform law in the field of transport documents.

Beijing Convention on the Judicial Sale of Ships

Particular attention should also be paid to the United Nations Convention on the International Effects of Judicial Sales of Ships, commonly referred to as the Beijing Convention on the Judicial Sale of Ships. Spain ratified the Convention on 21 August 2025, and its entry into force is scheduled for 2026, together with other state parties. The Convention establishes a harmonised regime for the international recognition of judicial sales of ships, ensuring that purchasers acquire a clean and internationally opposable title, thereby enhancing legal certainty, maximising the value of vessels on the market and protecting the interests of creditors and third parties.

Taken as a whole, these regulatory and conventional developments reflect a clear trend within Spanish maritime law towards modernisation, digitalisation and international harmonisation, strengthening legal certainty and operational efficiency while consolidating Spain's alignment with international maritime law standards and practice.

Trends and Developments

Contributed by:

Albert Prats Ribas and Jordi Mayol Orga
BUFETE A. PRATS

BUFETE A. PRATS is a boutique law firm based in Barcelona that provides personalised business consulting services and comprehensive legal advice, in all areas of maritime and transport law, port law, international trade and commodities, and related matters such as customs and excise. Typical customers are ship-owners, charterers, international traders, port terminals operators and logistic services providers of maritime and multimodal transport. The firm benefits from a well-established national and inter-

national network of correspondents that enables it to provide legal advice on not only the regulatory aspects, but also the financial, commercial and operational aspects inherent to any business plan. It has wide experience of acting in complex, high-value multi-jurisdictional and cross-border disputes, for Spanish and international clients in all major jurisdictions, and is familiar with leading arbitral institutions and procedures.

Authors



Albert Prats Ribas is a lawyer with more than 23 years' experience, specialising in maritime and transport law, port law and international trade and commodities. After practising law in his hometown, he joined one of the

leading maritime law firms in Barcelona in 2021, becoming partner after some years. In March 2017, he opened **BUFETE A. PRATS**, providing business consulting services and comprehensive legal advice to a range of customers within the maritime, transport, logistics and port industries. Albert is a regular speaker at courses and conferences on maritime and transportation law organised by the Maritime and Transport Law Section of the Barcelona Bar Association and Port Authorities.



Jordi Mayol Orga is a highly specialised professional in maritime law, land and air transport law, insurance law and procedural law. He began his career at one of the leading maritime law firms in Barcelona,

where he acquired solid knowledge and skills before joining another prominent firm specialising in maritime law. He joined **BUFETE A. PRATS** in June 2023, further enhancing the firm's ability to offer effective legal solutions and top-level legal support. Jordi has advised multiple national and international clients on a wide variety of high-level legal matters, and has represented clients in numerous complex legal proceedings throughout Spain.

BUFETE A. PRATS

Travessera de Gràcia
17-21 Entlo. Pta. A
08021 Barcelona
Spain

Tel: 669855796
Email: office@bufeteprats.com
Web: www.bufeteprats.com



BUFETE A. PRATS
DERECHO MARITIMO Y TRANSPORTE

Restrictions on Transit Authorisations, Sovereignty and Regulatory Friction: Spain's Royal Decree-Law 10/2025 and the United States' Maritime Response

Introduction

Access to ports and navigation through territorial waters are two distinct legal areas in international maritime law. While access to ports is part of the core sovereignty of the coastal state, navigation through territorial waters is subject to a specific regime of guarantees, notably the right of innocent passage.

This distinction is essential to understanding the scope of the recent maritime restrictions adopted by Spain through Royal Decree-Law 10/2025 of 23 September, adopting urgent measures against genocide in Gaza and in support of the Palestinian population (RDL 10/2025, published in the Official State Gazette No 230 of 24 September 2025). This measure operates within a domestic legal framework in which Law 14/2014 of 24 July on Maritime Navigation (LNM) expressly recognises the State's power to condition, restrict or prohibit navigation in Spanish maritime spaces for reasons of maritime safety and security.

RDL 10/2025 has introduced significant restrictions on transit authorisations for ships carrying goods linked to Israel, including defence equipment, dual-use products and fuels for military use.

The application of this regulatory framework has particularly affected vessels flying the flag of the United States participating in the Maritime Security Programme (MSP), regulated by Title 46 of the United States Code, Chapter 531. The MSP is a strategic programme through which the Maritime Administration (MARAD) maintains a fleet of commercially viable and militarily useful merchant ships available for mobilisation by the Department of Defence during national emergencies or armed conflict.

According to public information from the Federal Maritime Commission (FMC), between 9 and 14 November 2024 Spain denied access to the APM port terminals in Algeciras to three US-flagged MSP vessels operated by Maersk Line Limited (*Maersk Denver*, *Maersk Nysted* and *Maersk Seletar*), which were carrying cargo originating in or destined for Israel, citing compliance with European Union regulations.

The denial of access to Spanish ports to this type of vessel has prompted the FMC to open a formal investigation under the powers granted to it by Title 46 USC to act against foreign practices that may create unfavourable conditions for maritime transport in US foreign trade.

This article examines the legal scope of RDL 10/2025 and the response of the US maritime authorities.

Spanish regulatory framework: RDL 10/2025 and the transit authorisation regime

Regulatory context: from Law 53/2007 to RDL 10/2025

Spain has a robust system for controlling foreign trade in defence equipment, established by Law 53/2007 of 28 December on the control of foreign trade in defence and dual-use equipment (BOE No 312 of 29 December 2007). The regime was developed by Royal Decree 679/2014 of 1 August (BOE No 207 of 26 August 2014), which classifies defence equipment in specific annexes and establishes detailed procedures for export, import and transit authorisations.

All export, import and transit operations involving defence equipment require prior administrative authorisation in accordance with Law 53/2007. Control is based on a case-by-case assessment in accordance with the criteria established in Article 8, which includes considerations regarding respect for human rights, international peace and security, compatibility with United Nations and European Union embargoes, and the protection of Spanish public order. This evaluative approach allows the State a margin of discretion based on the specific circumstances of each case.

Royal Decree-Law 10/2025 does not replace the pre-existing system but modifies it by introducing additional restrictions specifically targeting Israel through a mechanism for denying authorisations (regulatory mandate with a predetermined outcome). This measure reflects an intensified application of the criteria of Article 8 of Law 53/2007, transforming what was a case-by-case assessment into a categorical prohibition. RDL 10/2025 maintains the administrative procedure of RD 679/2014, but orders that all authorisation requests relating to Israel be systematically denied,

with no room for individual assessment of specific circumstances.

Structure of RDL 10/2025: prohibitions on three levels

RDL 10/2025 introduces differentiated restrictions that operate on three clearly differentiated levels in its regulatory structure.

- First level: absolute prohibition on transfers of defence material. Article 1 of RDL 10/2025 establishes an absolute prohibition covering both Spanish exports of defence material to Israel and imports of such material originating in Israel. This prohibition is general and categorical in nature, with no exceptions except those expressly established in the First Additional Provision of RDL 10/2025 itself. The scope of this prohibition covers all material included in the annexes to RD 679/2014.
- Second level: denial of authorisation for the transit of defence equipment and military fuels. Articles 1.3 and 2 of RDL 10/2025 prohibit the transit of defence material through Spanish territory when its final destination is Israel. This prohibition operates in accordance with the administrative procedures of RD 679/2014, but with a predetermined outcome: all requests for transit authorisation will be systematically denied. Of particular relevance is the express inclusion of fuels suitable for military use (JP-4, JP-5 and JP-8), which, although not traditionally classified as defence material under the regulation of RD 679/2014, are now subject to systematic refusal. Article 2 of RDL 10/2025 declares Technical Note 1 of category ML8 of RD 679/2014, which excluded these fuels from classification as defence material, to be inapplicable.
- Third level: prohibition on customs imports of settlement products. Article 3 of RDL 10/2025 introduces a ban on imports of civilian products originating from Israeli settlements located in the Occupied Palestinian Territory. This measure is different in nature from the previous two, as it refers not to defence material but to ordinary civilian products produced in those settlements.

Operational mechanisms and practical effects on maritime transport

The measures contained in RDL 10/2025 operate within the Spanish system of prior administrative authorisation established by Law 53/2007 and RD 679/2014, and are implemented through the refusal of authorisations by the competent Ministries. The Secretary of State for Trade (part of the Ministry of Economy, Trade and Enterprise) decides on applications for authorisations for defence equipment, while the Ministry of Finance, through the State Tax Administration Agency, decides on operations with customs implications. The Interministerial Regulatory Board for Foreign Trade in Defence and Dual-Use Equipment (JIMDDU) issues mandatory and binding reports in accordance with Article 14 of Law 53/2007.

From the perspective of the maritime operator, the effect of RDL 10/2025 is direct: it is impossible to obtain the necessary authorisations to operate with goods included in its material scope that originate in or are destined for Israel. Although this restriction is based not on Article 20 of the LNM (access to ports) but on foreign trade control (Law 53/2007), the practical result is the same: affected ships cannot make operational stops in Spanish ports.

One immediate operational consequence is the search for alternative ports in third countries for refuelling and provisioning. It is possible that ships participating in the MSP that historically included stopovers in Algeciras (one of the main transshipment and refuelling hubs in the western Mediterranean) will now make stopovers in other ports, such as Tangier Med.

Access to ports and innocent passage regime in international law of the sea

An analysis of the legal scope of the restrictions introduced by RDL 10/2025 requires a distinction to be made between access to ports, the regime of innocent passage through territorial waters and the regime of transit passage through straits. Although related, they are governed by different legal regimes under the United Nations Convention on the Law of the Sea (UNCLOS) and the LNM.

Access to ports and administrative control of foreign trade

Access to ports is a manifestation of the sovereignty of the coastal State. Article 25.2 of UNCLOS recognises that the coastal State shall have the right to take the necessary measures to prevent any violation of the conditions to which the admission of ships into its internal waters or port facilities is subject. Article 20 of the LNM confers on the Maritime Administration the power to condition, restrict or prohibit navigation in Spanish maritime spaces for reasons of maritime safety and security, and to prevent the carrying out of illegal activities or the exercise of prohibited trafficking.

It is essential to note that the measures adopted by RDL 10/2025 are based primarily on the administrative control of foreign trade in defence material in accordance with Law 53/2007 and RD 679/2014, and not on the direct exercise of the powers to restrict access to ports regulated in Article 20 of the LNM.

This distinction is relevant when assessing the conformity of Spanish measures with international obligations under UNCLOS. Article 21 allows the coastal State to enact laws on customs matters during innocent passage, but this power is subject to the obligation established in Article 24.1, which prohibits the coastal State from “imposing on foreign ships requirements that have the practical effect of denying or impeding the right of innocent passage”. There is therefore a clear regulatory hierarchy: when a customs measure has the effect of de facto denial, the prohibition in Article 24.1 prevails as a closing rule.

Regime of innocent passage and protection of technical stops

Article 17 of UNCLOS establishes that ships of all States, whether coastal or landlocked, enjoy the right of innocent passage through the territorial sea. Article 24.1 specifies that the coastal State shall not impede innocent passage and shall refrain from imposing requirements that have the “practical effect of denying or impeding that right”. In line with this provision, Articles 37 to 45 of the LNM substantially reproduce these provisions, recognising that navigation through the territorial sea by all foreign vessels shall be subject

to the regime of innocent passage, which must be swift and uninterrupted.

The denial of access to port based solely on the nature of the cargo does not constitute a violation of the right of innocent passage in a strict technical sense, provided that the vessel retains the possibility of transiting through the territorial sea without interruption, unless, given the circumstances of the specific case, the measure has a practical effect equivalent to an impediment to protected transit, particularly in the absence of reasonable alternatives.

On the other hand, it should be recalled that Article 18.2 of UNCLOS provides that passage “includes stopping and anchoring, but only to the extent that they are normal incidents of navigation or are imposed on the ship by force majeure or serious difficulty”. In other words, stopovers resulting from force majeure are protected as an integral part of the right of innocent passage under Article 18.2 of UNCLOS. On the contrary, routine stopovers (scheduled refuelling, ordinary provisioning) do not enjoy such enhanced protection.

By ordering the systematic refusal of transit authorisations for goods falling within its material scope, RDL 10/2025 prevents ships carrying such goods from making operational stopovers in Spanish ports. The legal question that arises is whether the systematic refusal that makes it impossible to exercise innocent passage in certain strategic trade routes is compatible with Article 24.1 of UNCLOS.

Transit passage through the Strait of Gibraltar: a more restrictive legal regime

Article 37.1 of the LNM expressly states that “navigation through the Strait of Gibraltar shall be governed by the provisions of Part III of the 1982 United Nations Convention on the Law of the Sea”. This reference means that navigation through the Strait is governed not by the general regime of innocent passage (Part II, Articles 17–26), but by the specific regime of transit passage (Part III, Articles 37–44).

The legal difference between the two regimes is substantial. While Article 21 of UNCLOS allows the coastal State to enact laws regulating innocent passage in

the territorial sea, Article 44 of UNCLOS, applicable to straits used for international navigation, categorically states that “the coastal States of a strait shall not impede the passage in transit... There shall be no suspension of passage in transit”. In addition, Article 42.2 prohibits such laws from “having the effect of denying, impeding or impairing the right of transit passage”.

Strictly speaking, the denial of access to the port of Algeciras does not in itself prevent transit passage through the Strait of Gibraltar, which ships can exercise without the need for a port call. However, insofar as Algeciras is one of the main supply ports in the western Mediterranean, the systematic denial of access to certain ships could be examined under the more stringent standard of Article 44 if it is proven that it has a de facto hindering effect on routes that depend on that port of call to complete their transit.

By ordering the systematic refusal of transit authorisations for goods falling within its material scope destined for Israel, RDL 10/2025 potentially affects ships using the Strait of Gibraltar on their trade routes, which have historically made supply stops in Algeciras. In this context, the question arises as to whether such measures could be assessed under the more demanding standard of Article 44 of UNCLOS when it is proven that they have an impeding effect on the effective exercise of transit passage.

The approach of US maritime law and the competences of the FMC

The Maritime Security Programme and its strategic relevance

The MSP is regulated by Title 46 USC, Chapter 531, and is one of the pillars of US maritime and national security policy. Through this programme, the federal government enters into operational agreements with private ship-owners who maintain US-flagged vessels available for mobilisation by the Department of Defence in the event of a national emergency or conflict.

The MSP is directly linked to the maritime policy objectives set forth in 46 USC § 50101 (a), which include maintaining a merchant marine sufficient to transport a substantial portion of foreign trade by water and

capable of serving as a naval and military auxiliary in times of war or national emergency.

The vessels integrated into the MSP operate on regular commercial routes in peacetime, but must be prepared to act as naval auxiliaries in crisis situations. The operational reliability of these vessels and their access to strategic ports are central elements of the country’s maritime security system. Denial of access to key ports, such as Algeciras (one of the main transshipment hubs in the western Mediterranean), compromises both the commercial viability of the routes and the responsiveness of the maritime transport system in emergency scenarios.

Regulatory framework: Title 46 USC, Chapter 421

Title 46 USC, Chapter 421 (Sections 42101 to 42109) gives the FMC the authority to adopt regulations designed to adjust or address “general or special conditions unfavourable to shipping in foreign trade”.

According to Section 42101 (a), these conditions may arise from the laws or regulations of a foreign country, or from practices employed by owners, operators or masters of foreign vessels. The regulatory development is found in 46 CFR Part 550, which establishes procedures for filing petitions, investigating restrictive practices and taking corrective action.

This regulatory framework responds to a functional logic characteristic of US maritime law: the legislator does not require foreign practices to be illegal under international law for the FMC to take action. It is sufficient that such practices create unfavourable conditions for US maritime transport. The FMC examines the material impact on the commercial and strategic interests of the United States, regardless of the legal classification of foreign measures in other jurisdictions.

The investigation into Spanish port practices

The denial of access in November 2024 to three MSP vessels at the APM terminals in Algeciras (see **Introduction**, above) prompted the FMC to open a formal investigation under Title 46 USC Chapter 421 (Docket No 24-30, FMC-2024-0022), published in the Federal Register on 6 December 2024 (89 FR 96973). The

investigation received more than 8,000 public comments in its initial phase.

In its 19 December 2025 update (published in the Federal Register, Vol 90, No 243, on 22 December 2025), the FMC concluded that, based on the information obtained, the laws or regulations adopted, followed or enforced by Spain “are likely creating general or special conditions unfavorable to shipping in U.S. foreign trade”.

Available countermeasures

Section 42106 of Title 46 USC empowers the FMC to adopt various countermeasures when it determines that unfavourable conditions exist. It can:

- limit voyages to and from US ports, or the quantity or type of cargo carried (Section 42106 (1));
 - suspend, in whole or in part, tariffs and service contracts for transport to or from US ports (Section 42106 (2));
 - suspend a carrier’s right to operate under agreements filed with the Commission (Section 42106 (3)); and
 - impose a per-voyage charge, with a statutory limit of USD1 million per voyage adjusted for inflation – as of December 2025, the adjusted limit is USD2,304,629 per voyage (Section 42106 (4)).
- Section 42106 (5) also grants the FMC a residual clause allowing it to take any other action it deems necessary and appropriate to adjust or address unfavourable conditions for maritime transport in United States foreign trade.

In addition, Section 42107 allows the FMC to request the Secretary of Homeland Security to deny customs clearance to vessels from a regulated country, and to collect the fees imposed by the Commission. It may also request that ships from the affected country be denied entry to US ports or that ships about to depart from a US port be detained.

The FMC’s procedure illustrates the ability of the US regulatory system to respond unilaterally to practices by foreign governments that it considers harmful to its maritime interests. At the time of writing, the Commission has not adopted a final determination, having requested additional public comments by 20 Febru-

ary 2026. The eventual adoption of countermeasures would have direct effects on bilateral trade flows between Spain and the United States.

Conclusions

The restrictions introduced by RDL 10/2025 are formally based on the administrative control of foreign trade in defence material, in accordance with the regime established by Law 53/2007 and RD 679/2014, and not on the direct exercise of the powers to restrict access to ports regulated in Article 20 of the LNM. However, the practical effect of the systematic denial of transit authorisations is equivalent: ships carrying goods included in the material scope of RDL 10/2025 cannot make operational stops in Spanish ports.

This distinction is essential to understanding the scope of the conflict under analysis. While access to port is subject to the discretion of the coastal State in accordance with internal security criteria, innocent passage through territorial waters is protected against measures that have the practical effect of denying or impeding that right (Article 24.1 UNCLOS).

In the specific case of the Strait of Gibraltar, the applicable regime is that of transit passage (Articles 37–44 UNCLOS), which establishes a more demanding standard: Article 44 categorically prohibits impeding transit passage. The systematic denial of stopovers in Algeciras could be examined under this standard if it is proven to have a de facto hindering effect on routes that depend on that port to complete transit.

The FMC’s reaction highlights a structural tension inherent in contemporary maritime law. The US regulatory framework, set out in Title 46 USC Chapter 421, prioritises the material impact of certain foreign practices on maritime transport, regardless of their formal compatibility with international maritime law.

This functional approach creates a scenario in which sovereign decisions taken in accordance with a State’s domestic law can trigger regulatory responses in other legal systems, including countermeasures with considerable economic impact.



Law and Practice

Contributed by:

Michele Fara, Ninos Aho, Paula Bäckdén and Anders Leissner
Advokatfirman Vinge KB

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Advokatfirman Vinge KB (Vinge) is a leading Nordic law firm with around 350 lawyers in Stockholm, Gothenburg, Malmö, Helsingborg and Brussels. Vinge is a full-service firm and practises in various fields, including corporate law, mergers and acquisitions, capital markets, dispute resolution, intellectual property, real estate, employment, international trade, maritime and transport law and environmental law. Vinge's client base encompasses businesses, organisations

and individuals, both in Sweden and internationally, including shipping companies, insurance companies, private equity firms, government entities, start-ups and entrepreneurs. The firm's maritime and transport practice is comprised of six dedicated lawyers with expertise in various areas, covering all aspects of shipping and transport including contentious and non-contentious matters.

Authors



Michele Fara specialises in dispute resolution, maritime and transport law, and commercial agreements. He has extensive experience of both international and domestic arbitrations and civil proceedings,

particularly concerning complex contractual disputes. Furthermore, Michele is head of Vinge's maritime and transport law group and is regularly engaged by clients in the transport and logistics sector, and by industrial companies and insurers, for all kinds of matters within shipping and transportation. He has also assisted clients within the energy sector in several major projects concerning new energy and climate change mitigation.



Ninos Aho is a partner in Vinge's dispute resolution group and has extensive experience of acting as counsel in court proceedings and arbitration. Ninos also specialises in maritime and transport law and

assists in matters related to all modes of transport, such as sea transport, road transport and forwarding, rail transport, air transport and logistics (3PL), and in transport insurance matters. His practice covers a number of sectors, such as transport, energy and international trade.



Paula Bäckdén holds a PhD in maritime law and specialises in maritime and transport law, such as dispute resolution and commercial agreements, including litigation in civil court and arbitration, the sale and

purchase of ships' contracts, charterparties and management contracts. Paula has specialised knowledge of insurance law, assisting clients in insurance disputes, particularly within marine insurance. She is president of the Swedish Maritime Law Association and, as such, is the Swedish representative in the GA of the Nordic Offshore and Maritime Arbitration Association. Paula has been appointed Dispascheur of Sweden, settling marine insurance disputes as well as general average disputes.



Anders Leissner worked as a claims manager, and subsequently as general counsel, for an international P&I club for more than 20 years before joining Vinge, which has given him broad and practical experience of

shipping and international claims handling, including risk management as well as governance and compliance issues. Anders has particular experience in relation to sanctions and has been appointed as a court expert in English High Court proceedings. Anders also acts as arbitrator in shipping disputes. Between 2021 and 2023, Anders was chairperson of the Swedish War Risk Insurance Board following an appointment by the Swedish government.

Advokatfirman Vinge KB

Nordstadstorget 6
PO Box 11025
404 21 Göteborg
Sweden

Tel: +46 106 141 000
Email: info@vinge.se
Web: www.vinge.se

vinge

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Swedish Maritime Code (1994:1009) establishes seven maritime courts in Sweden whose internal jurisdiction is purely geographical. The maritime courts are exclusively competent in respect of matters governed by the Maritime Code, such as cargo claims, charter-party disputes, liability funds and limitation of liability.

Disputes under marine insurance contracts are subject to the exclusive jurisdiction of the Swedish Dis-pascheur.

1.2 Port State Control

Sweden is bound by the EU Port State Control Directive (2009/16/EC) and is party to the Paris Memorandum of Understanding on Port State Control. Port state control is carried out by the Swedish Maritime Administration, which is also the authority to which marine casualties are to be reported. If a crime is suspected to have been committed, casualty is investigated by the marine prosecutor in co-operation with the Coast Guard and/or the marine police.

1.3 Domestic Legislation Applicable to Ship Registration

The registration and nationality of vessels is governed by Chapter 1 of the Swedish Maritime Code (1994:1009). The practical aspects of registration are governed by the Ordinance on Vessel Registration (1975:927).

1.4 Requirements for Ownership of Vessels

A vessel of which more than 50% is owned by Swedish citizen(s) or company/companies is considered Swedish and must be registered in the Maritime Registry. The vessel can be considered non-Swedish, and thus not subject to registration, if it is registered in an official registry of another EU or European Economic Area (EEA) state and is part of a business established in that state, and if the vessel is directed and controlled therefrom. Separate rules apply to vessels not used in a business. A vessel under construction can be registered.

1.5 Temporary Registration of Vessels

A vessel can be temporarily registered for up to one month if registration in Sweden is a condition for deletion in the vessel's current registry. From February 2026, registration based on bareboat c/p is permitted, both for Swedish vessels being registered in a foreign registry and for foreign vessels being registered in Sweden. A condition for the latter is that the operation of the vessel is under "decisive Swedish influence".

1.6 Registration of Mortgages

Vessels are registered with the Maritime Registry, held by the Swedish Transport Authority. Mortgages can be granted over a registered vessel by the ship-owner by handing over the deed of mortgage issued by the same authority to the lender in exchange for a loan. Such mortgage may be registered with the Maritime Registry but registration is not a precondition for the mortgage to be effected.

1.7 Ship Ownership and Mortgages Registry

Transcripts of the registration of a vessel, including any registered mortgages, are available to the public from the Maritime Registry by request to the authority.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Due to the liability resting with the ship-owner, Swedish banks are generally hesitant with respect to the leasing of vessels, as well as sale and lease-back transactions. Traditional mortgages thus remain the preferred security for financing vessels, often with additional security in the vessel's contracts and earnings.

2.2 Ship Leasing

As per 2026, the Swedish Ships' Registry is open to bareboat registration, which is expected to facilitate the leasing of vessels (*skeppslega*). While defaulting payments under a mortgage can be recovered through a judicial sale, the security for the lessor under a leasing arrangement is that the vessel can be retrieved. Sweden has not yet signed or ratified the UN Convention on the International Effects of Judicial Sales of Ships.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal Pollution

The 1969 International Convention on Civil Liability for Oil Pollution Damage, as amended in 1992, and the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage, are incorporated in Chapters 10 and 10a of the Swedish Maritime Code (1994:1009), respectively.

Registered owners are, with some exceptions, strictly liable for damage or loss caused by oil pollution and bunker oil pollution. The ship-owner is exempt from liability if it can prove that the damage was:

- caused by an act of war or a similar action;

- entirely caused by an act or omission by a third party with intent to cause damage; or
- caused by negligence of a public authority in connection with the maintenance of lights or other navigational aids.

The law also includes provisions on limitation of liability, establishment of a limitation fund, compulsory insurance and direct action against the registered owner. In addition, the Swedish Transport Agency has issued Ordinance TSFS 2023:14, which contains detailed rules and recommendations on the discharge of oil and other pollutants from vessels.

Wreck Removal

Sweden has ratified the 2007 Nairobi International Convention on the Removal of Wrecks. Chapter 11a of the Swedish Maritime Code incorporates the convention's provisions. As a main rule, the ship-owner is required to remove a wreck that poses a danger to navigation or to the environment. Further, lost cargo must always be reported, regardless of whether it poses a danger to navigation or not. As for larger ships, the ship-owner is also obliged to have liability insurance in place, or to provide other adequate security to cover their liability. The provisions apply to all Swedish territorial waters, including lakes and canals.

There is no mechanism for the establishment of a separate wreck fund.

3.2 International Conventions: Collision and Salvage

Chapter 8 of the Swedish Maritime Code contains provisions on collision liabilities. The provisions are based on the 1910 Brussels Collisions Convention and are complemented by the general rules on ship-owners' liability in Chapter 7 of the Swedish Maritime Code (1994:1009), as well as general tort law.

The main rule regarding collision liability is contribution in proportion to the level of causation. A party involved in a collision is liable for losses only to the extent the party caused the collision. Each party answers for half of the loss, unless there are circumstances that give support for any other distribution of liability. There are, however, some exceptions to this rule. If the collision is due to an accident, or if it cannot be determined

whether the parties have caused the collision, each party shall be liable for its own loss.

Salvage

The 1989 International Convention on Salvage has been ratified by Sweden. The provisions are incorporated in Chapter 16 of the Swedish Maritime Code (1994:1009) and are, for the most part, optional. This allows for salvage contracts on different terms, except for certain provisions relating to, inter alia, the salvor's obligation to act with due care to prevent or mitigate environmental damage.

3.3 Convention on Limitation of Liability for Maritime Claims

Sweden is party to the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol. Consequently, maritime claims in Sweden are subject to global limitation. The Convention's provisions are codified in Chapter 9 of the Swedish Maritime Code (1994:1009). Special limitation rules relating to freight and transport of passengers can be found in Chapter 13 (on carriage of general cargo), Chapter 14 (on chartering of vessels) and Chapter 15 (on carriage of passengers and luggage). These special rules are to be applied before limitation and distribution is set according to Chapter 9.

3.4 Vienna Convention on the Law of Treaties

Sweden is a party to the Vienna Convention on the law of treaties, and the Convention has generally also been considered applicable to treaties of uniform law. While never referred to by its title, the principles of treaty interpretation contained in the Vienna Convention have been reiterated by the Swedish Supreme Court.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Provisions pertaining to limitation funds can be found in Chapters 9 and 12 of the Swedish Maritime Code (1994:1009). A limitation fund may be constituted if, on account of a claim subject to limitation in Sweden, suit has been brought or arrest or other legal proceedings have been instituted. The fund shall be constituted with the court where the suit has been brought, or with one of the seven maritime courts competent for the place where arrest or other legal action has been

applied for. A limitation fund is deemed to have been constituted with effect for all persons who can claim the same limit of liability. It is intended only for the payment of claims of the kind to which that limit of liability applies.

A global fund shall be equal to the aggregate amounts that constitute the limit of liability for claims for which limitation is invoked and which have arisen out of one distinct occasion, plus interest. The person applying for constitution of a limitation fund shall pay the fund amount into court or produce satisfactory security for it. The application must be in writing, and the applicant shall account for the circumstances and state the names and addresses of likely claimants against the fund.

Accrued interest can increase the limitation amount significantly. This is especially notable in cases of prolonged limitation proceedings. Interest shall be calculated in accordance with the Swedish Interest Act (1975:635).

3.6 Seafarers' Safety and Owners' Liability

Sweden has ratified the 2006 Maritime Labour Convention. Corresponding provisions are found in laws and regulations such as the Seaman's Act (1973:282), the Act on Periods of Rest for Seafarers (1998:958), the Act on Enlistment of Seamen (1983:929), the Ship Safety Act (2003:364), the Work Environment Act (1977:1160) and the Social Insurance Code (2010:110).

4. Cargo Claims

4.1 Bills of Lading

Sweden is a party to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924, First Protocol, 1968, Second Protocol, 1979 (the "Hague-Visby Rules") as well as the United Nations Convention on the Carriage of Goods by Sea, 1978 (the "Hamburg Rules"). Provisions regarding contract of carriage of goods are found in Chapter 13 of the Swedish Maritime Code (1994:1009). This Chapter can be described as a hybrid of the Hague-Visby Rules and the Hamburg Rules, though only those parts of the Hamburg Rules

that are not in conflict with the Hague-Visby Rules have been implemented.

As for the Rotterdam Rules, Sweden has signed but not yet ratified the Convention.

Sweden is also a party to the Convention on the Contract for the International Carriage of Goods by Road, 1956 (the “CMR Convention”), which may be applicable to transport by sea.

4.2 Title to Sue on a Bill of Lading

Under Swedish maritime law, the lawful holder of the bill of lading has title to sue thereunder. Apart from the original shipper or consignee, a third party, to whom the bill of lading has been endorsed, is also considered the lawful holder.

An insurer, insofar as the damage is covered by the insurance and has been compensated by the insurer, becomes subrogated to the insured’s right to compensation for damages arising from the damage. The insurer will, in such case, be entitled to sue under the bill of lading.

Moreover, according to general principles of Swedish law, a party is free to assign its claim for damages to any other person, and the title to sue will essentially follow the rightful holder of the assigned claim. In this context, it may be noted that under Swedish law, unlike in some other jurisdictions, the question of title to sue is not a procedural issue, but a substantive one.

4.3 Ship-Owners’ Liability and Limitation of Liability for Cargo Damages

The ship-owner is liable for loss or damage that the Master, members of the crew or a pilot cause through fault or neglect in the performance of their duties. Further, the ship-owner is liable if the loss or damage is caused by any other person while performing work in the vessel’s service on the direction of the ship-owner or Master (Chapter 7 of the Swedish Maritime Code (1994:1009)).

Provisions on the carrier’s liability for damaged goods are found in Chapter 13 of the Swedish Maritime Code. The Code defines the carrier as the person who enters into a contract with a sender for the carriage

of general cargo by sea – ie, the contractual carrier. The ship-owner may, however, also incur liability as the actual carrier of the goods without having entered into any contract with the cargo interests (eg, in its capacity as a subcarrier). The mandatory liability will in general not differ depending on whether ship-owners cause damage in their capacity as contractual or actual carriers. The main rule regarding liability for cargo damage is that the carrier is liable for damage resulting from the goods being lost or damaged while in its custody. The carrier may, however, be exempt from liability if it proves that the loss or damage is caused by navigational errors or fire not caused by personal fault or neglect.

The carrier’s liability can be limited to 667 Special Drawing Rights (SDR) per unit or, if the liability thereby is higher, 2 SDR per kilo of the gross weight of the goods (the SDR is an international reserve asset created by the International Monetary Fund (IMF) based on the value of a basket of currencies). The right of limitation is lost if the carrier is proven to have caused the damage or loss with intent, or recklessly with knowledge that such damage or loss would probably occur.

The ship-owner can further limit its liability regarding claims on account of damage to property if the damage occurred on board the vessel or in immediate connection with her operation, or with salvage operations (global limitation).

4.4 Misdeclaration of Cargo

The shipper has a strict liability towards the carrier regarding the correctness of the statements relating to the goods inserted in the bill of lading. Regarding carriage of dangerous goods, the shipper is not only liable towards the carrier, but also towards any subcarrier. The shipper is obliged to inform the carrier about the dangerous nature of the goods and any necessary safety measures. Failure to do so may give the carrier the right to discharge or destroy the goods without liability for paying any compensation.

To the best of the authors’ knowledge, shippers’ misdeclaration of cargo has not been tried in any recent case law of material significance.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

In the event of loss or damage to cargo that the cargo owner has observed or ought to have observed, the cargo owner must provide the carrier with a notice of claim immediately upon delivery. If the damage or loss is not apparent, a notice of claim must be given within three days from delivery.

Claims for compensation regarding loss or damage of cargo become time-barred within one year from the date of delivery.

There are possibilities to extend the time limit (for a maximum of ten years), for example through a mutual agreement between the parties, provided that such agreement has been concluded after the claim arose.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Sweden is a party to the 1952 International Convention Relating to the Arrest of Sea-Going Ships (the “1952 Arrest Convention”). The provisions of the Convention are incorporated into Chapter 4 of the Swedish Maritime Code (1994:1009). These rules are applicable to the arrest of a vessel with some international aspect (international arrest), and to vessels entered into the Swedish ship registry or an equivalent foreign ship registry.

Domestic arrests (ie, arrest of Swedish-flagged vessels where the applicant has its habitual residence or principal place of business in Sweden) are regulated by the provisions in Chapter 15 of the Swedish Code of Judicial Procedure (1942:740).

5.2 Maritime Liens

Maritime liens are recognised in Sweden (Chapter 3 of the Swedish Maritime Code (1994:1009)). A maritime lien upon a vessel secures any claim against the operator concerning:

- wages and other sums due to the Master or other person employed on board on account of their employment on the vessel;

- port, canal and other waterway dues and pilotage dues;
- compensation for personal injury that has occurred in direct connection with the operation of the vessel;
- compensation for property damage that has occurred in direct connection with the operation of the vessel, provided the claim is not based on contract; and
- salvage, remuneration, compensation for removal of a wreck and contribution in general average (where all cargo owners are responsible for the losses of others).

Difference Between Maritime Liens and Maritime Claims

Swedish law differentiates between maritime liens and maritime claims. As stated in the foregoing, maritime liens are regulated in Chapter 3 of the Swedish Maritime Code (1994:1009). Maritime claims for which a vessel can be arrested are, on the other hand, regulated in Chapter 4 of the Swedish Maritime Code. The code specifies a list of all such maritime claims for which a ship can be arrested. This list corresponds with the list found in Article 1 of the 1952 Arrest Convention. The maritime claims that may lead to arrest are claims based on any of the following circumstances:

- damage caused by a vessel, in a collision or otherwise;
- loss of life or personal injury caused by a vessel or occurring in connection with the operation of a vessel;
- salvage;
- demise charter agreement;
- agreement concerning the carriage of goods on board a vessel on account of a charterparty, bill of lading or any similar document;
- loss of or damage to goods, including luggage carried in a vessel;
- general average;
- bottomry;
- towage;
- pilotage;
- delivery of goods or materials for a vessel’s operation or maintenance;

- building, repair or equipment of a ship or charges for docking;
- wages of the Master or any other crew member on account of his or her employment on board the vessel;
- Master's disbursements and disbursements made by a consignee, charterer or shipper, or agents, on behalf of the vessel or her owner;
- any dispute as to the ownership of a vessel;
- any dispute between co-owners of a vessel as to its ownership or possession, or its operation or earnings therefrom; and
- any mortgage or other contractual hypothecation of a vessel.

It should be noted that, because the list is exhaustive, it is not possible to arrest a vessel on a claim relating to any circumstance other than those listed.

For a vessel to be arrested, the ship-owner must be liable for the maritime claim unless the claim is secured by a maritime lien.

5.3 Liability in Personam for Owners or Demise Charterers

Regarding international arrests, a vessel can only be arrested for the maritime claims listed in Chapter 4 of the Swedish Maritime Code (1994:1009), provided that the owner of the vessel is liable for the claim. There is, however, no requirement for the ship-owner or demise charterers to be liable in personam if such claims also are subject to maritime lien.

5.4 Unpaid Bunkers

Bunker suppliers have the option to arrest a vessel for claims relating to bunker deliveries provided that the owner of the vessel is liable for the claim. In cases where bunkers have been supplied to a bareboat or time charterer, the bunker supplier can only rely on the general rules on arrest under Chapter 15 of the Swedish Code of Judicial Procedure (1942:740) to arrest bunkers on board, or to seize other assets of the charterer.

5.5 Arresting a Vessel

For a vessel to be arrested, certain formalities are required. The arrest applicant must submit an application to the maritime court with jurisdiction over the

matter (see 2.4 Procedure and Requirements for Establishing a Limitation Fund).

A power of attorney in original form must be submitted with the request for arrest. The arrest application must be drafted in Swedish. Supporting documentation in English is usually accepted.

To obtain an arrest order, the applicant must demonstrate probable cause for a legitimate claim that is, or could be assumed to be, brought before the court. In addition, the applicant must show that there is a presumed risk that the defendant may evade, conceal assets or otherwise avoid payment, unless the claim is secured by a maritime lien. Lastly, the applicant is obligated to provide security covering all potential costs and damages that may be incurred by the other party in the event of an unjustified vessel arrest. Without security, the court will generally not grant the application for arrest. The court can decide to waive the security requirement for a claimant who cannot afford it and has very strong reasons (*synnerliga skäl*) for its claim. The court also determines what kind of security is adequate and how much it should cover.

5.6 Arresting Bunkers and Freight

Bunkers supplied to a bareboat or time charterer may be subject to arrest. The bunker supplier can, however, only invoke the general rules on arrest outlined in Chapter 15 of the Swedish Code of Judicial Procedure (1942:470) in order to arrest bunkers onboard or seize other assets of the charterer.

5.7 Sister-Ship Arrest

So-called sister-ship arrests are possible in Sweden. Pursuant to Chapter 4 of the Swedish Maritime Code (1994:1009), a vessel other than that to which the maritime claim relates can be arrested in certain cases. This is possible if the other vessel is owned by the same legal entity at the time when the maritime claim arose. There are exceptions to this rule, however; for example, if the claim relates to disputes as to the ownership, possession, employment or earnings of the vessel, or to the mortgage of a vessel.

5.8 Other Ways of Obtaining Attachment Orders

There are different types of attachment orders in Swedish law that can be used to obtain security, depending on the nature and stage of the claim, the type of property involved and the risk of dissipation or loss of the assets. Apart from ship arrests and provisional attachment under Chapter 15 of the Swedish Code of Judicial Procedure (1942:470), if the claimant has a binding decision against the debtor, security can be obtained by attachment (*utmätning*) under the Swedish Enforcement Code (1981:774).

5.9 Releasing an Arrested Vessel

A vessel subject to arrest shall be prevented from departing. However, pursuant to Chapter 4 of the Swedish Maritime Code (1994:1009), the owner or any interested party in possession of the vessel may apply to the court for permission to use the vessel against bail, or as security. This can be granted in two cases: if the vessel is arrested because of a maritime claim related to disputes as to the ownership of the vessel, or to disputes between co-owners of a vessel as to the ownership or possession of the vessel – or the operation of or earnings from the vessel.

To release the arrest, the owner or a stakeholder can provide security that satisfies the claimant's demand. The Enforcement Code (1981:774) does not specify what forms of security are valid, but it states that a pledge, a guarantee (*borgen*) or a business mortgage (*företagshypotek*) will suffice. The court decides if the security is adequate, unless the other party agrees to it. Bank guarantees and P&I letters of undertaking are usually seen as a form of guarantee and are thus valid.

5.10 Procedure for the Judicial Sale of Arrested Ships

According to the Enforcement Code (1981:774), once an enforcement title has been granted, usually a judgment regarding the merits of the claim, and following a granted application of attachment (*utmätning*), an arrested vessel, provided it is registered, can be sold at public auction. An arrested vessel is, as a general rule, sold at auction by the Enforcement Authority. However, the Enforcement Code allows the Enforcement Authority to instruct auctioneers to sell property. Such instructions may also be given to lawyers or

other suitable persons. The sale should normally take place within four months of the attachment.

The auction shall be announced well in advance, and in an appropriate manner. The announcement shall contain information about the meeting regarding distribution of the purchase price. Holders of claims shall be urged to report their rights to the enforcement authority no later than at the time of the auction.

Notification of the sale shall be sent to the applicant and the owner, as well as to known creditors who have a maritime mortgage, mortgage rights or right of retention, no later than 30 days before the auction. If such a creditor becomes known later, it shall be notified immediately.

Claims are listed in accordance with the priority prescribed by statute. Interest and other ancillary obligations are listed before the principal sum of the claim unless the creditor requests otherwise. The administration expenses are included immediately prior to the enforcement claim.

A decision to grant an arrest will be enforced by the Enforcement Authority or by an instructed person. The Enforcement Authority informs the vessel's Master about the arrest order, and the vessel's certificates and nationality documents will normally be taken into custody. A seal will also be fixed to the rudder. Breaching the arrest of the vessel is sanctioned by fines or imprisonment of up to one year. The party who requested the arrest might be required to cover the costs of maintaining the arrest in advance, such as harbour fees or similar costs.

Sweden is not a signatory to the Convention on the International Effects of Judicial Sales of Ships.

5.11 Insolvency Laws Applied by Maritime Courts

The Company Reorganisation Act (2022:964) is part of Swedish insolvency law and regulates how companies can be reconstructed in order to overcome financial difficulties. A company can apply for reconstruction if it has a viable business model that can survive the financial problems that the reconstruction is meant to solve. The goal of the reconstruction is to help

the company overcome its economic troubles and become profitable and stable.

Chapter 2 of the Company Reorganisation Act sets out that while the corporate restructuring is in progress, as a main rule, enforcement or other execution according to the Enforcement Code (1981:774) may not take place against the debtor. During this time, a creditor may not in any other way realise the debtor's assets. This implies that the debtor's property is protected from individual creditor claims during a reconstruction procedure.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

If the arrest applicant has failed to initiate proceedings on the merits of the claim within one month, or if the applicant is unsuccessful in such proceedings so that the arrest is lifted, the applicant becomes strictly liable for all expenses and damages that the defendant suffers. The owner of the vessel has the right to seek compensation for damages resulting from a wrongful arrest by initiating separate legal proceedings against the applicant in court.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The liability of a carrier of passengers is regulated by Chapter 15 of the Swedish Maritime Code (1994:1009), which recaps the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the 2002 Protocol. Sweden has ratified the Athens Convention, as amended by the 2002 Protocol, and is further bound by EC Regulation 392/2009 on the liability of carriers of passengers by sea in the event of accidents, which incorporates the Athens Convention into EU law. Sweden is also bound by EC Regulation 1177/2010 concerning the rights of passengers when travelling by sea and inland waterways.

The time limit of two years, which is initiated when the passenger disembarked from the vessel, and/or the luggage was brought from the vessel, can be interrupted only by initiation of legal proceedings at court.

The date of the filing of the suit is the date that the time bar is interrupted. Agreements on time-bar extensions are generally accepted in Sweden.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

In general, Swedish courts will recognise and enforce law and jurisdiction clauses stated in bills of lading. However, there are certain limitations for jurisdiction and arbitration clauses in Chapter 13 of the Swedish Maritime Code (1994:1009).

In disputes concerning the carriage of cargo, a jurisdiction clause may be void if it limits the claimant's right to bring an action at the place where:

- the respondent has its principal place of business or, in the absence thereof, its habitual residence;
- the agreed contract of carriage was entered into, provided that the respondent has a place of business, a branch or an agency there through whom the contract was concluded; or
- the agreed port of loading or the agreed actual port of discharge is situated.

For arbitration clauses, the Swedish Maritime Code states that – as a part of the arbitration agreement – the claimant always has a right to request that the arbitration shall be pursued in one of the states where a place named in the foregoing list is situated.

It should be noted that the aforementioned limitations do not apply to jurisdiction or arbitration clauses in cross-trade (ie, in traffic between non-Nordic states), nor to jurisdiction clauses if anything else follows from certain EU legal acts or international instruments.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

If a bill of lading is issued under a charterparty containing a provision on the competent court or an arbitration clause, without the bill of lading expressly mentioning that the provision/clause is binding on the holder of the bill of lading, the carrier may not

invoke the provision/clause against the holder of the bill of lading, provided that the holder has acquired it in good faith (Chapter 13 of the Swedish Maritime Code (1994:1009)).

Thus, a provision on the competent court or an arbitration clause in a charterparty may only be invoked against the holder of the bill of lading if that bill expressly mentions that the provision/clause is binding on such holder. A general reference to the charterparty in the bill of lading will not suffice.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Sweden is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Recognition and enforcement of foreign arbitral awards is conducted in accordance with the Swedish Arbitration Act (1999:116).

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Under Swedish law, an arrest can be obtained provided that the requirements outlined in **5. Maritime Liens and Ship Arrests** are fulfilled. Hence, it does not matter if the substantive claim is subject to foreign jurisdiction through arbitration or court proceedings. However, the foreign judgment/arbitral award must be enforceable in Sweden (Chapter 4 of the Swedish Maritime Code (1994:1009)).

7.5 Domestic Arbitration Institutes

The Swedish Chamber of Commerce is the main domestic arbitration institute in Sweden. It does not specialise in maritime claims but deals with maritime disputes, as well as most other types of disputes.

In addition, the Nordic Offshore and Maritime Arbitration Association (NOMA) was established in 2017 as a Nordic initiative. NOMA has developed its own arbitration rules, and their importance is likely to increase in Sweden. Ad hoc proceedings under the Swedish Arbitration Act (1999:116) may also be an option for maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

A court may not, provided that the respondent objects, rule on an issue that shall be decided by arbitrators pursuant to an arbitration agreement. The respondent must, however, invoke the arbitration agreement on the first occasion it pleads its case on the merits in court (Section 4 of the Swedish Arbitration Act (1999:116) and Chapter 10 of the Swedish Code of Judicial Procedure (1942:740)).

As a main rule, a Swedish court will consider itself competent to entertain proceedings for a dispute instituted in that court unless the respondent has made a timely objection to the competence of the court invoking the relevant jurisdiction clause, has failed to appear in court at the first hearing or, if the preparation is in writing, omitted to submit an answer (Chapter 10 of the Swedish Code of Judicial Procedure (1942:740)). The respondent must present its objection when making its first appearance in the case. Should the respondent be prevented from asserting an objection by legal excuse, the objection must be presented as soon as possible after the excuse has ceased to exist. Failure to raise such an objection within the allotted timeframe results in forfeiture of the right to raise the objection (Chapter 34 of the Swedish Code of Judicial Procedure). Please note that the rules are somewhat different where the Brussels I Regulation is applicable.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

There is an optional tonnage tax system. Shipping operations that are qualified include the transport of goods and passengers at sea with ships that have a gross tonnage of at least 100, have their strategic and financial management in Sweden and are mainly used in international traffic or in domestic traffic in another country.

For the shipping business to be considered qualified, it is further required, among other things, that a certain proportion of the ships in the company's fleet are registered in a register in a state within the EU/EEA.

As a general rule, the company can leave the tonnage tax system after ten tax years at the earliest. A proposal has been made by the government to extend the tonnage tax system to special vessels of a smaller tonnage, such as cable-laying, salvage, ice-breaking and marine work vessels. In addition, cabotage traffic is proposed to be eligible for tonnage tax if subject to “international competition”. If approved by Parliament, the law will be amended on 20 June 2026.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Force majeure is not per se an established concept under Swedish law. Instead, whether unforeseeable, uncontrollable and/or extraordinary events will relieve a party from its contractual obligations will depend on the particular circumstances and the relevant contractual terms. However, there are possibilities under the Swedish Contracts Act (1915:218) to modify or set aside contract terms that become excessively onerous as a result of circumstances that are typically regarded as force majeure events.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Sweden has implemented “IMO 2020”. Notably, the Baltic Sea and the North Sea are so-called sulphur emission control areas (SECAs), which means that vessels are prohibited from using fuel within this area having a sulphur content exceeding 0.10% by weight.

The requirements for the sulphur content of fuel used on board are regulated by EU Directive 2016/902, and the applicable Swedish legislation is the Sulphur Ordinance (2014:509). The authority responsible for enforcing the Sulphur Ordinance is the Swedish Transport Agency. However, bunker suppliers must be registered under the Sulphur Ordinance with a different agency – the Swedish Chemical Agency.

Breach of the Sulphur Ordinance entails an environmental penalty fee. The fee varies from EUR2,500 to EUR50,000, depending on the level of sulphur and

the power of the engine of the vessel that used the bunkers.

It should be noted that, as of 1 July 2025, it is prohibited to discharge water from scrubbers (the purpose of which is to reduce the sulphur content in bunkers) in “open-loop mode” within the territorial waters of Sweden, Denmark or Finland.

9.3 Trade Sanctions

Sweden does not have any sanctions of its own. Instead, Sweden applies UN and EU sanctions. Breach of sanctions entails criminal liability in Sweden. Only natural persons can commit a crime in Sweden. Legal persons (eg, companies) can, however, be subject to corporate fines if a sanctions breach has been committed within the ambit of the company’s operations.

There is very little public case law in Sweden regarding sanctions breaches. The lack of public judgments from sanctions-related commercial disputes may be explained by the fact that most commercial disputes in Sweden are referred to private arbitration.

The administration of sanctions is performed by several agencies, of which the two most prominent are the Inspectorate of Strategic Products and the National Board of Trade Sweden. There is no mechanism to grant authorisations or permits beyond what the sanctions legislation provides for.

The Swedish government has recently taken several steps to enhance the focus on sanctions and sanctions compliance amongst agencies, and in business life. Amongst other things, a new sanctions law was enacted in 2025, which, among other things, increased the penalties for sanctions breaches.

Trade sanctions against Russia and the non-governmental controlled areas of Ukraine have had a large impact on Sweden’s business life, including shipping. The main legal instruments regarding the EU’s sanctions against Russia are EU Regulation 833/2014, EU Regulation 269/2014 and EU Regulation 1351/2014. These Regulations contain several provisions specifically targeting shipping and shipping-related services.

9.4 International Conflict

Recent geopolitical developments, as well as experiences related to the COVID-19 pandemic, have prompted the Swedish government to take several steps towards strengthening Swedish shipping (see **8.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies**). Furthermore, the war in Ukraine has had a significant impact on Swedish shipping (see **9.3 Trade Sanctions**).

One major topic at the time of writing is how Sweden and other Baltic states should react to Russia's so-called shadow fleet, which comprises poorly insured tankers that also apparently conduct sabotage operations against sea-bed infrastructure. Approximately 90 of these vessels are estimated to leave Russian ports in the Baltic Sea every month, laden with Russian oil, transiting the Gulf of Finland, Danish Straits and the English Channel. During 2025, the Baltic states took several steps to enhance inspections regarding, for example, the certificates of insurance for these vessels.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

In Sweden, maritime and transport law are generally considered to be rather particular and somewhat inaccessible legal regimes, and are typically not well known to, or practised by, the average lawyer.



Law and Practice

Contributed by:

Türker Yıldırım, Semih Sander, Gülistan Baltacı Hatay and Selçuk Sencer Esenyel
EsenyelPartners Lawyers & Consultants

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Contributed by: Türker Yıldırım, Semih Sander, Gülistan Baltacı Hatay and Selçuk Sencer Esenyel, Esenyel|Partners Lawyers & Consultants

Esenyel|Partners Lawyers & Consultants was founded in 2013 and is a leading international law firm in Türkiye, recognised for its strong expertise in complex national and cross-border matters. The firm is a trusted adviser to major global corporations and industry leaders, known for delivering high-quality, results-driven legal solutions. With a team of over 120 experienced and multilingual lawyers and professionals, Esenyel|Partners provides integrated, business-focused advice supported by deep sector knowledge. The firm offers full-service legal support

across a wide range of practice areas, including shipping and transport law, corporate and commercial matters, dispute resolution, regulatory compliance, insurance and international trade. Esenyel|Partners represents a distinguished international client base, including P&I clubs, global banks, ship-owners, airlines, insurers and multinational companies, such as the Istanbul and Marmara, Aegean, Mediterranean and Black Sea Chamber of Shipping (DTO) and the Turkish Shipbuilders' Association (GİSBİR).

Authors



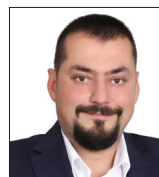
Türker Yıldırım is a highly respected partner at Esenyel|Partners Lawyers & Consultants and a shipping lawyer with extensive experience in maritime disputes, transport claims and international trade matters. He serves as Chairman of the Istanbul Bar Association Maritime Law Commission, reflecting his leadership and recognition within Türkiye's legal community. Over his distinguished career, Türker has earned acclaim for his strategic, results-oriented approach, successfully managing complex shipping and logistics cases for both domestic and international clients. Known for his deep technical expertise, practical insight and meticulous attention to detail, he is a trusted adviser in navigating the intricate legal and commercial challenges of the maritime sector.



Semih Sander is a partner at Esenyel|Partners Lawyers & Consultants and a highly respected lawyer registered with the Istanbul Bar Association, renowned for his expertise in maritime and transport law and in general litigation. He advises domestic and international clients on complex shipping transactions and high-value disputes, providing practical and strategic legal solutions. Mr Sander also delivers comprehensive support to leading international banks across corporate and finance matters. His deep knowledge, professional excellence and consistent track record of successful outcomes for major clients underscore his pre-eminent standing and reliability as a trusted and distinguished legal adviser.



Gülistan Baltacı Hatay is a leading specialist in aviation and shipping law, advising clients on complex cross-border matters. Her practice focuses on transactional and litigation work in the maritime and aviation sectors, including aviation finance and leasing, shipping and aviation disputes, port and airport operations, and all associated insurance matters. She also has significant experience in offshore projects, advising on contractual structuring and dispute resolution, as well as aircraft damage claims and regulatory compliance. Widely recognised for her technical expertise and strategic insight, Ms Hatay is a trusted adviser in complex legal and commercial matters.



Selçuk Sencer Esenyel is a founding partner of Esenyel|Partners Lawyers & Consultants, and is a pre-eminent lawyer with over 18 years of distinguished experience. Educated in Türkiye and the United Kingdom, he leads the firm's shipping, finance and litigation practices, providing insightful and strategic counsel on maritime, aviation, asset finance and dispute resolution. Renowned for his expertise, Mr Esenyel serves on the BIMCO Documentary Committee, reflecting his international influence in maritime law. His profound legal acumen, combined with a track record of successful outcomes for major international corporations, financial institutions and industry leaders, underscores his status as a trusted and pre-eminent legal adviser.

EsenyelPartners Lawyers & Consultants

Levent Mah.
Sümbül Sok. No 61
34330 Beşiktaş, İstanbul
Türkiye

Tel: +90 212 397 19 91
Email: info@esenyelpartners.com
Web: www.esenyelpartners.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Maritime Courts

Civil courts of first instance and appeal courts are established as per Law 5235. Pursuant to Articles 4 and 5 thereof and the Turkish Commercial Code (TCC), commercial matters shall be referred to commercial courts, and one or more in each province can be identified as functioning as a maritime court. For instance, the Istanbul 17th Commercial Court and Izmir 5th Commercial Court have been designated as maritime courts.

Common Maritime Disputes

Disputes arising from carriages – such as vessel and container demurrage and cargo damage – are common, along with ship arrests and cargo liens due to maritime claims or charterparty disputes. Further, the number of disputes stemming from under-declaration of bunkers or a deficiency in bunkers has been steadily increasing.

1.2 Port State Control

Türkiye applies port state control (PSC) based on the Mediterranean and Black Sea Memorandum of Understanding. The Ministry of Transport and Infrastructure (the “Ministry”) is the highest authority for PSC. The Directorate General of Maritime Affairs and the port authorities, operating under the Ministry, are the main bodies authorised to implement PSC through

authorised PSC officers (PSCOs). By implementing PSC, the Ministry aims to:

- verify that vessels engaged in shipping within Turkish jurisdiction comply with applicable international maritime instruments in respect of navigation safety, life, property and environmental protection, as well as seafarers’ living and working conditions; and
- take enforcement action against sub-standard vessels.

The authorities and powers of the PSCOs are regulated under Law 4922 and other relevant regulation. PSCOs shall, inter alia:

- inspect foreign-flagged vessels calling at Turkish ports or anchorage areas;
- assess compliance with International Maritime Organization (IMO) rules regarding safety, pollution prevention and crew welfare requirements;
- order that deficiencies be remedied; and
- suspend operations or detain vessels where serious non-compliance is found.

1.3 Domestic Legislation Applicable to Ship Registration

Ship registration in Türkiye is regulated by specific provisions under the TCC and the relevant secondary legislation. Ship registries operating under port authorities – for instance, the Office of the Istanbul Harbour Master – handle domestic registration of vessels.

1.4 Requirements for Ownership of Vessels

There are different types of ship registries in Türkiye, each with different registration requirements.

Registration with the Turkish (National) Ship Registry is only allowed if the ship-owner is either a Turkish citizen or a Turkish legal entity where the majority of the board of directors, shares and voting rights are held by Turkish citizens.

On the other hand, registration with the Turkish International Ship Registry (TISR) is possible if the ship-owner resides in Türkiye, irrespective of nationality. For legal entities, such ship-owner must still be a Turkish legal entity; however, assignment of the majority of the board of directors, shares and voting rights shall only be sought if the vessel is to hoist the Turkish flag.

However, there is an exception under Article 941 (2) of the TCC in that foreign vessels shall be allowed to fly the Turkish flag if bareboat-chartered to a Turkish legal entity where, again, the majority of board of directors, shares and voting rights are held by Turkish citizens. Further, the Master and 51% of the crew must be Turkish citizens.

A special registry exists for vessels under construction, and it is possible for builders and buyers to have vessels under construction registered with such special registry.

1.5 Temporary Registration of Vessels

Neither temporary nor dual registration of vessels is permitted in Türkiye. However, there is an exception for financial leasing and bareboat charter. Financially leased foreign-flagged vessels can be registered with the TISR subject to certain conditions, whereas bareboat-chartered foreign vessels can be registered with a special registry kept by the Ministry.

1.6 Registration of Mortgages

Ship registries maintain the registration of mortgages. The following documents, in original, are required for registration of a mortgage:

- ship mortgage registration application;
- notarised mortgage agreement;
- payment of registration fees;

- for real persons, ID document, power of attorney and proof of address; and
- for legal entities, signature circular, good standing certificate, power of attorney and an ID document of the representative.

1.7 Ship Ownership and Mortgages Registry

As per Article 973 of the TCC, the Turkish ship registry is public, and registry records may be reviewed by any person. However, in practice, the registry requires such persons to state their interest in reviewing the records. In any case, pursuant to Article 973 (2), one must prove one's legitimate interest to review the detailed registry files.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

Key terms generally include:

- default provisions;
- loan amount;
- form of loan extension;
- interest terms;
- payment terms;
- lender's and debtor's rights and obligations;
- securities; and
- terms of repayment.

In addition, key terms increasingly include sanctions clauses due to the ongoing conflicts and enhanced know-your-customer (KYC) diligence by the lenders.

Debt financing is the most common ship finance type in Türkiye. Typical transactions involve an owner mortgaging one or more of their existing vessels to finance the purchase of another.

Other than mortgages, lenders usually require assignment of receivables, earnings or insurances, and personal and corporate guarantees. Undertakings by managers are also not uncommon.

2.2 Ship Leasing

Ship-Leasing Transactions

While leasing transactions are increasing in other trade areas (such as aviation), ship leasing is still not a

commonly preferred financing option for ship-owners or financial institutions in Türkiye. Accordingly, there is not a strong shift away from traditional bank lending towards private equity and alternative credit providers. That said, Chinese leasing houses have been seen as becoming more active in the market.

On the other hand, sale-and-leaseback transactions are more common, albeit still less preferred than traditional financing.

Differences in Relationship Between Transaction Parties

In ship-leasing transactions, the lessor owns and holds legal title to the vessel, while the lessee can operate, have possession, and control the vessel during the lease term. The lessee may acquire ownership of the vessel at the end of the lease term.

In terms of ship financing, the borrower is the legal owner of the vessel, while the lender is merely financing the acquisition of the vessel with funds secured by a mortgage and other securities.

Differences Between Mortgage and Lease Default

There are certain differences in both the enforcement and qualification of ship mortgage and lease defaults. As per Article 1014 of the TCC, a ship mortgage constitutes a right in rem granting the lender/mortgagee the ability to seek the enforcement of the mortgage for satisfaction of its claim from sale proceeds and with priority over ordinary claims. In the event of a lease default, general default provisions of the Turkish Code of Obligations (TCO) and the TCC shall apply, and the lessor shall have a claim for the return of the vessel and payment of contractual receivables. Therefore, where the transaction is secured by a mortgage, the lender would arrange the auction of the vessel as per the Enforcement and Bankruptcy Law (EBL). If the transaction is a lease transaction, the lessor would aim for the return of its property – ie, the vessel – and satisfaction of its receivables under the lease agreement by pursuing the assets of the lessee, albeit without enjoying any priority rights.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal Pollution

Türkiye is a party to the following international conventions, among others:

- the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) and the Protocol of 1997;
- the International Convention on Civil Liability for Oil Pollution Damage, 1992;
- the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and the Protocol of 2003; and
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Regarding the owners' liability for pollution, administrative fines are imposed under the Turkish Environmental Law and on the basis of the gross tonnage of the vessel that caused the pollution.

Wreck Removal

Türkiye is not a state party to the Nairobi International Convention on the Removal of Wrecks, 2007. Wreck removal in Türkiye is governed by the Law on Ports No 618 and the relevant provisions of the TCC.

3.2 International Conventions: Collision and Salvage Collision

Türkiye is a party to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs). Under the Regulation on Maritime Collision Prevention, which entered into force on 12 March 2024, all vessels, regardless of their flag, sailing in Turkish territorial waters are required to comply with the rules set out in COLREGs.

Salvage

Türkiye is a party to the International Convention on Salvage, 1989. The provisions of various international conventions, including the aforementioned Convention, have been incorporated into the TCC. Claims for

salvage reward constitute maritime liens under Turkish law.

3.3 Convention on Limitation of Liability for Maritime Claims

Türkiye is a party to the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, and maritime claims in Türkiye are subject to global limitation. The Convention's provisions are incorporated into the TCC by way of Article 1328 thereof.

Regarding the 2012 amendments, under the tacit acceptance procedure introduced by the 1996 Protocol, in 2024 the Istanbul Maritime Court ruled that the limitation fund should be constituted in accordance with the increased limits set out in the 2012 amendments. However, there remains an ongoing debate as to whether the increased limits introduced by the 2012 amendments have entered into force in Türkiye.

3.4 Vienna Convention on the Law of Treaties

Türkiye is not a state party to the Vienna Convention on the Law of Treaties 1969 (the "Vienna Convention"). However, certain principles of the Vienna Convention are applied on the basis that they constitute universally accepted legal standards.

3.5 Procedure and Requirements for Establishing a Limitation Fund

A limitation fund is set up upon an application to the competent maritime court. The court would then determine the limitation amount and grant the applicant time (usually a few weeks) to deposit the money or provide security. The limitation amount is calculated with reference to the ship's tonnage. Items such as interest and potential legal costs are taken into consideration as well.

3.6 Seafarers' Safety and Owners' Liability

While Türkiye signed the Maritime Labour Convention 2006 (MLC), the process for Türkiye to become a formal party to the MLC has not been completed.

The rights and safety of seafarers are regulated by international conventions to which Türkiye is a party, as well as by domestic laws, regulations and decisions of the competent authorities. Türkiye is currently

a party to several International Labour Organization (ILO) conventions regulating seafarers' rights and safety, including the Conventions numbered 55, 73, 134 and 69. Further, seafarers working on Turkish-flagged vessels, regardless of their nationality, are entitled to the rights set out under Maritime Labour Law 854. For matters involving foreign-flagged vessels, the TCO shall apply.

4. Cargo Claims

4.1 Bills of Lading

Türkiye has ratified the dated Hague Rules. Although Türkiye has not ratified either the Visby Rules, the Hamburg Convention or the Rotterdam Rules, these have influenced the TCC, particularly in terms of the carrier's limitation of liability. For instance, non-conflicting innovations introduced by the 1968 Visby Protocol and the 1979 Special Drawing Rights Protocol were incorporated into the TCC.

4.2 Title to Sue on a Bill of Lading

The legal holder of a bill of lading shall have title to sue by relying on the bill of lading. The insurer may also have title to sue if it has subrogated the rights of the legal bill of lading holder.

The title to sue may be transferred to third parties without any limitation.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

In principle, the ship-owner is liable for any damage caused to third parties because of the fault of the crew or the compulsory or voluntary pilot while performing their duties. If, however, the ship-owner is the carrier at the same time, it shall be liable under the provisions of the TCC governing the carrier's liability.

Pursuant to Article 1180, the carrier is obliged to exercise the care and diligence that a prudent carrier is expected to show in the performance of a contract of carriage, particularly in loading, stowage, handling, carriage, preservation, supervision and discharge of the goods. For a carrier to be held liable for cargo damage, the damage must have occurred while

the cargo was in the carrier's custody. The cargo is deemed to be in the carrier's custody from the time it has been received by the carrier until:

- the delivery to the cargo receiver;
- where the cargo receiver refuses delivery, the cargo is put at the cargo receiver's disposal in accordance with the contract or the law; and
- if it is mandatory for the cargo to be delivered to authorities, delivery to such authorities.

The carrier can be excluded from liability in accordance with Articles 1179, 1180, 1181 and 1182, in particular where:

- the damage did not occur due to the carrier's or its employees' intent or neglect;
- the damage results from an act relating to the navigation or other technical management of the vessel, or from fire – in which case the carrier's liability shall be limited to its own fault;
- except in cases of general average, the damage results from salvage operations or attempts at salvage of life or property at sea; or
- specific cases apply, such as compliance with court orders, occurrences of strikes or lockouts, etc.

Limitation of Liability

According to Article 1186 of the TCC, the liability of the carrier is limited. For any loss of or damage to the cargo, the carrier shall, in any event, not be liable for an amount exceeding the higher of SDR666.67 per package or unit, or SDR2 per kilogram unless the value of the cargo has explicitly been stated on the bill of lading. Further, limitation of liability would not apply in certain cases, such as the carrier causing the loss of or damage to the cargo on purpose.

Liability of Actual Carrier

Pursuant to Article 1191 of the TCC, if the carriage is partially or entirely performed by an actual carrier, the contractual carrier shall remain liable together with the actual carrier on a joint and several basis.

4.4 Misdeclaration of Cargo

Pursuant to Article 1145 of the TCC, the shipper is obliged to declare to the carrier accurate and com-

plete information regarding the cargo. Accordingly, the shipper is liable to the carrier for any damages arising from misdeclaration.

Two recent judgments on Article 1145, both by the Istanbul Maritime Court, confirm that carriers' claims against shippers on the ground of misdeclaration of cargo are approved and accepted by the Turkish courts.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Pursuant to Article 1188 of the TCC, any rights to claim compensation from the carrier for damage to or loss of cargo or late delivery will be limited to within one year as of the complete or partial delivery of the cargo and, where the cargo was never delivered, the date the cargo should have been delivered. This is a prescription period; however, it can be extended by an agreement between the parties, provided such agreement is executed after cause of action has arisen.

With reference to Article 1297, claims in the nature of a liability in tort, such as those arising from collision, are subject to a time bar of two years. This is a statute of limitation and can be suspended or interrupted in certain situations.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

Türkiye ratified the 1999 International Convention on the Arrest of Ships (the "1999 Arrest Convention") and the 1993 International Convention on Maritime Liens and Mortgages ("1993 MLM Convention").

As for domestic law, vessel arrest procedures in Türkiye are governed by the TCC, which incorporates the principles of the 1999 Arrest Convention and sets out the rules on maritime claims.

5.2 Maritime Liens

Türkiye differentiates between maritime lien claims and maritime claims.

Maritime Lien Claims

Articles 1320 to 1327 of the TCC set out maritime liens. Maritime lien claims are listed on a numerus clausus basis, and are as follows:

- claims for seamen's wages;
- claims for loss of life and personal injuries;
- claims for salvage reward;
- claims for port, canal and other waterway dues, as well as pilotage dues;
- claims based on tort arising out of physical loss or damage caused by the operation of the vessel, other than loss of or damage to cargo, containers or passengers' effects carried on the vessel; and
- claims for general average.

Turkish courts recognise a maritime lien for loss of life and personal injury of passengers or crew on the vessel, as well as other persons on land or on water, under Article 1320 (1)(b) of the TCC. The basis of such claims must be "in direct connection with the operation of the vessel".

Maritime Claims

Maritime claims are listed under Article 1352 of the TCC on a numerus clausus basis, and are as follows:

- loss or damage caused by the operation of the vessel;
- loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a vessel which by herself or her cargo threatened damage to the environment;
- damage or threat of damage caused by the vessel to the environment, coastline or related interests, measures taken to prevent, minimise or remove such damage, compensation for such damage, costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken, or loss incurred or likely to be incurred by third parties in connection with such damage, and damage, costs or loss of a similar nature to those identified in this point;
- costs or expenses relating to the raising, removal, recovery, destruction or rendering harmless of a vessel which sank or was wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of her crew;
- any agreement relating to the use or hire of the vessel, whether contained in a charterparty or otherwise;
- any agreement relating to the carriage of goods or passengers on board the vessel, whether contained in a charterparty or otherwise;
- loss of or damage to or in connection with goods (including luggage) carried on board the vessel;
- general average;
- towage;
- pilotage;
- goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the vessel for her operation, management, preservation or maintenance;
- construction, reconstruction, repair, converting or equipping of the vessel;
- port, canal, dock, harbour and other waterway dues and charges;
- wages and other sums due to the Master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
- disbursements incurred on behalf of the vessel or her owners, including loans taken for the vessel;
- insurance premiums (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the ship-owner;
- any commissions, brokerages or agency fees payable in respect of the vessel by or on behalf of the ship-owner;
- any dispute as to ownership or possession of the vessel;
- any dispute between co-owners of the vessel as to the employment or earnings of the vessel;
- a mortgage or "hypothèque" or a charge of the same nature on the vessel; and
- any dispute arising out of a contract for the sale of the vessel.

There is no specific statutory time bar for filing maritime claims before the Turkish courts per se. As a matter of private international law, time bars are subject to the law that is applicable to the underlying legal relationship.

The lapse of time leading to the extinction of maritime liens is governed by Article 1326 of the TCC, which is incorporated from Articles 6 and 9 of the 1993 MLM Convention. Maritime liens listed under Article 1320 (1) (a) to (e) are extinguished after one year unless, prior to expiry, the vessel is arrested or seized for a forced sale. For the seamen's claims, the period of one year commences upon the claimant's discharge from the vessel.

5.3 Liability in Personam for Owners or Demise Charterers

Under Turkish law, as a general rule, in personam liability of the owners or demise charterers is required for a vessel to be arrested. However, there is an exception for maritime liens. If the claim constitutes a recognised maritime lien, the vessel may be arrested regardless of whether the owners or demise charterers are personally liable.

5.4 Unpaid Bunkers

A bunker supplier may arrest a vessel based on a maritime claim, as provided under Article 1352 (1)(I) of the TCC. For an actual supplier to arrest the vessel, the supporting documents for the claim and the owner's liability for the debt must be assessed separately. If the bunkers were supplied to a chartered vessel and ordered by the charterer rather than the owner, the vessel may not be arrested. However, since an arrest application is examined by Turkish courts on a prima facie basis, the owner's or charterer's liability is not always assessed in depth at this stage. Also, under Turkish law, a charterer does not have the authority to bind the vessel.

5.5 Arresting a Vessel

The arresting party must provide prima facie evidence that the claim constitutes a maritime claim under Article 1352 of the TCC, including the amount claimed. Submission of original supporting documents is not required.

A legalised power of attorney (PoA) in favour of the lawyer is required. If the PoA is issued abroad, it would need to be notarised and apostilled.

All documents in a foreign language must be translated into Turkish by a translator recognised by a Turkish notary.

Counter-Security

Save for crew claims, the arresting party is required to provide counter-security at the fixed level of SDR10,000. Said security must be provided simultaneously with the submission of the arrest application. The amount of the counter-security can be increased or decreased by the arresting court depending on the requests of the parties.

5.6 Arresting Bunkers and Freight

There is no specific provision directly allowing the arrest of bunkers and freight. However, if the conditions set out under the general enforcement and attachment rules are met, it may be possible to obtain such an arrest.

5.7 Sister-Ship Arrest

A sister-ship arrest is possible under TCC Article 1369 (2). This article is adopted from Article 3 (2) of the 1999 Arrest Convention.

5.8 Other Ways of Obtaining Attachment Orders

Apart from vessel arrests, no other attachment orders are permitted on a vessel to secure maritime claims under TCC Article 1353. It is also not possible to arrest a vessel for claims other than maritime claims. However, if the debtor owns assets other than the vessel and the legal requirements are met, attachment may be applied to such other assets.

5.9 Releasing an Arrested Vessel

The arrested party can challenge the arrest order, and the latter can be lifted if the objections are accepted by the court.

The release of the arrest vessel can be procured by provision of security. The amount of such security would be at the discretion of the arresting court, and is usually 115% of the claim amount, provided

that such amount remains below the arrested vessel's value. The security can be deposited in cash or provided by means of an unconditional bank letter of guarantee issued by a Turkish bank for an unlimited period of time. Release upon provision of a P&I letter of undertaking or a foreign bank guarantee is possible if the arresting and arrested party agree.

5.10 Procedure for the Judicial Sale of Arrested Ships

Under Turkish law, the judicial sale of a vessel is carried out by the competent bailiff's office. A judicial sale would require a finalised claim. While the auction process is the same for Turkish and foreign-flagged vessels generally, there is a difference in that the auction of a foreign vessel would require a notification to the general consulate of the vessel's flag state as well as notifications to the relevant ship registry and announcement in the relevant country.

The vessel's maintenance is attended by trustees appointed by the relevant bailiff; however, the claimant seeking the auction is, in practice, expected to pay the fees and expenses.

The auction shall be public and can be entered by any individual or legal entity. There will be a reserved price of 50% of the appraised value of the vessel.

A private sale is possible, albeit by way of a process involving the bailiffs and courts and a minimum of 90% of the appraised value of the vessel.

Under Articles 1390 to 1397 of the TCC, the ranking of claims from the proceeds of a vessel's auction is as follows:

- expenses related to the forced sale, custody and maintenance of the vessel, and the wages and other receivables of crew for the period from the vessel's arrest until their discharge;
- costs for the removal or salvage of a wrecked, stranded or sunken vessel by public authorities, either to ensure safe navigation or to protect the environment;
- claims secured by maritime liens;

- ship-yard's privileged claims, if the vessel was in the ship-yard's possession at the time of the auction;
- customs duties, taxes and other levies imposed on the vessel;
- ship mortgages or other statutory liens;
- maritime claims that do not take priority over the above; and
- all other claims against the owners.

5.11 Insolvency Laws Applied by Maritime Courts

Insolvency proceedings in Türkiye are mainly governed by the EBL. The EBL stipulates the "concordato" scheme, which is similar to Chapter 11 of the US Bankruptcy Code and the Scheme of Arrangement in the UK.

Vessels owned by ship-owners under court protection by way of the "concordato" scheme cannot be arrested.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

The arrested party can seek damages on the ground of a wrongful arrest if the arrest order is lifted upon the arresting party's failure to issue substantive proceedings within one month, or the lifting of the arrest order as per objections or the failure of the arresting party in the substantive proceedings. In any case, the claimed damages must be substantiated.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims Applicable Regulations for Maritime Passenger Claims

The Athens Convention 1974 and the 2002 Protocol have been in force in Türkiye since 1987 and 2014, respectively. The TCC, TCO and Turkish Consumer Protection Law are the main domestic laws applicable to the resolution of maritime passenger claims. Under the preamble of the TCC, it is explicitly stated by the legislature that the relevant articles are based on the 2002 Protocol.

Time Limit of Maritime Passenger Claims

Pursuant to Article 1257 of the TCC, all compensation claims arising from the death of or personal injury to passengers shall be caught by the time bar after ten years. It is further stipulated that all other claims arising from passenger contracts, including receivables for loss of or damage to luggage, are subject to a time bar of two years as of the date the passenger disembarks or ought to have disembarked. For all other receivables, the two-year time bar begins on the date of maturity.

In the case of an international voyage, the time limits under the Athens Convention 1974 and the 2002 Protocol shall apply.

Limitation of Liability on Owners

The carrier is liable for the damages arising from the death of or injury to passengers on the ground of a shipping incident. Liability of the carrier is limited to SDR250,000 per passenger for each shipping incident. The carrier is released from liability if it proves that the incident resulted from war, terrorism, civil war, insurrection or an exceptional natural event that could not be avoided or prevented, or from an act or omission of a third party committed with the intent to cause the accident. If the carrier is at fault, it is also liable for the portion of the passenger's damage exceeding the above-mentioned limits. The burden of proving the absence of fault rests with the carrier.

However, the carrier's liability is limited to SDR400,000 for the death of or injury to passengers howsoever caused.

The carrier's limit of liability for luggage claims is regulated under Article 1263 of the TCC, and the applicable limit varies between SDR2,250 and SDR13,700 depending on the circumstances and the location of luggage damaged.

Maritime Lien

Loss of life or personal injury to passengers would give rise to maritime lien claims, whereas other claims would qualify as maritime claims.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Turkish courts generally recognise and enforce law and jurisdiction clauses stated in bills of lading. However, there has been an ongoing debate regarding whether Turkish courts could seize jurisdiction where a bill of lading with a foreign law and jurisdiction clause has been executed on behalf of a foreign carrier by a Turkish agency in Türkiye. This debate stems from Article 105 of the TCC.

Further, a risk exists that an asymmetric jurisdiction clause granting one of the parties the right to refer to different courts in different jurisdictions could be found invalid by Turkish courts.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Turkish courts recognise and enforce the law and arbitration clause of a charterparty incorporated into the relevant bill of lading, on the condition that the bill of lading contains a specific reference to the charterparty and a copy of the charterparty has been shared with the ultimate holder of the bill of lading. Under Article 1237 (3) of the TCC, if it cannot be proven that the charterparty has been represented to the ultimate holder of the bill of lading, the provisions of the charterparty shall not bind such person.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Türkiye is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under Turkish law, the recognition and enforcement of foreign arbitral awards are regulated under the provisions of International Private and Procedure Law 5718.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The TCC adopts the lex fori principle regarding the arrest of a vessel. Therefore, the Turkish courts would order the arrest of a vessel even if the claim is governed by a foreign law, and would respect application

of foreign law by the competent foreign court or arbitration panel abroad to the substantive proceedings.

7.5 Domestic Arbitration Institutes

Türkiye does not have a domestic arbitration institute that specialises in maritime claims, although the Istanbul Arbitration Centre has a shortlist of maritime law specialists for handling maritime claims.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

The defendant can raise a “lack of jurisdiction” objection, which would be considered a preliminary objection that requires the court’s immediate attention and decision.

8. Ship-Owners’ Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners’ Companies

Pursuant to Article 12 of the Law on the TISR, income generated by the operations or from the transfer of vessels and yachts registered with the TISR are exempt from corporate income tax. Owners of such vessels and yachts are only obliged to pay registry fees and annual tonnage tax. However, if the vessel or the yacht is classed with Turkish Loyd (Türk Loydu), these amounts will be reduced by 50%. Transactions relating to vessels and yachts registered with the TISR – including sale, purchase, mortgage, registration, financing, chartering, time charter, and all freight contracts – are exempt from stamp tax and fees. Amounts received in connection with such transactions are also exempt from banking and insurance transaction tax and from any applicable funds.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Articles 136 and 137 of the TCO regulate partial and total impossibility of performance. Article 138 deals with cases where performance is still possible but has become excessively burdensome due to unforeseen

extraordinary events. Whether events, causes or circumstances resulting in non-performance of a shipping contract constitute force majeure or frustration must be assessed by the court for each dispute.

Turkish courts have dealt with many matters concerning the non-performance of contractual obligations. There are precedents where Turkish courts have considered the following circumstances as force majeure or frustration:

- severe sea and weather conditions in Karadeniz Ereğli;
- flooding in Mersin resulting from a natural disaster;
- heavy wind, waves and current conditions at the Bosphorus; and
- civil war at the port of discharge.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

MARPOL is in force in Türkiye. IMO 2020, which regulates the global upper limit on the sulphur content of fuel oil used by vessels, is set out under MARPOL Annex VI. As Türkiye is a party to MARPOL and all its annexed protocols, IMO 2020 is implemented accordingly.

The limit under MARPOL VI, which is 0.5%, is implemented in Turkish territorial waters, although a lower limit of 0.1% would apply in certain scenarios. For vessels in Sulphur Emission Control Areas (SECAs), the limit is 0.1%, and the entire Mediterranean Sea up to the Dardanelles has been designated as a SECA.

Port authorities and therefore the related ministry are the responsible authorities to enforce the MARPOL VI limits. Recently, disputes arising from the use of substandard fuel oil have increased.

In the event of pollution, the vessel and the relevant coastal facility are jointly liable for compensating all damage arising from the pollution. Moreover, administrative sanctions (such as administrative fines) are imposed on parties causing environmental pollution.

9.3 Trade Sanctions

Türkiye has not incorporated international trade sanctions as part of its domestic law. Regarding co-oper-

ation with the enforcement of trade sanctions, Türkiye generally follows the sanctions imposed by the UN Security Council. While US/EU sanctions are not legally enforced, the Turkish Banking Regulation and Supervision Agency as well as major Turkish banks have implemented strict compliance protocols to avoid secondary sanctions.

Trade sanctions have had impacts on the Turkish market. For instance, sanctions were imposed against a Turkish ship-yard but were later removed after successful delisting efforts.

9.4 International Conflict

The effects largely mirror global shipping industry challenges. Turkish carriers and logistics companies have faced delayed voyages, cancellations of bookings and additional documentation requirements, including the issuance of letters of indemnity. Operators have encountered additional handling costs, slower processing, and restrictions on certain financial and trade transactions, leading to operational delays. Additionally, as a commercial impact of the Ukraine war, Turkish carriers and ship-owners have been affected in their trade at Black Sea ports, and more recently there have also been physical attacks on Turkish vessels in the Black Sea.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Legislative work is currently being carried out by a committee of maritime trade and law experts in order to regulate maritime enforcement matters. Upon completion of this legislative work, updated maritime enforcement law provisions will enter into force. A detailed explanation of this is available in the [Türkiye Trends and Developments](#) article in this guide.

Trends and Developments

Contributed by:

Türker Yıldırım, Semih Sander, Gülistan Baltacı Hatay and Selçuk Sencer Esenyel
Esenyel|Partners Lawyers & Consultants

Esenyel|Partners Lawyers & Consultants was founded in 2013 and is a leading international law firm in Türkiye, recognised for its strong expertise in complex national and cross-border matters. The firm is a trusted adviser to major global corporations and industry leaders, known for delivering high-quality, results-driven legal solutions. With a team of over 120 experienced and multilingual lawyers and professionals, Esenyel|Partners provides integrated, business-focused advice supported by deep sector knowledge. The firm offers full-service legal support

across a wide range of practice areas, including shipping and transport law, corporate and commercial matters, dispute resolution, regulatory compliance, insurance and international trade. Esenyel|Partners represents a distinguished international client base, including P&I clubs, global banks, ship-owners, airlines, insurers and multinational companies, such as the Istanbul and Marmara, Aegean, Mediterranean and Black Sea Chamber of Shipping (DTO) and the Turkish Shipbuilders' Association (GİSBİR).

Authors



Türker Yıldırım is a highly respected partner at Esenyel|Partners Lawyers & Consultants and a shipping lawyer with extensive experience in maritime disputes, transport claims and international trade matters. He serves

as Chairman of the Istanbul Bar Association Maritime Law Commission, reflecting his leadership and recognition within Türkiye's legal community. Over his distinguished career, Türker has earned acclaim for his strategic, results-oriented approach, successfully managing complex shipping and logistics cases for both domestic and international clients. Known for his deep technical expertise, practical insight and meticulous attention to detail, he is a trusted adviser in navigating the intricate legal and commercial challenges of the maritime sector.



Semih Sander is a partner at Esenyel|Partners Lawyers & Consultants and a highly respected lawyer registered with the Istanbul Bar Association, renowned for his expertise in maritime and transport law and in general litigation. He

advises domestic and international clients on complex shipping transactions and high-value disputes, providing practical and strategic legal solutions. Mr Sander also delivers comprehensive support to leading international banks across corporate and finance matters. His deep knowledge, professional excellence and consistent track record of successful outcomes for major clients underscore his pre-eminent standing and reliability as a trusted and distinguished legal adviser.



Gülistan Baltacı Hatay is a leading specialist in aviation and shipping law, advising clients on complex cross-border matters. Her practice focuses on transactional and litigation work in the maritime and aviation sectors,

including aviation finance and leasing, shipping and aviation disputes, port and airport operations, and all associated insurance matters. She also has significant experience in offshore projects, advising on contractual structuring and dispute resolution, as well as aircraft damage claims and regulatory compliance. Widely recognised for her technical expertise and strategic insight, Ms Hatay is a trusted adviser in complex legal and commercial matters.

Contributed by: Türker Yıldırım, Semih Sander, Gülistan Baltacı Hatay and Selçuk Sencer Esenyel, Esenyel|Partners Lawyers & Consultants



Selçuk Sencer Esenyel is a founding partner of Esenyel|Partners Lawyers & Consultants, and is a pre-eminent lawyer with over 18 years of distinguished experience. Educated in Türkiye and the United Kingdom, he leads the firm's shipping, finance and litigation practices, providing insightful and strategic counsel on maritime, aviation, asset finance and dispute resolution. Renowned for his expertise, Mr Esenyel serves on the BIMCO Documentary Committee, reflecting his international influence in maritime law. His profound legal acumen, combined with a track record of successful outcomes for major international corporations, financial institutions and industry leaders, underscores his status as a trusted and pre-eminent legal adviser.

Esenyel|Partners Lawyers & Consultants

Levent Mah.
Sümbül Sok. No 61
34330 Beşiktaş, İstanbul
Türkiye

Tel: +90 212 397 19 91
Email: info@esenyelpartners.com
Web: www.esenyelpartners.com

Esenyel  Partners
LAWYERS and CONSULTANTS

Ongoing Legislative Reforms

Draft Maritime Enforcement Law

The Turkish Enforcement and Bankruptcy Law No 2004 (EBL) has been in force since 1932, with only partial changes over the years. In August 2025, the Ministry of Justice published the Draft Compulsory Enforcement Law (the “Draft Law”), with the stated aim of introducing modernised enforcement legislation.

At present, the rules governing maritime enforcement are fragmented between the Turkish Commercial Code No 6102 (TCC) and the EBL. The Draft Law consolidates all provisions relating to maritime enforcement into a single legislative framework, and introduces notable changes.

Under the current TCC provisions, the competent court for the arrest of a foreign-flagged vessel is the court at the location where the vessel is anchored, berthed or dry-docked. The Draft Law introduces a new rule: if vessel tracking systems show that the vessel will call at a specific location within Turkish territorial waters, an arrest application may also be submitted to the court at that location. This provision aims to mitigate the risk of the vessel departing the port within a short period, and grants the court the authority to examine an arrest application even if the vessel has not yet berthed. Once the court grants the arrest order, the arresting party must apply to the enforcement office within one week from service of the decision to execute the order. Otherwise, the arrest order will become null and void.

The Draft Law also introduces significant changes regarding the sale of a vessel *pendente lite*. Under the current TCC provisions, an application for a sale *pendente lite* may be made where the vessel’s value rapidly declines, the cost of maintaining the vessel is high, or the vessel or her cargo poses a risk to navigation safety, life, property or the environment. The Draft Law removes the requirement that the vessel owner must have in personam liability for a maritime claim to request a sale *pendente lite*, regardless of the vessel’s flag. Furthermore, the court’s decision on the sale *pendente lite* will be final and not appealable.

On 1 November 2025, the Scientific Commission responsible for drafting the Draft Law, together with academics, judges, representatives of the Turkish maritime industry and legal practitioners, held an academic conference to discuss the Draft Law text. During the conference, it was proposed that, in addition to the general Enforcement Offices, specialised Maritime Enforcement Offices should be established.

Consensus on the need for a renewed Maritime Labour Law

The Maritime Labour Law No 854 (MLL) covers the labour law provisions applicable to seafarers who work under an employment contract on vessels of 100 gross tons and above and flying the Turkish flag, as well as to their employers, whereas the employment rights and obligations of seafarers who work on a foreign-flagged vessel are subject to the Turkish Code of Obligations No 6098 (TCO).

Nevertheless, the Maritime Labour Convention (MLC) – adopted by the International Labour Organization, and which entered into force on 20 August 2013 with the aim of establishing international standards for seafarers to ensure safe and decent working and employment conditions for seafarers – has not been ratified by Türkiye. Although the MLC came close to being put into practice following its publication on 25 March 2017 in the Official Gazette, it has not yet been incorporated into domestic legislation, as the ratification process has not been completed. Consequently, it has not become a piece of legislation that Turkish courts must take into account when issuing judgments. Therefore, even if an employment contract complies with the MLC in line with international requirements, Turkish courts render their decisions in accordance with Turkish domestic law (MLL, TCO) and precedents of the Turkish Court of Cassation. The reason why employment contracts are often drafted in line with the MLC – regardless of whether or not Türkiye has ratified it – is that, when a Turkish-flagged vessel calls at a port in a state that has ratified the MLC, port state authorities typically expect the employment contracts on board to comply with MLC standards.

The MLL and TCO contains different rules on matters such as entitlement to compensation, calculation of overtime, annual leave and weekly rest periods. These

discrepancies have resulted in inconsistent decisions by Turkish courts, particularly where Turkish seafarers work aboard foreign-flagged vessels. In some cases, seafarers employed on Turkish-flagged vessels may face adverse results before Turkish courts simply because their employment contracts were drafted in MLC-compliant form due to operational requirements abroad, even though their legal relationship should normally fall under the MLL.

For the reasons set out above, leading figures in the maritime sector – including practitioners, ship-owners and industry associations – have jointly expressed the need to revise and modernise the MLL. Their view is that any renewal of the legislation should align to the extent possible with the standards set out under the MLC.

Consequently, in the coming years, the legislative agenda is expected to focus on either the ratification of the MLC and its incorporation into domestic legislation, or a comprehensive reform of the MLL.

Implementation of the new Regulation on Pilotage and Towage Services

On 11 February 2025, the Regulation on Pilotage and Towage Services (the “Regulation”) entered into force following its publication in the Official Gazette. Upon publication of the Regulation, the former regulation dated 8 January 2020 was abolished. Under the renewed Regulation, fundamental amendments have been made to the former provisions relating mainly to minimum requirements, conditions of rendering services, tender processes and sanctions.

The principal amendments under the Regulation are as follows.

- The Ministry of Transportation and Infrastructure (the “Ministry”) will grant authorisation for the fulfilment of pilotage and towage services through a tender procedure.
- Port facilities are required to obtain a “service authorisation certificate”, as defined under Article 20 of the Regulation, in order to provide pilotage and towage services. Further, the transfer of service authorisation certificates is prohibited, and similarly the subcontracting of such services has

also been restricted. Accordingly, services may only be procured from a third-party company with the prior approval of the Directorate General of Maritime Affairs of the Ministry (the “Directorate”).

- For the fulfilment of towage services, it is required to have at least the number of tugboats and mooring boats specified separately for each regional service area in Annex 1 of the Regulation.
- In pilotage service tenders, companies are required to have already employed at least the number of pilotage masters specified for each regional service area in Annex 1 of the Regulation.
- Substantial administrative fines will be imposed on individuals and companies that fail to comply with their obligations and administrative requirements under the Regulation.
- The Directorate has been granted the authority to transfer the services covered by the Regulation for a period not exceeding 20 years. Such transfer will also be carried out through a tender procedure, and companies participating in the tender must meet the technical, administrative and financial criteria set out in the Regulation and its Annexes.
- The transitional provisions regulate that service authorisation holders who were previously authorised or appointed within the relevant regional service areas before the Regulation entered into force on 11 February 2025 may continue to provide services. However, this is conditional upon their maintaining compliance with the terms under which they were originally authorised or appointed. Accordingly, they may continue their operations until the completion of the tender processes stipulated in the Regulation and the commencement of services by the newly selected companies.
- Participation in tenders through a consortium structure is prohibited, and applications are permitted only under a joint venture model.
- Finally, it is also forbidden to participate in tenders for both pilotage and towage services within the same regional service area.

Overall, the Regulation introduces a significantly more structured and transparent framework for pilotage and towage services, aiming to increase the quality and persistence of the services, increase operational standards and ensure compliance across the sector.

Recent Debates on Limitation of Liability

Recently, a debate has arisen before the Istanbul 17th Commercial Court (the “Istanbul Maritime Court”) related to Article 1328 of the TCC, which sets out the rules applicable to limitation of liability arising from maritime claims, as follows.

- (1) The liability arising from maritime claims could be limited according to the International Convention on Limitation of Liability for Maritime Claims dated 19 November 1976 that was published in the Official Gazette No 17007 dated 4 June 1980 and the Protocol dated 2 May 1996 that changed this Convention or international conventions that have been prepared to replace it and agreed by the Republic of Türkiye.
- (2) This article is implemented so as to include the changes to be made in accordance with Articles 20 and 21 of the International Convention on Limitation of Liability for Maritime Claims dated 1976 and Article 8 of the Protocol dated 1996 starting from the date at which they become enforceable in the Republic of Türkiye.
- (3) The “Convention dated 1976” that is mentioned in this Section refers collectively to the International Convention on Limitation of Liability for Maritime Claims dated 19 November 1976, the Protocol dated 2 May 1996, and those changes concerning this Convention which have been enforceable in the Republic of Türkiye.

The rules referred to in Article 1328 regarding the ship-owner’s limitation of liability are governed by the Convention on Limitation of Liability for Maritime Claims adopted in 1976 (the “Convention”) and the 1996 Protocol (the “Protocol”), which was introduced to amend the Convention in response to the need for updated limitation amounts.

The Protocol introduced a simplified mechanism for updating the limitation amounts and, to this end, established the tacit acceptance procedure. In accordance with this procedure, the International Maritime Organization adopted a decision on 19 April 2012 (the “Decision”). Through this Decision, the limitation amounts set out under the Convention and the Protocol were increased by 51%.

In a former dispute, the Istanbul Maritime Court briefly decided in their decision dated 15 May 2019 – File No 2018/148, Decision No 2019/232 – that the increased limit of liability under the Decision must be applied to Turkish legislation. One of the parties appealed against that judgment, and the appeal process is pending (the “Former Judgment”).

In the meantime, a new dispute arose and recently came before the Istanbul Maritime Court. Briefly, the subject of the dispute concerns an application made to the Istanbul Maritime Court for the establishment of a fund, in accordance with Article 1328 of the TCC, under the Convention and the Protocol in relation to a foreign-flagged vessel that capsized by heeling over while berthed.

In the present case, one of the parties has brought before the court the same interpretation issue as in the Former Judgment, but this time by submitting a legal opinion arguing that the Decision cannot be applied since it has not become part of domestic legislation, on the grounds that it has not been duly ratified – even though the Istanbul Maritime Court previously took the position that the Decision is applicable under Turkish law.

Considering that the interpretation of Article 1328 may directly affect both the court’s decision and the scope of the fund to be established, and further taking into account that the legal opinion submitted contradicts the Former Judgment, the justification of the TCC and Turkish legal doctrine, the counterparty also submitted a counter legal opinion prepared by Prof Dr Kerim Atamer, one of the leading and most respected scholars in Turkish maritime law who was also involved in the legislative process of the TCC’s maritime law provisions. He argued that the Decision must be applied, as in the Former Judgement, as part of domestic legislation, since the legislature intended to incorporate all interpretations and amendments of the Protocol when drafting Article 1328. Therefore, the increased limitation amounts must be applied.

Neither the Istanbul Maritime Court nor the Court of Appeal has rendered a decision yet. However, once a decision is issued, it will create a significant precedent for similar disputes, particularly since this time

the interpretation debate has been brought before the court by legal professionals. The debate has arisen from a divergence of legal opinions, and the precedent to be established will be of considerable importance for determining the principles applicable to ship-owners' limitation of liability in future cases.

Maritime Authority Updates the List of Recognised P&I Clubs

General overview

On 23 December 2024, the vessel *Amnah* capsized and sank at a Turkish port while carrying over 200 containers, posing significant environmental and navigational risks. Following the lack of response from the vessel's P&I club, the Directorate held consultations and meetings to assess the incident, evaluate the risks to navigation and the environment, and determine the necessary measures to prevent similar occurrences in the future.

P&I insurance is mandatory for certain types of vessels in accordance with international standards, and it is required for all vessels with a gross tonnage of 300 or more that enter or exit Turkish maritime jurisdiction. Additionally, a valid P&I policy is required for vessels passing through the Turkish Straits.

On 9 January 2025, the Directorate announced that all vessels covered by a valid policy from insurance companies listed in the annual update "List of Recognised P&I Insurers" meet this requirement. However, for vessels insured by companies not included in this list, the insurance company must register with the Port Management Information System (LYBS-PMIS) to ensure compliance with the passage conditions.

Application criteria

Insurance companies seeking registration in the LYBS-PMIS must meet the following conditions:

- collaborate with a correspondent firm in Türkiye with valid authority;
- submit a letter of intent to the authorities, including full company details and a valid P&I policy;
- provide financial reliability reports from recognised credit rating agencies;
- offer an online portal on the website to verify the validity of P&I policies;
- ensure that insurance coverage meets international standards, with a minimum coverage of USD100 million; and
- provide financial and claims payment reports for the last three years.

Türkiye's maritime industry continues to constitute a substantial share of the country's commercial activity, owing to its strategic geopolitical position and its high-capacity ports. Naturally, the legal framework governing maritime commerce evolves in parallel with this economic dynamism. The developments outlined above represent only part of a broader transformation, as Turkish maritime law increasingly seeks alignment with international standards while responding to the practical needs of the sector. In the coming years, both regulatory reforms and judicial interpretations are expected to continue shaping a more coherent and modern legal environment for maritime stakeholders.



Law and Practice

Contributed by:

Abdelhak Attalah and Ghassan Hidar
Attalah Legal Consultancy

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Attalah Legal Consultancy is a boutique law firm specialising in maritime and international trade, offering expert legal services in complex transactions and disputes. With a focus on the maritime industry, the firm combines in-depth local knowledge with a global network to provide tailored solutions. Attalah's lawyers possess exceptional technical expertise in

maritime law, and the firm is also renowned for its proficiency in bankruptcy, insolvency and the recognition and enforcement of foreign judgments and arbitral awards. Industry specialisation has always been at the heart of Attalah's strategy, enabling the firm to deliver comprehensive and effective services within its core maritime practice.

Authors



Abdelhak Attalah of Attalah Legal Consultancy brings 31 years of expertise in cross-border disputes, bankruptcy, insolvency and the enforcement of foreign arbitral awards and court judgments, with a particular

focus on the shipping industry. He offers strategic counsel to CEOs, general counsel and industry professionals, specialising in crafting practical solutions, negotiating high-stakes deals and fostering commercial trust. Abdelhak serves as an evaluator and adjudicator at the London Maritime Arbitrators Association (LMAA), further enhancing his authority in maritime legal matters.



Ghassan Hidar is a partner at Attalah Legal Consultancy and boasts over two decades of legal expertise in the UAE. Specialising in commercial dispute resolution, he excels at navigating complex legal challenges

across industries such as shipping, aviation and insurance. He is known for his innovative problem-solving and efficiency, and delivers tailored solutions that address clients' specific needs. He is also skilled in post-award matters, including securing the enforcement of foreign judgments. His deep understanding of procedural nuances and commitment to justice make him a highly regarded figure in the UAE's legal landscape.

Attalah Legal Consultancy

Office RIB-303E
RAK Insurance Building
Ras Al Khaimah
UAE

Tel: +971 55 777 0275
Email: info@attalah.law
Web: www.attalah.law

Attalah law

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The United Arab Emirates (UAE) does not have specialised admiralty courts, so maritime claims are treated as commercial disputes and handled by the general judiciary. These claims are governed by UAE Federal Decree-Law No 43/2023, which introduces the Maritime Law (ML), effective from 29 March 2024. The ML establishes the legal framework and procedures applicable to maritime matters in the UAE. Common maritime claims, as listed in Article 53 of the ML, include ship arrests, ship mortgages and ship mortgage foreclosure, cargo claims, marine accidents, hull and machinery (H&M) insurance, general average and disputes over bills of lading (B/L) and charterparties. Such claims are adjudicated by the commercial chambers of local courts.

1.2 Port State Control

In the UAE, the system of port state control is governed by Articles 68–76 of the ML. These articles outline the roles and powers of the UAE port authorities and the Ministry of Energy and Infrastructure, the competent authority responsible for enforcing maritime regulations.

According to the ML, the Ministry has the authority to implement both international and national requirements related to maritime security, safety and environmental protection. Specifically, the Ministry is empowered to:

- inspect foreign ships – the Ministry ensures that foreign vessels in UAE waters and ports comply with internationally ratified agreements, as well as national legislation, and the Ministry establishes guidelines and procedures for conducting such inspections;
- monitor local maritime operations – the Ministry verifies the compliance of ports, classification societies, companies and maritime facilities with international standards, national laws and any relevant decisions or circulars issued by the Ministry;

- collaborate with government entities – the Ministry works in co-ordination with federal and local authorities to fulfil the coastal state’s duties, as outlined in international agreements and national legislation;
- specify security and environmental standards – the Ministry specifies the safety, security and environmental preservation requirements for maritime facilities and ships, even those not covered by international agreements; and
- grant exemptions – the Ministry has the discretion to grant exemptions to ships from certain requirements based on the provisions of internationally ratified agreements and national laws, establishing guidelines for such exemptions.

Regarding marine casualties, including seafarer fatalities, grounding, pollution or wreck removal, the Ministry, through the port authorities, is responsible for co-ordinating the necessary actions in line with international treaties and local legislation. It exercises regulatory oversight and may act in response to marine casualties to ensure compliance with safety and environmental protocols.

1.3 Domestic Legislation Applicable to Ship Registration

The key pieces of domestic legislation governing ship registration in the UAE are Articles 7–21 of the ML. These Articles establish the requirements for registering a vessel in the ship register. The authority responsible for managing the registration process is the Ship Registration Administration, which operates under the Ministry of Energy and Infrastructure.

Articles 9–11 address the registration process for vessels under construction, specifically through the registration of the relevant ship-building contract. Article 9 (1) stipulates that the specifications for a new building vessel must be approved by the Ministry. The Ministry will then establish a special register, known as the “under construction ships register”, where ship-building contracts are to be recorded pursuant to Article 9 (3). Notably, under Article 9 (4), it is the shipbuilder, rather than the “shipbuilding seeker” (buyer), who is responsible for registering the ship-building contract in this register.

Articles 10 and 11 briefly touch on the transfer of title, payment terms and guarantees for defects. These are generally considered commercial matters and are expected to be addressed within the ship-building contract itself.

Article 12 (3) grants the Cabinet the authority to confer UAE nationality on a vessel owned by a legal entity, provided the entity is established under an international agreement between shareholders from different jurisdictions, including the UAE.

1.4 Requirements for Ownership of Vessels

To be registered in the ship register, a vessel must meet the five key conditions outlined in Article 13 of the ML. These conditions are as follows:

- intended use – the ship must be intended for navigation in UAE waters, coastal navigation between UAE ports or navigation on the high seas;
- ownership requirements – the majority of the ship's shares must be owned by natural or legal persons who are either nationals of the UAE or another Gulf Cooperation Council (GCC) country, or by individuals or entities that have a domicile, business centre or ship management office in the UAE;
- age limit – the ship must not be older than 20 years, measured from the completion of its construction, with the exception of passenger ships, which must not be more than ten years old;
- approved specifications – the ship's drawings and specifications must be approved by the Ministry of Energy and Infrastructure or its authorised representative upon inspection; and
- valid certifications – the ship must hold valid international certifications verifying its suitability for maritime navigation, issued by a classification society authorised or recognised by the Ministry.

Foreign ownership of vessels is now permitted under Article 13 (1)(b) of the ML, which allows vessels owned by foreign entities or individuals to be registered under the UAE flag, a privilege that was historically reserved for UAE nationals and companies with a majority of Emirati shareholders.

Vessels can now be registered under the UAE flag not only when the majority of shares are held by UAE

nationals or companies from other GCC countries, but also when owned by individuals or entities with a domicile, business centre or office managing the vessel within the UAE. This broadens the scope of who can register vessels under the UAE flag, making it accessible to foreign nationals and GCC companies residing in the country. As a result, under the new ML, coastal service providers and supply vessels, which previously had the option to operate under foreign flags, will now be required to register under the UAE flag.

Bareboat Charter In

Article 18 (1) of the ML allows the charterer of a ship registered abroad, which meets the registration criteria for a UAE-flagged vessel (as outlined in Article 13), to request its registration with the Ministry provided that (i) the ship is “not equipped” and (ii) the charter period lasts at least six months.

Bareboat Charter Out

Article 19 (1) grants the owner of a UAE-flagged vessel the licence to have the ship fly the flag of another country if the owner wishes to lease it “unequipped” to a charterer who intends to register the ship abroad. At a minimum, the licence application must include (i) the bareboat charter agreement for the unequipped vessel and (ii) a letter from the ship's registration authority abroad confirming that the charterer's state has approved the ship's registration and the flag under which it will sail as stated in Article 19 (2) of the ML.

1.5 Temporary Registration of Vessels

The laws of the UAE do not permit the temporary or dual registration of vessels. There are no provisions in the applicable legislation that allow for such registrations.

1.6 Registration of Mortgages

The authority responsible for maintaining the registration of maritime mortgages in the UAE is the Ministry of Energy and Infrastructure, as stated in Article 13 (1) of the ML. According to Article 24 (4) of the same law, all legal transactions and rights, including mortgages, affecting a ship must be documented in the ship register.

The documentary requirements for registering a maritime mortgage are outlined in Articles 41 and 42 of the ML. Article 41 (3) specifies that a ship may be mortgaged even while under construction, and the executive regulations establish the procedures for registering such mortgages. Additionally, Article 42 stipulates that a ship mortgage must be accompanied by certified signatures from the parties involved to be valid. The law also allows the use of modern technological means for carrying out mortgage transactions.

The maritime mortgage register maintained by the Ministry is an official record, and access to it is restricted to owners unless authorised by official documentation.

1.7 Ship Ownership and Mortgages Registry

The registers are official records maintained by the Ministry of Energy and Infrastructure. As outlined in Article 7 of the ML, the Ministry is responsible for creating and managing the ship register, which includes detailed information about ships such as type, size, classification, navigation purposes and sailing areas.

The Cabinet may delegate the responsibility for creating and maintaining the register to a competent authority, and in such cases, that authority would assume the Ministry's role. However, any changes or updates made to the register must be reported to the Ministry.

Access to the ship's records is generally restricted to the ship-owners unless permission is granted through official channels or documentation from an authorised entity.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

The ML modernises ship mortgage provisions (Articles 41–52): mortgages apply regardless of tonnage; co-owned vessels require three-quarters majority approval; newbuildings may be mortgaged during construction; and mortgages rank after preferred debts (maritime liens) but enjoy priority determined by registration date. Typical security packages include assignment of earnings and insurances, share pledg-

es and corporate guarantees. The law expressly subordinates itself to ratified international conventions (Article 2).

2.2 Ship Leasing

Finance leases or other charters may not be recorded over UAE-flagged vessels, and UAE courts may recharacterise certain finance leasing transactions as conventional loans. Article 137 (2) of the ML suggests time charters with purchase options may be categorised as bareboat charters.

Sale and leaseback transactions are increasingly common. This structure allows the owner of the ship to sell and lease it back without incurring a huge debt on its financial statements, freeing up working capital while retaining operational control. The ML's bareboat charter-in provisions (Article 18) facilitate such structures where UAE operational presence is required.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

The liability of owners and interested parties in events of pollution and wreck removal in the UAE is influenced by both international conventions and domestic legislation.

Internationally, two key conventions address pollution and wreck removal:

- the International Convention on Civil Liability for Oil Pollution Damage (CLC) establishes the civil liability of ship-owners for damage caused by oil pollution – this convention also includes related annexes and resolutions that set out the legal framework for liability and compensation; and
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention) provides a legal basis for intervention in cases where oil pollution from ships threatens the marine environment, outlining the powers and responsibilities of states to take action.

Domestically, the ML governs the obligations of ship-owners and operators in relation to pollution and wreck removal. Specifically, Articles 221–234 address the responsibilities of ship-owners for the removal of maritime debris and related consequences.

Article 233 (3) of the ML ensures that the ship-owner or operator bears full responsibility for the costs and liabilities associated with pollution and wreck removal operations.

3.2 International Conventions: Collision and Salvage

The liability of owners and interested parties in events of collision and salvage is governed by both international conventions and domestic laws.

International Conventions

International Regulations for Preventing Collisions at Sea (COLREGs) establish the rules for preventing collisions between ships. They provide guidelines for safe navigation, ensuring that vessels take the necessary actions to avoid accidents while at sea.

The International Convention on Salvage (1989) sets out the legal framework for the salvage of ships and their cargo. It addresses the rights and obligations of the parties involved in a salvage operation, including the entitlement to salvage rewards and the liabilities related to the salvage process.

Domestic Legislation

Under the ML, the UAE has established specific provisions concerning collisions and salvage. Articles 235–241 of the ML address the assistance and salvage of sea vessels in peril, and Articles 242–253 outline the duties and responsibilities of ship-owners, operators and other relevant parties in ensuring the safety of navigation and the proper conduct of salvage operations. These provisions aim to promote accountability and responsible maritime practices, setting out the legal framework for managing collision incidents and salvage activities within the UAE.

3.3 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) is applicable in the UAE. This

international convention, which sets out the framework for limiting liability for certain maritime claims, has been incorporated into the ML.

Furthermore, the UAE's recent ratification of the 1996 Protocol to the 1976 LLMC, which entered into force on 23 May 2021, has additional important implications for maritime liability in the UAE. The 1996 Protocol increases the limits of liability for maritime claims, reflecting the growing costs of maritime incidents, and ensures enhanced financial protection for ship-owners, charterers, managers, operators and salvors.

- **Increased limitation of liability:** The 1996 Protocol raises the limits of liability, aligning them with modern economic realities. This increase in liability limits has a significant impact on the scope of compensation available for incidents such as marine pollution, cargo loss and personal injury.
- **Applicability of liability limits:** With the ratification of the 1996 Protocol, the liability limits now extend not only to ship-owners but also to charterers, managers, operators and salvors, allowing these parties to limit their liability in the event of maritime claims.
- **Impact on claims against ship-owners:** Ship-owners, including operators, charterers and managers, can now limit their liability for various maritime casualties, such as personal injury, cargo damage and pollution. This limitation applies unless the claim arises from gross negligence or intentional misconduct, providing a financial ceiling for these parties.
- **Impact on salvors:** The 1996 Protocol also benefits salvors by allowing them to limit their liability in claims arising from salvage operations, while ensuring fair compensation for their efforts.
- **Harmonisation with international standards:** The ratification of the 1996 Protocol brings the UAE's maritime liability framework in line with international standards set by the International Maritime Organization (IMO), ensuring smoother interactions in cases involving foreign parties or international incidents.

In summary, the ratification of the 1996 Protocol strengthens the legal framework for maritime liability in the UAE, offering enhanced financial protection

and clearer liability limits for ship-owners, charterers, operators, managers and salvors, while aligning the country's maritime laws with international conventions.

3.4 Vienna Convention on the Law of Treaties

The UAE has not ratified the Vienna Convention on the Law of Treaties 1969 (VCLT). However, Articles 31–33 of the VCLT – which set out the principles for treaty interpretation – are widely recognised as reflecting customary international law and are therefore binding on all states, including the UAE, regardless of formal ratification.

In *MSC Mediterranean Shipping Company SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS “MSC Flaminia”* [2025] UKSC 14, the UK Supreme Court adopted a textualist approach to interpreting Article 2.1 of the LLMC 1976, giving words their ordinary meaning without imposing glosses or implying unstated distinctions. This methodology reflects the VCLT's core interpretive framework: good faith interpretation according to the ordinary meaning of terms in their context and in light of the treaty's object and purpose.

The UAE ratified the LLMC 1976 and the 1996 Protocol, which entered into force on 23 May 2021. When UAE courts are called upon to interpret the LLMC or other international maritime conventions ratified by the UAE, they should apply an equivalent interpretive methodology through customary international law. Article 2 of the ML reinforces this by providing that the law's provisions do not prejudice international agreements, conventions and protocols approved by the UAE – thereby affirming the primacy of treaty obligations and, by extension, the interpretive principles governing them.

3.5 Procedure and Requirements for Establishing a Limitation Fund

Procedure and Requirements

The procedure for establishing a limitation fund in the UAE is outlined in the ML. The process is initiated by a request from the ship-owner or their representative, who submits it to the court with jurisdiction over the area where the incident occurred, unless otherwise agreed upon.

Request for establishment

The ship-owner or their representative must file a request for the creation of a compensation fund with the court. This is detailed in Article 85 (1) of the ML.

The court's role

The court with jurisdiction over the incident is responsible for establishing the compensation fund. This is specified in Article 85 (2) of the ML.

Compensation calculation

Compensation from the fund is calculated based on the conditions set out in Article 83 (1) of the ML, though the exact methodology is detailed further in the executive regulations. For instance, to calculate the limitation fund for a ship with a tonnage of 20,000 GT based on Article 83 (1) of the ML, the formula provided can be used, with an exchange rate of 1 SDR = AED4.84 (as of 10 December 2024), following the rules step by step.

- Step 1: identify the compensation limit based on tonnage – concerning the initial compensation for loss of life and physical damage, the basic amount is 1,000,000 Special Drawing Rights (SDR) for vessels with a tonnage not exceeding 2,000 tons. Concerning vessels with a tonnage exceeding 2,000 tons, the ship in question has a tonnage of 20,000 tons, so it falls into the second category. For this category, the compensation increases by 400 SDR for each additional ton above 2,000 tons (up to 30,000 tons).
- Step 2: calculate the additional SDR for the vessel – since the vessel has a tonnage of 20,000 tons, the additional compensation based on the additional tonnage above 2,000 tons must be calculated: (i) tonnage above 2,000 tons, $20,000 - 2,000 = 18,000$ tons; and (ii) compensation for additional tonnage (18,000 tons), $18,000 \times 400 = 7,200,000$ SDR.
- Step 3: calculate the total compensation in SDR – the total compensation is the sum of the base compensation (1 million SDR) and the additional compensation for the 18,000 tons above 2,000 tons: $1,000,000 \text{ SDR} + 7,200,000 \text{ SDR} = 8,200,000 \text{ SDR}$.
- Step 4: convert SDR to United Arab Emirates dirham – given that the exchange rate is 1 SDR

= AED4.84, the total compensation in United Arab Emirates dirham can now be calculated as $8,200,000 \text{ SDR} \times 4.84 \text{ AED/SDR} = \text{AED}39,688,000$. The maximum compensation for a vessel with a tonnage of 20,000 GT is 8,200,000 SDR, which is equivalent to AED39,688,000.

Deposit and guarantees

The requirement for a deposit depends on the court's determination, as clarified in Article 85 (4) of the ML. The competent court may require a deposit as security for the fund, but this is at its discretion and based on the guarantees deemed necessary.

Who can establish the fund?

The responsibility for establishing the limitation fund rests with the court in the jurisdiction where the incident occurred. This ensures that the fund is tied to the legal proceedings and jurisdictional context of the maritime incident.

In summary, the procedure for establishing a limitation fund is initiated by the ship-owner or their representative, with the court overseeing its creation. Compensation is calculated according to specified guidelines, and the requirement for a deposit is subject to the court's decision. However, since the ML was recently implemented, there is currently uncertainty regarding the establishment of the limitation fund within the UAE judicial system. The concept of creating a limitation fund in the UAE has yet to be tested by its legal and litigation systems.

3.6 Seafarers' Safety and Owners' Liability

The UAE has not ratified the Maritime Labour Convention (MLC) of 2006, but many of its provisions have been informally integrated into the UAE's legislative framework, and the Ministry of Transport has expressed its commitment to aligning with the core principles of the MLC. In this regard, the ML imposes specific obligations on vessel operators, including owners and charterers, to ensure seafarers' well-being while on board. Articles 93–104 of the ML establish the rights, entitlements and safety measures for seafarers, addressing their working conditions, welfare and protections in line with both international standards and domestic regulations.

4. Cargo Claims

4.1 Bills of Lading

The UAE has not ratified any international conventions concerning B/L, such as the Rotterdam Rules, Hamburg Rules, Hague-Visby Rules or Visby Rules. However, the ML includes provisions that are largely based on the Hague-Visby Rules. Specifically, Articles 155–187 of the ML address issues related to carriage of goods by sea, and B/L and Articles 188–198 govern the multimodal carriage of goods and B/L.

4.2 Title to Sue on a Bill of Lading

The lawful holder of the B/L – whether that is the consignee, the last endorsee or the designated holder – has the right to bring a lawsuit. The UAE courts also recognise the assignment of title to sue, such as assignment in favour of the cargo insurer.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Pursuant to Article 177 of the ML, the carrier's liability for damage or loss to cargo is limited to an amount not exceeding 835 SDR for each package or unit used to calculate the freight, or alternatively not exceeding 2.5 SDR per kilogram of the total weight of the goods, whichever is greater. The value of the SDR, as determined by the International Monetary Fund, is applied, and the payment must be made in United Arab Emirates dirham. However, this limitation may not apply in certain situations, including:

- if the damage results from an act or omission by the carrier or their agents, with the intent to cause harm or with recklessness, knowing that harm could occur;
- if the carrier issues a B/L without reservations, despite circumstances requiring such reservations, with the intent to harm bona fide third parties;
- if goods are loaded on deck in violation of an agreement stipulating that they should be loaded in the hold; and
- if the shipper provides a statement before shipment about the goods' nature, value and special preservation needs – this statement is included in the B/L.

As for liability between carriers, the contractual carrier is fully responsible for all damages occurring during the carriage process. In contrast, the actual carrier is only liable for damages occurring during the portion of the journey they handle. The actual carrier and the contractual carrier share joint liability, and their liability is subject to the limitations outlined in the foregoing pursuant to Article 186 (2) of the ML.

4.4 Misdeclaration of Cargo

Pursuant to Articles 159, 165, 169, 170 and 172 (3) of the ML, the shipper can be held liable for any misdeclaration of cargo, and the carrier has the right to claim compensation for any damage resulting from such misdeclaration. If cargo is discovered onboard that was misdeclared and not specified in the B/L, the ship's Master has the authority to either offload the cargo at the port of origin or impose a charge equivalent to the highest freight rate applicable to similar cargo for delivery to the discharge port, as stated in the B/L.

The foregoing is without prejudice to the carrier's right to seek compensation. As the ML is newly implemented, there have been no recent rulings from UAE courts addressing or confirming claims under its provisions. This matter remains untested in the courts in the context of the new ML. However, in a previous case, the Dubai court's ruling in Cassation No 612/2006 denied compensation for cargo loss to a B/L assignee, reasoning that the loss was attributable to the shipper.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

A claim for damaged or lost cargo arising from a sea carriage contract or a multimodal carriage contract is subject to a one-year time limit, starting from the date of delivery or the date when delivery should have occurred, as outlined in Articles 187 (1) and 198 (1) of the ML. If the consignee refuses to accept delivery or abandons the cargo, the time limit is calculated from the date the vessel arrives. For tort liability, the time limit is three years.

It is recommended that a claim be filed within the time limits set by law. However, the courts may allow a challenge to the time bar if the party entitled to invoke it waives their right. Any extension of the time bar

must be mutually agreed upon by all parties who are entitled to raise this defence.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The UAE is not a party to either the International Convention on Arrest of Ships 1999 or the International Convention Relating to the Arrest of Sea-Going Ships 1952, although the latter has been largely incorporated into UAE domestic law. Ship arrests in the UAE are primarily governed by Article 53 of the ML.

Under the ML, vessels can be arrested to satisfy a "maritime debt", which is a claim arising from any of the reasons listed in Article 53 (2).

The new ML remains clear and succinct, emphasising the key provisions while preserving the original intent. It expands the definition of "maritime debt" to encompass claims related to environmental damage caused by the vessel, coastline harm, wreck removal and port charges.

5.2 Maritime Liens

The UAE does not recognise the traditional concept of maritime liens as seen in common law. However, under the ML, certain claims are acknowledged as privileged debts, which remain attached to the vessel regardless of ownership. These privileged debts can only be extinguished through a judicial sale of the vessel or by following the prescribed sale procedures outlined in the ML.

Privileged debts under the ML arise in eight specific categories (Article 29 (1)–(8)). While these debts are not subject to formal procedures or special proof requirements (Article 30 (1)), there are certain instances where privileged debts can be registered in the ship register, provided the contract is notarised. These instances include debts related to failure or damage that require compensation for the ship's charterers (Article 29 (7)) and insurance premiums (Article 29 (8)).

The privileged debts recognised under the ML include:

- legal costs associated with the preservation, sale and distribution of the ship, as well as port fees, lighthouse fees and other similar taxes and levies;
- claims arising from the employment contracts of the Master, seafarers and other maritime personnel;
- compensation for salvage operations and assistance, along with the ship's contribution to general average losses;
- claims for compensation arising from marine accidents and injuries sustained by passengers and crew (excluding claims related to cargo damage);
- debts resulting from contracts executed by the ship's agent on behalf of the operator or contracts entered into by the Master outside the vessel's port of registration;
- liabilities related to loading, unloading, pilotage and towing operations;
- liabilities arising from failure or damage requiring compensation on behalf of the ship's charterers; and
- total insurance premiums for the ship's hull and equipment for the last insured voyage or insurance period, limited to one year's premiums.

Liabilities arising from a chartering contract are considered maritime debts under UAE law, and a vessel can be arrested to satisfy such debts. In the case of the bareboat charter, the charterer assumes responsibility for these maritime debts, and creditors can seek to arrest the vessel or any other vessel owned by the charterer.

The ML makes a clear distinction between privileged debts and general maritime debts. Privileged debts are claims that follow the vessel regardless of changes in ownership and are given priority for satisfaction. General maritime debts, on the other hand, do not enjoy such priority status.

Regarding vessel arrests, under the ML, a claimant can arrest not only the vessel directly related to the claim but also, under specific circumstances, any sister vessel owned by the same entity at the time the claim arose. Article 30 (2) of the ML sets out a

clear procedure for the registration and enforcement of privileged debts.

Article 37 of the ML establishes a time bar for maritime claims. Specifically, these claims are subject to a one-year limitation period. However, if the vessel cannot be seized within UAE waters, this period may be extended for up to three years. An exception is made for lawsuits related to privileged debts securing debts arising from the contracts referred to in Article 29 (5), which are subject to a six-month time bar from the maturity date of the debt.

Privileged creditors must assert their claims within a specified period after the sale of the vessel, and they have 30 days from the publication of the sale notice to make their claim to the purchase price.

In conclusion, the ML provides a structured framework for dealing with privileged debts, including those arising from maritime activities such as injuries to crew members, and offers specific mechanisms for registering and enforcing these debts.

5.3 Liability in Personam for Owners or Demise Charterers

It is not required that the owners or demise charterers be personally liable for a vessel to be arrested. A vessel can indeed be arrested regardless of the personal liability of its owners or demise charterers, as long as the claim qualifies as a maritime debt under Article 53 of the ML. Privileged maritime debts attach to the vessel herself, and they remain valid even if the ownership of the vessel changes, meaning that the vessel can be arrested irrespective of who is currently operating her.

Under Article 54, an arresting party may arrest the vessel related to the maritime debt, as well as any other ship owned by the debtor, when submitting its arrest application. However, this does not apply if the claim is based on certain maritime debts, such as those related to the ownership of the vessel, a mortgage over the vessel or the sale of the vessel. In those cases, only the vessel directly related to the debt can be arrested.

If the vessel is under a demise charter, the vessel related to the debt or any other vessel owned by the

demise charterer can be arrested. However, vessels owned by the owner of the chartered vessel, but not by the demise charterer, cannot be arrested for the maritime debt.

Under Article 55, in the case of a time charter where the charterer has the right to manage the vessel navigationally, and where the charterer is solely responsible for the maritime debt, the arresting party can arrest the relevant vessel or any other vessel owned by the charterer. The arresting party cannot arrest other vessels owned by the vessel's owner (the "chartering owner").

5.4 Unpaid Bunkers

Bunkering claims are classified in Article 53 (2)(l) of the ML as follows: "Supplying products or supplying the ship with fuel or tools necessary for use, maintenance, or preservation of the ship, in whichever place the supply is made". Thus, ship arrest in the UAE is a preservatory remedy to obtain security in favour of an unpaid bunker claim in the merits, whether commenced or to be commenced through court litigation or arbitration. Furthermore, supplying fuel is classified in Article 29 (5) of the ML as privileged maritime debt, entitling the supplier to seek an arrest of the vessel. A bunker supplier, whether actual or contractual, has the right to arrest a vessel for unpaid bunkers supplied to her.

The contractual supplier can arrest the vessel if they can prove the existence of a bunker supply contract with the owner, charterer, Master or agent, along with evidence of a stamped bunker delivery note. In contrast, an actual supplier's claim for non-payment may be challenged if the owner or charterer can demonstrate that payment was made to the contractual supplier. There have been cases where the actual supplier attempted to arrest the vessel based on a bunker delivery confirmation from the Master, but such claims were dismissed when proof of payment to the contractual supplier was presented by the owner.

UAE courts generally upheld the bunker supplier's right to arrest the vessel, even if the charterer, rather than the owner, entered into the bunker supply contract.

5.5 Arresting a Vessel

To arrest a vessel, a written application must be submitted to the competent court, accompanied by relevant documents that substantiate the maritime debt. An advocate licensed to practise in UAE courts must be retained to initiate the proceedings. The arresting party must provide a notarised power of attorney (PoA), which must be issued by the arresting party. If the PoA is executed outside the UAE, it must be attested by the UAE embassy or consulate in the country of execution, and subsequently counter-attested by the UAE Ministry of Foreign Affairs or the Ministry of Justice.

As Arabic is the official language of the UAE, all court proceedings, including those related to admiralty matters, are conducted in Arabic. All documents submitted to the court must be translated into Arabic by a translator licensed by the Ministry of Justice. While recent amendments to civil procedure laws allow certain matters to be conducted in English, it is not clear whether this applies to admiralty cases, so it is advisable to have all documents translated into Arabic.

UAE courts have historically followed varying practices regarding security for the arrest of vessels. Some courts required an indemnity undertaking from a local entity, while others insisted on a bank guarantee. However, with the introduction of Article 56 of the ML, the arresting party is now required to provide a financial guarantee to ensure the safety of the vessel and its crew. Any funds drawn from this guarantee will be considered judicial expenses and prioritised as debt in the event of the vessel's sale. Although Article 56 does not specify the exact form of the financial guarantee, based on Article 57, it is likely that a letter of guarantee from a P&I club or a recognised financial institution will be acceptable.

5.6 Arresting Bunkers and Freight

In the UAE, it is possible to arrest bunkers and freight under the Civil Procedure Code of 2022 (CPC) rather than under the ML. Article 252 (1) of the CPC allows a creditor to seek a court order from the judge for expedited matters for the confiscation of the debtor's property, including bunkers and freight or debts owing to their debtor in the hands of third parties – even if they are deferred, subject to a condition or disputed –

by providing valid grounds, such as the debtor being based outside the UAE or there being a risk of losing the security.

The process of arresting bunkers requires strict adherence to procedural formalities and the presentation of sufficient evidence that clearly establishes the debt and proves that the bunkers belong to the debtor.

5.7 Sister-Ship Arrest

A sister-ship arrest is possible in the UAE, as permitted under Article 54 of the ML. A claimant may arrest a sister ship owned by the debtor provided that the ship was owned by the debtor at the time the maritime debt was incurred. However, there are some restrictions. Sister-ship arrests are not allowed in cases where the debt relates to a dispute over the ownership or joint ownership of a vessel or involves issues concerning the use or rights to profits arising from a vessel. Additionally, in cases involving maritime mortgage claims, the arrest is limited to the mortgaged vessel only.

Thus, while a sister-ship arrest is generally allowed, certain specific claims, such as those involving ownership disputes or mortgages, would prevent such an arrest.

5.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, there are several other possibilities for obtaining attachment orders to secure a debt.

Attachment of Goods on Chartered Ships

Under Article 133 of the ML, a ship charterer/lessor can seek an attachment order for goods transported on a chartered vessel. These goods serve as security for the payment of the vessel's hire and associated charges.

If the charterer's hire remains unpaid, the charterer/lessor can petition a magistrate of summary justice to place the goods in the custody of a third party and seek their sale, either in whole or in part. This can occur unless the charterer provides a guarantee for the outstanding debt and covers the costs associated with the seizure, custody and sale.

The charterer/lessor retains a lien over the goods transported on the chartered vessel to secure payment of the hire and associated charges. This lien remains effective for 15 days after the delivery or deposit of the goods, unless a third party in good faith acquires a real right over them. Importantly, the lien remains valid even if the goods are commingled with other goods.

Attachment of Various Assets

Under Articles 247 and 252 of the CPC, attachment orders can be sought for a variety of assets belonging to the debtor. These assets can include bank accounts, real estate, machinery, cargo, vehicles, shares and office equipment.

Attachment orders can also extend to assets held by third parties under Article 252 of the CPC, where the court may impose conditions for enforcement, such as requiring proof of ownership of the assets to be attached.

The specific attachment order granted will depend on the nature of the debtor's assets and the details of the case, allowing the creditor flexibility in securing the debt through various types of property.

Together, these provisions provide multiple avenues for creditors to secure their claims through attachment orders on a wide range of assets – ie, not limited to vessels alone.

5.9 Releasing an Arrested Vessel

To release an arrested vessel, the owner or any interested party must provide security in the form of a cash deposit, a manager's cheque, a bank guarantee issued by a licensed UAE bank or a letter of undertaking (LOU) from P&I clubs or financial institutions pursuant to Article 57 (3) of the ML. The competent court will have the discretion to accept these LOUs as sufficient security for the vessel's release.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial Sale

The judicial sale of an arrested vessel proceeds after the court issues a final judgment. Once the judgment is made, the court will:

- issue a notification regarding the sale;
- notify the vessel registry and any other locations designated by the court; and
- appoint an expert to assess the vessel's value and set the initial price for the sale.

The court will also specify the basic price for the vessel, the terms and conditions governing the sale and the time of the auction.

The sale is conducted through an online auction managed by a company called Emirates Auction, which serves as the auctioneer. The auction is held in multiple rounds. The highest bid in each round becomes the initial price for the next round, with the vessel sold to the highest bidder in the final round subject to court confirmation. If no bids are received or the initial bid is below the reserve price, the auctioneer can seek a reduction in the initial price from the court.

Private Sale

Private sales of arrested vessels are not allowed in this jurisdiction. The judicial sale must proceed through a public auction.

Maintenance of the Vessel

The arresting party is responsible for maintaining the vessel from the time of arrest until she is sold by the court. If the port authorities or the vessel agent incur costs for the maintenance, these costs can be claimed as priority debts from the sale proceeds.

Priority Ranking of Claims

According to Article 29 of the ML, the priority ranking of claims from the sale proceeds is as follows:

- legal expenses related to the preservation or sale of the vessel;
- rights arising from maritime employment contracts;
- compensation for assistance, salvage and contribution to general average;
- compensation for marine accidents, excluding loss or damage to cargo and personal effects;
- debts arising from contracts executed by the ship's agent or Master outside the ship's port of registration;
- debts from loading, unloading, pilotage and towing operations;

- mortgages;
- liabilities for damages necessitating compensation on behalf of the ship's charterers; and
- total insurance premiums for up to one year.

Mortgage Priority and Its Relation to Maritime Claims

General priority of mortgages

Mortgages are listed as a lower priority compared to other maritime claims, such as legal expenses, crew wages and compensation for salvage. These higher-priority claims are satisfied first from the sale proceeds of an arrested vessel.

Priority of mortgages under the ML

According to Article 44 of the ML, a mortgage ranks directly after privileged debts attached to the vessel, which are specified in clauses (1)–(6) of Article 29 of the ML. However, mortgages may rank below certain other privileged debts referred to in clauses (7) and (8) of Article 29, if certain conditions are met.

Ranking of multiple mortgages

Debts secured by mortgages rank in order of the dates of registration. If several mortgages are registered on the same day on the vessel (or a share of the vessel), their priority is determined by the order of registration, with the oldest registered mortgage having higher priority.

Return of debt

The registration of a mortgage also ensures that the returns of the debt for the last two years, in addition to the current year's returns in which the bid is awarded, are secured. These returns are given the same priority as the principal debt of the mortgage.

Effect of judicial sale

After the judicial sale of the vessel, mortgages are extinguished. The sale proceeds are distributed based on the court's priority ranking of claims, which may include the assistance of an appointed expert to allocate the funds accordingly. Mortgages are not carried forward with the vessel once she is sold, and their claims are satisfied based on the order of registration.

5.11 Insolvency Laws Applied by Maritime Courts

Insolvency and Bankruptcy Framework in the UAE

The UAE operates two distinct court systems, each having its own regime for handling insolvency and bankruptcy cases.

Mainland “Onshore” Courts

These courts follow a civil law system and apply federal laws. Insolvency applies to individuals without merchant status and is governed by Federal Decree Law No 19 of 2019 on Insolvency. Bankruptcy applies to certain entities, including companies under Federal Decree-Law No 51 of 2023 (the “Financial Restructuring and Bankruptcy Law”), which governs bankruptcy for:

- companies subject to Federal Decree-Law No 32 of 2021 on Commercial Companies and those incorporated in free zones, except the Abu Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC);
- individuals with commercial activities (merchants); and
- licensed civil companies of a professional nature.

Offshore Courts (ADGM and DIFC)

These courts operate under a common law system and their own legal frameworks. In the DIFC, insolvency is governed by DIFC Law No 1 of 2019 (the “Insolvency Law”). In the ADGM, insolvency is regulated by the Insolvency Regulations 2022.

While the UAE’s insolvency and bankruptcy laws aim to provide a legal framework for restructuring and reorganisation, they do not have a direct equivalent to Chapter 11 of the United States Bankruptcy Code, which allows for debtor-in-possession reorganisation.

Arrest and Judicial Sale of a Vessel During Bankruptcy

Regarding the arrest and judicial sale of a vessel owned by entities undergoing bankruptcy proceedings, once bankruptcy proceedings are initiated in the UAE under Federal Decree Law No 51 of 2023, the competent bankruptcy court takes over the process. As part of this process, individual creditor claims and lawsuits (including those seeking ship arrests) are typ-

ically stayed. This means that creditors cannot usually initiate actions such as vessel arrests or judicial sales once bankruptcy proceedings have been initiated. However, the bankruptcy court may provide specific relief in certain cases, but in general, such actions are prohibited while the bankruptcy process is underway.

The UAE does not have specialised admiralty courts. Instead, maritime claims are treated as commercial disputes and are handled by the general judiciary. Thus, in case of bankruptcy, they are handled by the competent bankruptcy court and once bankruptcy proceedings are underway, the bankruptcy court takes over, and maritime arrests or judicial sales of vessels are generally prohibited unless specific relief is granted.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

In the UAE, there is no specific provision under the ML for claiming damages due to wrongful arrest, and there is a limited history of such claims. Generally, the courts do not award damages for wrongful arrest unless the party alleging such arrest can prove that the arresting party obtained the arrest based on fraudulent or forged documents. The burden of proof lies with the party claiming wrongful arrest to demonstrate that the arrest was unjustified. Without such proof, the courts are unlikely to grant compensation for damages or costs arising from the arrest.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Passenger Claims

In the UAE, maritime passenger claims are governed by the ML, as the UAE has not ratified the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea (1974, as amended). The provisions related to passenger claims are mainly outlined in Articles 206–220 of the ML, which cover the contract of carriage of persons by sea.

Time Limit for Filing a Claim

Claims for death or injury during maritime transportation must be filed within two years from the passen-

ger's departure from the ship (or from the day of death, if it occurs after leaving the ship due to an incident during the voyage). Claims for the loss or damage of personal effects are subject to a one-year time limit. Claims for delayed arrival of the vessel must be filed within six months from the day following the passenger's departure from the ship.

Limitations on Liabilities

The ML sets liability caps as follows:

- for death or injury of a passenger, the carrier's liability is limited to 250,000 SDR unless the incident is caused by exceptional circumstances like war, piracy or natural disasters, in which case the liability limit increases to 400,000 SDR;
- for loss or damage of registered personal effects, the carrier's liability is limited to 3,375 SDR. However, for vehicles transported by sea, the liability can be up to 12,700 SDR; and
- for unregistered personal effects, the carrier's liability is limited to 2,250 SDR.

Additionally, the ML allows carriers to agree to liability limits exceeding these amounts. However, if the claimant proves that the damage resulted from intentional acts or gross negligence on the part of the carrier or its agents, the carrier may not invoke the limitation of liability.

Maritime Lien or Maritime Claim for Personal Injury

Claims for personal injury of a passenger are recognised as maritime claims under UAE law, and they are considered privileged debts according to Article 29 (4) of the ML.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

In the UAE, the recognition and enforcement of law and jurisdiction clauses in B/L are subject to specific conditions under UAE arbitration law and Commercial Maritime Law.

Transfer of Rights and Arbitration Clauses

When a B/L is transferred to the consignee, it typically transfers all the rights and actions of the shipper. However, arbitration clauses are treated differently. For an arbitration clause to be enforceable against the consignee, the consignee must explicitly consent to it in writing.

If the arbitration clause is negotiated separately and individually with the carrier, it may be deemed null and void. This means that a consignee cannot be automatically bound by an arbitration clause unless they have agreed to it.

Enforceability of Arbitration Clauses

UAE courts have ruled that for an arbitration clause contained in a B/L to be enforceable, it must be prominently displayed on the front side of the B/L. This clause should be presented in the same font size and style as other essential information, such as the names of the shipper and carrier, ensuring that the clause is clearly visible and acknowledged by all parties involved. Thus, for an arbitration clause in a B/L to be recognised and enforced in the UAE, it must be clearly stated and prominently positioned in the document, and the consignee must give their explicit written consent. If these conditions are not met, the clause may not be enforceable.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In the UAE, the recognition and enforcement of law and jurisdiction clauses in B/L depend on the specific conditions set by the country's legal framework, including both its onshore civil law system and the offshore jurisdiction of the DIFC and ADGM.

Onshore Jurisdiction (UAE Civil Law System)

In the UAE's onshore civil law system, arbitration clauses in B/L can be enforced, but certain conditions must be met.

- **Explicit consent:** The consignee must explicitly consent to the arbitration clause. If the clause is negotiated separately from the B/L, it might not be enforceable.
- **Clear incorporation:** The arbitration clause must be clearly indicated in the B/L, typically with the same

prominence as other critical details such as the names of the shipper and carrier. If the arbitration clause is incorporated by reference from the charterparty, the reference must be specific and clearly identify the dispute resolution mechanism.

For instance, in *Al Buhaira National Insurance Co v The Shipping Corporation of India Limited* (Cassation No 363 of 2011), the Dubai court of cassation ruled that a general incorporation clause referring to terms in a charterparty, including the arbitration clause, was sufficient for enforcement. The court stated that even if the charterparty's details were not fully specified, the incorporation clause was enforceable as long as it explicitly referred to arbitration in the B/L.

Offshore Jurisdiction (DIFC and ADGM)

In the DIFC, which follows English common law, the approach to arbitration clauses in B/L is more flexible.

- General terms of incorporation: the DIFC courts may recognise arbitration clauses even if they are incorporated by general terms. As seen in cases such as *The Merak* (1964), the English court recognised that a general reference to “all terms of the charter party” was sufficient to incorporate an arbitration clause if the clause was broad enough to apply to disputes under both the charterparty and the B/L.
- Binding arbitration clauses: as long as the arbitration clause applies to disputes arising from both the B/L and the charterparty, it may be considered enforceable, even if the specific details of the charterparty are not included in the B/L.

Challenges With Incorporation by Reference

The incorporation of an arbitration clause by reference is more complicated when a B/L is transferred to a third party (such as a consignee). Since the third party might not have knowledge of the charterparty's terms, the validity of such incorporation can be disputed. The third party may challenge the arbitration clause, arguing that it was not properly incorporated or that they did not consent to it.

Legal Risks for B/L Transferees

Transferees of a B/L should be cautious when accepting an endorsement, as they may inadvertently agree

to an arbitration clause they did not negotiate. This could lead to legal disputes about the enforceability of the clause in the onshore UAE jurisdiction, where “express terms” are generally required for incorporation.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 is applicable in the UAE. The UAE ratified the Convention on 31 August 2006 without any reservation. As a result, foreign arbitral awards are generally recognised and enforced in the UAE, subject to the conditions outlined in the Convention.

In terms of domestic law, the recognition and enforcement of foreign arbitral awards in the UAE are governed by Articles 222, 223 and 225 of the CPC, specifically under Articles 222 and 223 read together, which provide the conditions under which foreign arbitral awards may be refused recognition or enforcement. The general rule is that foreign arbitral awards, even from non-signatory states, are recognised and enforced in the UAE, with certain statutory exceptions.

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Courts in the UAE can order the arrest of a vessel or the attachment of assets, even if the relevant claim is subject to a foreign arbitration or jurisdiction clause. This is because the UAE courts have the authority to arrest vessels in their territorial waters, regardless of whether they have jurisdiction to adjudicate the substantive claim or whether the claim is subject to a foreign arbitration or jurisdiction clause in a contract such as a B/L or charterparty.

While the UAE is not a member of the International Convention on Arrest of Ships of 1999, it follows its own legal framework, which allows for the arrest of vessels based on maritime debts recognised under Article 53 of the ML, including claims that may be subject to foreign arbitration or jurisdiction clauses. Therefore, even if a contract stipulates foreign arbitration or jurisdiction, this does not preclude the possibility of a vessel being arrested in UAE waters to secure the claim.

7.5 Domestic Arbitration Institutes

There is no specialised domestic arbitration institute exclusively for maritime claims in the UAE. However, parties to a maritime contract who wish to resolve disputes through arbitration can still appoint arbitrators with expertise in ML or related fields.

The parties can choose to refer their dispute to arbitration under the general framework provided by the UAE's arbitration laws. The UAE has established institutions, such as the Dubai International Arbitration Centre (DIAC) and the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC), which can handle arbitration matters, including maritime disputes. While these institutions are not specifically dedicated to maritime claims, they can provide the necessary services for arbitration in such cases.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

If proceedings are commenced in breach of a foreign jurisdiction or arbitration clause in the UAE, the defendant has several remedies.

- Arbitration clause violation: If the dispute is subject to an arbitration clause, the defendant must raise the issue of the arbitration agreement at the first hearing. This is crucial to prevent accidental waiver of the right to arbitration. If the defendant challenges jurisdiction based on the arbitration agreement at the initial hearing, the court is likely to dismiss the case without addressing the merits, and the matter will be referred to arbitration as per the agreement.
- Foreign jurisdiction clause violation: If the proceedings are commenced in violation of a foreign jurisdiction clause, the defendant should raise the issue of lack of jurisdiction as early as possible, ideally at the first available opportunity. The court will assess the challenge and, if it finds the foreign jurisdiction clause binding, may dismiss the case in favour of the agreed foreign jurisdiction.

In both cases, the key is to act promptly in raising the issue of jurisdiction or arbitration to avoid waiving the right to challenge the venue or dispute resolution mechanism.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

In the UAE, the tax treatment of income earned by vessels owned by companies depends on where the company is incorporated and the nature of its operations. In addition, the introduction of Article 12 (3) in the ML could have implications for the future landscape of UAE-based maritime operations. This Article might encourage more international shipping deals, mergers and joint ventures, potentially leading to new tax reliefs or more attractive conditions for shipping companies in the future. However, as of now, its exact impact on vessel tax exemptions remains to be seen.

Free Zone Exemption

Companies incorporated in UAE free zones typically enjoy corporate tax exemptions, provided they meet certain conditions. This often includes a 0% corporate tax rate on qualifying activities such as the ownership, management and operation of ships involved in international transportation. Shipping companies based in these zones are not subject to corporate income tax, making free zones a popular choice for ship-owners looking for tax relief.

Mainland UAE Companies

Companies incorporated in mainland UAE do not currently benefit from the same exemptions, as there is no tonnage tax or specific relief for shipping activities under UAE's mainland tax regime. As a result, shipping companies based on the mainland may face higher tax obligations and will likely continue to flag their vessels under other jurisdictions that offer more favourable maritime tax regimes, such as tonnage tax or accelerated depreciation.

Tonnage Tax and Accelerated Depreciation

The UAE does not currently have a tonnage tax system (which is a tax based on the vessel's tonnage rather than its income). Additionally, there is no specific accelerated depreciation system targeted at ships under the UAE tax law. As a result, companies seeking such benefits need to incorporate in jurisdictions that offer these specific maritime tax incentives.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under UAE law, the concept of force majeure is recognised, and there is relevant case law addressing situations such as pandemics. Force majeure refers to events that, if they occur, make it impossible for a party to fulfil its contractual obligations, as outlined in Article 273 of the Civil Transactions Code. In the case of the COVID-19 pandemic between 1 April 2020 and 31 July 2021 and other specific cases, UAE courts recognised an emergency financial crisis under the previous Federal Decree Law No 9 of 2015 on bankruptcy, along with its amendments. Therefore, circumstances like late delivery, non-arrival of a chartered vessel or delays in loading or discharging could be considered force majeure if they meet the criteria of making performance impossible under the contract.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

Since 1 January 2020, the UAE has implemented the IMO 2020 regulations, which limit the sulphur content of fuel oil used on board ships to 0.50% mass by mass (m/m). This regulation applies to vessels operating within UAE territorial waters and calling at UAE ports. The Ministry of Energy and port authorities are responsible for enforcing the sulphur content limitations in the UAE.

Vessels are required to comply with these regulations by either using compliant fuel (with sulphur content not exceeding 0.50%) or by having an approved alternative means of compliance, such as an exhaust gas cleaning system (scrubber).

Fuel Compliance

Vessels refuelling at UAE ports with high-sulphur fuel oil (HSFO) must provide an International Air Pollution Prevention (IAPP) certificate, which confirms that the vessel has a working scrubber system. This allows the vessel to continue using HSFO while complying with the sulphur limit.

Vessels entering UAE territorial waters or ports with non-compliant fuel must submit a fuel oil non-availa-

bility report (FONAR). However, submitting a FONAR does not exempt the vessel from the requirement to carry compliant fuel.

Enforcement Actions

While there have been no reported enforcement actions or sanctions for violations as of now, the UAE authorities are monitoring compliance actively. Any violations would typically lead to penalties or sanctions, but the exact measures are not publicly detailed.

9.3 Trade Sanctions

The UAE legal system enforces international trade sanctions, but it does not enforce unilateral sanctions imposed by countries such as the USA or the UK unless they are consistent with United Nations (UN) resolutions. The UAE implements UN Security Council sanctions resolutions, ensuring compliance with international trade sanctions as mandated by the UN. However, the UAE has not adopted specific sanctions against Russia under its domestic law. As a result, these sanctions do not directly impact Russian citizens or entities conducting business in the UAE. However, although the UAE has not enacted specific sanctions against Russia, the global economic shifts and changes in trade routes may indirectly affect the UAE. The country has maintained a neutral stance on the conflict, and there have been no direct reports of sanctions-related impacts on the UAE's trade activities.

While the UAE central bank monitors compliance to avoid violations of international law, the UAE does not have special committees that grant permits for trade activities otherwise prohibited by sanctions. However, entities in the UAE are expected to comply with international sanctions when applicable and may seek guidance from regulatory bodies like the central bank to ensure compliance with international laws.

9.4 International Conflict

Since the onset of the Russia-Ukraine conflict, the UAE has experienced some disruption in the supply of raw materials, particularly affecting sectors reliant on imports from these countries. While there is no specific public data detailing the full extent of this impact, there have been legal cases before UAE courts involving breaches of contract between Russian or Ukrain-

ian suppliers and UAE buyers, particularly concerning raw materials like seeds and agricultural by-products. These disruptions could have various legal and commercial implications, such as frustration of shipping and carriage contracts, where delays or non-delivery of goods due to the conflict may be claimed. War risk insurance coverage may come into play if goods are damaged or lost during transit due to the conflict, and issues related to the deterioration of goods because of late delivery could also arise. Additionally, if goods are significantly delayed or lost, this could lead to claims for total loss under the terms of the carriage contract.

While the UAE legal system is equipped to handle such disputes, the implications of international conflicts for trade and contracts could include increased litigation, more insurance claims and the renegotiation of commercial terms between affected parties.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The ML introduced significant changes, particularly regarding foreign ownership. Foreign investors are allowed to own up to 100% of shipping companies, a notable departure from the restrictions of the previous Commercial Maritime Law of 1981. The ML also provides comprehensive provisions addressing

maritime debts, ship mortgages and the foreclosure thereof, offering greater clarity and a more robust legal framework for resolving disputes related to maritime financial obligations. This is expected to have a substantial impact on how shipping companies operate and how creditors enforce their rights in relation to ship mortgages.

Additionally, the ML allows UAE residents of any nationality to own and register vessels in the UAE. It also extends registration to companies incorporated in the UAE and vessels managed by UAE-based entities. This represents a significant shift from the previous Commercial Maritime Law of 1981, aligning the legal framework with the evolving needs and interests of the shipping community. Stakeholders in the shipping industry should be mindful of these developments and their potential implications for ownership, finance and dispute resolution in the maritime sector.

Another point of clarification pertains to the bareboat charterer of a ship registered abroad that meets the registration criteria for a UAE-flagged vessel, as set out in Article 13 of the ML. It would be useful to determine whether a bareboat chartered-in vessel flying the UAE flag under Article 18 (1) of the ML will still be considered a “foreign ship” for the purposes of Article 15 (1), which requires approval from the Ministry for a foreign ship to engage in marine transportation within UAE ports or to participate in other maritime activities such as towing, piloting or fuelling.

Trends and Developments

Contributed by:

Sujan Malhotra and Vaidehi Kolhe
Ship Law Sea FZ LLE

Ship Law Sea FZ LLE is a boutique maritime and international trade law practice based in the United Arab Emirates advising ship-owners, charterers, managers, brokers, operators and trading companies on both contentious and non-contentious matters. The firm's approach is rooted in real-world maritime operations, giving it a practical understanding of the commercial pressures facing clients across the shipping industry. Its disputes practice includes maritime claims, arbitration, global ship arrests, vessel releases and cross-border enforcement strategies. The firm

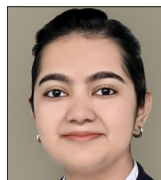
regularly co-ordinates multi-jurisdictional matters, delivering clear and commercially focused solutions. In addition, Ship Law Sea maintains a strong corporate and transactional practice, advising on vessel sale and purchase transactions, corporate structuring, contract drafting and risk management for shipping and trading clients. Over the past five years, the firm has developed a growing international footprint, supporting clients across key maritime jurisdictions with technical precision, responsiveness and commercially relevant advice.

Authors



Sujan Malhotra is managing partner at Ship Law Sea FZ LLE, with over 17 years' experience in maritime and international trade law. He holds an LLM in International Maritime Law from Swansea University and is

dual-qualified as an English solicitor and Indian advocate. He combines legal expertise with commercial insight gained through in-house roles with leading offshore and fleet shipping companies, and positions at international law firms. His practice covers dispute resolution, arbitration, contracts and cross-border shipping matters. He has represented Monaco and, since 2019, UAE ship-owners at the BIMCO Documentary Committee, and is an elected member of the Chartered Institute of Arbitrators and Institute of Chartered Shipbrokers.



Vaidehi Kolhe is a part of the shipping and trade disputes team at Ship Law Sea. She holds a Master's in International Commercial and Maritime Law from Swansea University, UK. She has substantial

experience advising ship-owners, P&I clubs and international clients on a wide range of contentious matters, including vessel arrests, charterparty disputes, cargo claims and marine insurance issues.

Ship Law Sea FZ LLE

10th floor, Reach Business Centre
Concord Towers
Al Sufouh 2
Dubai Media City
Dubai 566468
United Arab Emirates

Tel: +971 (04) 285 9194
+971 50 189 6359
Email: Legal@shiplawsea.com
Web: www.shiplawsea.com



Introduction

The UAE has continued to consolidate its position as a preferred jurisdiction for maritime and commercial dispute resolution in the Middle East, and increasingly on the global stage. Over the last year, both the volume and complexity of maritime disputes have risen steadily, driven by volatile freight markets, supply chain disruption, financial stress among trading entities and heightened regulatory enforcement. This evolution is taking place against the backdrop of the UAE's growing importance as a shipping nation, now ranking 12th globally by ship ownership value.

Courts in the UAE have demonstrated increasing confidence in handling technically complex maritime disputes, while arbitration seated in the UAE has benefited from strong and consistent judicial support, particularly in relation to interim relief and enforcement. An increasing number of stakeholders are selecting UAE courts – both Dubai International Financial Centre (DIFC) and Mainland courts – as their preferred forum and governing law, primarily due to the speed of resolution and the effectiveness of enforcement mechanisms.

For claimants, the UAE remains an attractive forum for asset-driven enforcement strategies, including vessel arrest and precautionary attachments. For respondents, the evolving jurisprudence underscores the importance of early procedural engagement and proactive litigation risk management.

These developments follow the introduction of Federal Decree-Law No 43 of 2023 (the “New Maritime Code”), which replaced the UAE's 40-year-old maritime law regime and modernised the ship arrest framework. The legal landscape has been further strengthened through statutory reforms and the ratification of key international conventions, including the Nairobi International Convention on the Removal of Wrecks 2007 (“WRC 2007”) and the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (“OPRC 1990”), as well as the promulgation of the Ship Recycling Regulation (SRR).

Federal Decree-Law No 20 of 2025, amending the Commercial Companies Law, has introduced significant corporate reforms impacting maritime busi-

nesses. These reforms enhance structural flexibility for ship-owning entities and maritime investors. Together, these measures signal the UAE's ambition to operate as a globally recognised maritime and dispute resolution hub.

This article highlights recent trends in the UAE legal system, with a particular focus on maritime disputes, enforcement and the broader regulatory environment.

UAE Mainland Courts

Exclusive authority of arbitral tribunals to grant interim measures

In Appeal No 657 of 2025, the Dubai Court of Cassation issued a landmark ruling affirming the exclusive authority of arbitral tribunals to issue interim and precautionary measures, including anti-suit injunctions.

The dispute arose after an ICC arbitral tribunal issued an interim order restraining a party from commencing court proceedings in relation to matters governed by a memorandum of understanding subject to arbitration. The Dubai Court of Appeal initially set aside the anti-suit injunction, holding that it infringed the constitutional right of access to justice.

The Court of Cassation reversed that decision, holding that arbitral tribunals are empowered under UAE law to issue interim measures during the pendency of arbitration proceedings, and that only the tribunal itself has jurisdiction to modify, suspend or revoke such measures. The Court found that the Court of Appeal had erred by assuming jurisdiction to revoke the tribunal's order.

This decision reinforces the autonomy of arbitral tribunals seated in the UAE and aligns the Mainland courts with international best practice, further strengthening the UAE's reputation as a pro-arbitration jurisdiction.

Maritime Debts and Vessel Arrests Under the New Maritime Code

Recent case law illustrates the Mainland courts' careful application of the maritime debt requirement under the New Maritime Code.

In Execution No 5413/2023/209, the Dubai Court ordered the lifting of an attachment over a vessel

that had been arrested to enforce a labour judgment, holding that the underlying claim did not constitute a maritime debt under Article 61 of the New Maritime Code. As a result, the arrest was impermissible. The Court had previously rejected a similar application in Decision No 74, emphasising that executory seizure may not be imposed on a vessel except after at least 24 hours have elapsed from official notification to pay a qualifying maritime debt.

In another case, Case No 296/2025, the Khor Fakan Court of First Instance granted a precautionary attachment over a vessel in a charterparty dispute. The Court held that the charterers had satisfied the requirements for provisional seizure under Article 53 (2)(f) and (p) of the New Maritime Code and required the claimant to provide security for potential damages.

Together, these decisions demonstrate a more disciplined and predictable approach to vessel arrests, balancing creditor protection with procedural safeguards for ship-owners.

UAE Offshore Courts

ADGM courts: anti-suit injunctions in support of arbitration

In *A22 and B22 v C22* [2025] ADGMCFI 0018, the ADGM Court of First Instance confirmed that the ADGM courts have jurisdiction to grant anti-suit injunctions restraining proceedings before UAE onshore courts, where it is “just and convenient” to do so.

The dispute concerned insurance subrogation proceedings commenced in the Abu Dhabi onshore courts against a marine warranty surveyor and related parties, notwithstanding an arbitration clause incorporated by reference into the surveyor’s contractual terms. Relying on Sections 16 and 41 of the ADGM Courts Regulations 2015, which mirror Section 37 of the UK Senior Courts Act 1981, the Court held that it possessed injunctive powers equivalent to those of the English courts, including the power to restrain foreign or onshore proceedings in support of arbitration.

On the facts, however, the Court declined to grant relief, finding that the applicants had failed to establish with a high degree of probability that a binding arbitration agreement governed the dispute. Key factors

included the delayed execution of the contract, the non-party status of one defendant and the late stage at which relief was sought.

The ADGM Court confirmed that it has jurisdiction to grant anti-suit injunctions, including restraining proceedings before UAE onshore courts, where it is just and convenient to do so, though the practical enforcement of such orders across judicial systems continues to evolve.

DIFC courts: marine insurance, choice of law and market practice

In *Al Buhaira National Insurance Company v Arab War Risks Insurance Syndicate* [2024] DIFC CFI 013, the DIFC Court addressed complex issues arising from marine hull and war risks insurance and reinsurance arrangements.

Al Buhaira National Insurance Company (ABNIC), a Sharjah-incorporated insurer, had issued marine hull and war risks policies to Horizon Energy LLC for the MT Beta. The policies were reinsured on a 100% facultative basis with the Arab War Risks Insurance Syndicate (AWRIS). Following the vessel’s disappearance, ABNIC avoided the policies for material misrepresentation and non-disclosure. The DIFC Court held that ABNIC was entitled to avoid the policies due to the assured’s deliberate or reckless breach of the duty of fair presentation.

ABNIC subsequently sought declarations regarding AWRIS’s liability under the reinsurance contract and recovery of defence costs incurred in the underlying proceedings.

Choice of law

The reinsurance documentation contained no express governing law clause. Applying Article 8 (2) of the DIFC Application of Civil and Commercial Laws, the Court held that English law governed the reinsurance contract, based on its closest connection to the transaction. The Court relied on several factors, including:

- incorporation of Institute War and Strikes Clauses and London market wordings governed by English law and practice;

- the underlying policies being governed by English law;
- both parties holding themselves out as providers of marine war risks insurance under London market wordings; and
- the specialised nature of marine war risks reinsurance, which operates in conjunction with the Marine Insurance Act 1906 and English jurisprudence to promote commercial certainty.

Defence costs and implied terms

Under English law, and following *Baker v Black Sea & Baltic General Insurance Co. Ltd.* [1998] 1 WLR 974, reinsurance contracts do not ordinarily cover defence costs absent express wording or universally accepted market practice.

ABNIC adduced expert evidence that, in the UAE and Middle East reinsurance market, it is a uniformly accepted custom for reinsurers to reimburse defence costs incurred by the reinsured in proportion to their share of the risk. Justice Black KC accepted this evidence and held that such market practice gave rise to an implied term requiring AWRIS to indemnify ABNIC for defence costs properly incurred.

This aspect of the decision represents a significant development, recognising regional market custom as capable of grounding implied contractual terms, even where this departs from orthodox English law approaches.

Corporate Law Reform and Its Impact on the Maritime Sector

The enactment of Federal Decree-Law No 20 of 2025, amending the Commercial Companies Law (Federal Decree-Law No 32 of 2021), introduces reforms with particular significance for maritime businesses.

Key reforms

Multi-class share structures

Limited liability companies (LLCs) may now issue multiple classes of shares with differing rights and privileges, subject to regulatory approval. This reform facilitates more sophisticated capital structures, enabling preferred equity, differential voting rights and tailored investor arrangements.

Enhanced exit and succession mechanisms

LLCs and private joint stock companies may incorporate drag-along and tag-along rights, liquidity pathways and succession planning directly into their constitutional documents, rather than relying solely on shareholders' agreements.

Company re-domiciliation and conversion

The new Article 15 bis permits companies to transfer registration between emirates, free zones and financial free zones while retaining legal personality, contracts and obligations. This enables seamless migration without liquidation or re-establishment.

Clarification of company nationality

All companies established in the UAE, including free zone and financial free zone entities, are confirmed to hold UAE nationality, with significant implications for tax treaty access and corporate tax relief.

Implications for maritime businesses

These reforms provide ship-owning companies and maritime investors with greater flexibility in structuring ownership, financing fleets and facilitating exits. When considered alongside the New Maritime Code's liberalisation of the UAE ship registry, the ability to re-domicile companies while retaining legal continuity enhances the attractiveness of establishing ship-owning structures in the UAE.

International Maritime Conventions, Compliance and Environmental Regulation

WRC 2007

The UAE has acceded to the WRC 2007 through Federal Decree No 159 of 2024, introducing a comprehensive statutory regime governing wreck removal, liability, insurance and enforcement.

While the Convention preserves a ship-owner's right to limit liability under international limitation regimes, the UAE has exercised a reservation preventing limitation for wreck removal claims in UAE waters. This creates potentially unlimited exposure for ship-owners and insurers and reflects a strong policy commitment to environmental protection.

The UAE has also mandated compulsory insurance for vessels of 300 GT and above and will now be able to

issue certificates of insurance directly, aligning UAE-flagged vessels with international standards and supporting the expansion of the UAE flag.

OPRC 1990

The UAE has acceded to the OPRC 1990 through Federal Decree No 188 of 2022, reinforcing national and international co-operation in responding to oil pollution incidents. The Convention requires states to maintain national response systems and contingency plans, and to provide assistance during major pollution events.

SRR

The SRR, issued by Circular No 19 of 2023, applies to UAE-flagged vessels and certain non-UAE-flagged vessels calling at UAE ports. The regulation prohibits ship recycling via beaching and landing methods, requiring recycling in dry docks or equivalent facilities, and imposes extensive obligations relating to hazardous materials inventories.

The SRR exceeds the standards of the Hong Kong Convention and positions the UAE as a leader in sustainable ship recycling, albeit with potentially significant compliance implications for older vessels and international operators.

Maritime Sanctions, Trade Controls and Compliance Risk

Heightened global sanctions regimes and trade control measures are increasingly intersecting with maritime operations in the UAE, particularly given the country's role as a major trading, energy and transshipment hub. While UAE law does not mirror all foreign sanctions frameworks, compliance considerations are increasingly influencing maritime disputes, including charterparty performance, vessel employment, insurance coverage and enforcement risk.

The UAE central bank and the Ministry of Economy's financial intelligence unit have taken a more proactive role in issuing compliance circulars, such as the Guidance for Licensed Financial Institutions on Risks related to Trade-Based Money Laundering and Transshipment, especially on dual-use goods, financial transfers and beneficial ownership transparency, and conducting audits on suspicious transactions.

Consequently, UAE-registered companies will face local penalties like banks freezing transactions, insurers withholding coverage and ports demanding deeper documentation for violations of international sanctions, even when such sanctions are not directly implemented under UAE law.

From a dispute perspective, sanctions-related issues are beginning to arise in the context of off-hire claims, refusal of port entry, denial of insurance cover, and challenges to payment under letters of credit and charterparty hire. These developments underscore the importance of sanctions screening, contractual safeguards and early legal assessment, particularly where vessels, cargoes or counterparties have exposure to multiple jurisdictions.

Conclusion

The UAE's maritime legal framework is undergoing a profound transformation driven by progressive judicial decisions, modernised maritime and corporate legislation, and the incorporation of key international conventions. These developments enhance legal certainty, support effective enforcement, and align the UAE with global best practices in maritime commerce and dispute resolution.

Combined with practical regulatory initiatives expected in 2026, including enhanced marine traffic controls and sustainability measures, the UAE is positioning itself as a forward-looking maritime hub that balances commercial sophistication with environmental responsibility.



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Bargate Murray is a leading maritime, dispute resolution and aviation law firm based in Mayfair, London, UK, founded and led by Quentin Bargate, FCI Arb, a renowned expert in maritime law and arbitration. The key players in the firm are Quentin Bargate, Elliot Bishop, who focuses on work for yacht marinas, Robert Caleja, who heads the aviation department,

and Andrew Giles, who works closely with Quentin in handling major maritime arbitrations, representing owners, managers, yards, and family offices by providing advisory services and representing clients in complex yacht and ship construction projects, sale and purchase, structuring, tax and before arbitral tribunals.

Authors



Quentin Bargate qualified as a solicitor in 1981, founded Bargate Murray in 2004, following a distinguished City career at Lovell White and King and as partner and head of the international trade and shipping group at Simmons & Simmons. He is the CEO of Bargate Murray and widely regarded as one of the top advisors in major maritime arbitration and litigation and transactional shipping matters, particularly all aspects of superyacht work. Quentin is also regularly appointed as a maritime arbitrator under LMAA Terms. He holds an MSc in Marine Law, a Diploma in International Maritime arbitration, and is a Fellow of the Chartered Institute of Arbitrators (FCI Arb) and a member of the Baltic Exchange and the Nautical Institute.



Elliot Bishop operates at the intersection of law and commerce and has acted in multi-jurisdictional litigation on behalf of major banks and insurers in respect of policy coverage issues and international enforcement of loan security against pleasure boats and superyachts. He is a highly motivated and technically adept individual, with extensive commercial and organisational experience, who sees the “big picture” with ease. An instinctive leader and team player, Elliot facilitates innovative and efficient solutions to often complex issues. He is also a Freeman of the City of London.

Bargate Murray

16 Berkeley St
London
W1J 8DZ
UK

Tel: +44 020 7375 1393
Fax: +44 020 7392 9529
Email: contact@bargatemurray.com
Web: www.bargatemurray.com



1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

In England and Wales, specialist maritime and shipping disputes are primarily determined by the Admiralty Court, which forms part of the King's Bench Division of the High Court. The principal statutory basis for its jurisdiction is the Senior Courts Act 1981 (in particular Sections 20–21, which define the Admiralty jurisdiction and the circumstances in which proceedings may be brought in rem). Admiralty procedure is governed by the Civil Procedure Rules (CPR), notably CPR Part 61 and the associated Practice Direction, together with the Admiralty and Commercial Courts Guide.

In practice, the Admiralty Court deals with (amongst other things) ship arrests and judicial sales, enforcement of ship mortgages, collision and allision claims, salvage and towage disputes, cargo and bill of lading claims (including misdelivery), claims arising out of charterparties where an in rem remedy is sought, bunker and necessities claims (where the statutory tests are met), limitation of liability issues and claims for personal injury or loss of life connected with a ship's operation. For marina-based claims for unpaid marina dues, Section 20 (2)(n) of the Senior Courts Act 1981 applies.

However, for contractual shipping disputes, the most popular choice, dictated by the material contract, is a reference to London maritime arbitration (very commonly under London Maritime Arbitrators Association (LMAA) terms) or less frequently in the Commercial Court.

1.2 Port State Control

The United Kingdom applies port state control through the Paris Memorandum of Understanding on Port State Control (the "Paris MoU"). In the UK, port state control inspections are carried out by the Maritime and Coastguard Agency (MCA) under the Merchant Shipping (Port State Control) Regulations 2025 and related statutory powers.

In broad terms, the MCA may board and inspect foreign-flag ships calling at UK ports/anchorages, require production of certificates, record deficiencies, impose operational restrictions, and detain a ship where deficiencies are sufficiently serious. In relation to marine casualties, the Marine Accident Investigation Branch (MAIB) conducts no-blame safety investigations, while the MCA (and, where relevant, the police and prosecuting authorities) may investigate and enforce offences. For significant pollution incidents and wrecks, the Secretary of State's Representative (SOSREP) may exercise intervention powers to protect safety and the environment, including directing salvage/wreck removal operations and requiring preventive action.

1.3 Domestic Legislation Applicable to Ship Registration

The core domestic legislation for UK ship registration is the Merchant Shipping Act 1995 (Part II and associated provisions), supplemented by the Merchant Shipping (Registration of Ships) Regulations 1993 (as amended) and related secondary legislation.

Registration is administered by the UK Ship Register, operated by the MCA on behalf of the Registrar General of Shipping and Seamen. The UK register comprises a number of "parts", including (amongst others) Part I (the main register), Part II (fishing vessels), Part III (the Small Ships Register) and Part IV (bareboat charter registration).

1.4 Requirements for Ownership of Vessels

UK registration is generally restricted to "qualified" owners/charterers as prescribed by the Merchant Shipping Act 1995 and the Registration Regulations. In practice, qualification can often be satisfied by UK nationals and UK-incorporated companies (and certain other categories), which means that foreign beneficial ownership is commonly accommodated through an appropriate corporate or trust structure with a qualifying registered owner.

Registration is normally effected on completion/delivery of the vessel, once the requisite evidence of title is available and the registration formalities can be satisfied. During construction, parties typically protect their position through contractual security (for example, security over the shipbuilding contract and

refund guarantees), while preparing the documentation needed for prompt registration and mortgage registration on delivery.

1.5 Temporary Registration of Vessels

UK law permits provisional (temporary) registration, typically for a limited period to allow a vessel to operate while outstanding registration formalities are completed. Separately, the UK Ship Register provides for bareboat charter registration (Part IV) for vessels on bareboat charter to a qualifying UK charterer for the duration of the charter.

Full “dual registration” (ie, two concurrent registrations conferring nationality) is not generally permitted. However, bareboat charter arrangements can, in effect, operate alongside an underlying “primary” registry, with the primary registry’s nationality element typically suspended for the bareboat period, depending on the relevant foreign law and registry practice.

1.6 Registration of Mortgages

Mortgages over UK-registered ships are recorded by the UK Ship Register (Registrar General of Shipping and Seamen/MCA) on the register for the relevant part. A registered mortgage is created/registered by lodging the mortgage instrument in the prescribed form together with the required particulars (including the vessel details, the mortgagor and mortgagee details and execution evidence) and payment of the applicable fee.

In practice, the Registrar will require appropriately executed documents (including corporate authority where relevant), and where documents are not in English, a certified translation is typically provided. Scanned copies are commonly accepted for processing, subject to any requirements for wet-ink signatures and/or production of originals for particular applications.

1.7 Ship Ownership and Mortgages Registry

The UK ships register is a public record in the sense that registration details may be obtained by third parties. In practice, a third party can obtain an official extract (commonly a “Transcript of Registry”) from the UK Ship Register for a particular vessel upon request and payment of the relevant fee.

The transcript typically confirms key particulars such as the vessel’s registered ownership, registered mortgages and other registered entries. This is routinely used by financiers, counterparties and advisers as part of due diligence and enforcement planning.

2. Ship Finance and Leasing

2.1 Ship Loan Finance

English law-governed ship finance remains common in transactions with a UK nexus and in international financings choosing English law and jurisdiction/arbitration. Typical debt financings are documented on a facility agreement (often Loan Market Association-style), with conditions precedent, representations, undertakings and events of default, together with comprehensive security and covenant packages.

Security commonly includes (as applicable) a first-priority registered ship mortgage, assignments of earnings and charter hire, insurances and requisition compensation, charges over accounts (including a retention or earnings account), share security over the owning SPV, guarantees (corporate and, where appropriate, personal) and security over material contracts. Depending on the structure, financiers may also seek security over management agreements, hedging arrangements and intercompany receivables, and may require cash collateral or reserves (eg, for dry-docking) as part of the overall risk allocation.

2.2 Ship Leasing

Leasing and sale-and-leaseback structures are widely used in the international shipping market and are frequently documented and/or supported from London, including transactions involving alternative credit providers and, in particular, overseas institutions. The key commercial drivers include balance sheet treatment, access to longer tenors, and the ability to match amortisation profiles to employment.

A lessor/lessee relationship is typically asset-based: the lessor retains title and the lessee’s core obligation is to pay hire and return the vessel (or purchase it under an option), with termination/re-delivery and repossession rights as central remedies. By contrast, lender/borrower structures are credit-based: the bor-

owner owns the asset and the lender's primary remedy is enforcement of security (including a mortgage sale) and contractual acceleration. In practice, English courts and arbitral tribunals will enforce both types of arrangements according to their terms, but the procedural route differs: mortgage enforcement in England commonly involves arrest and judicial sale in the Admiralty Court, whereas repossession under a lease is usually pursued through contractual termination and delivery up (and, where needed, court relief such as injunctions), alongside any security and guarantees.

3. Marine Casualties and Owners' Liability

3.1 International Conventions: Pollution and Wreck Removal

Owner and interested-party liability for pollution and wreck removal in the UK is shaped by a mixture of international conventions and domestic statutes. Key conventions include the 1992 Civil Liability Convention (CLC) and 1992 Fund Convention (and the Supplementary Fund where applicable) for persistent oil pollution, the 2001 Bunkers Convention for bunker oil pollution from any ship, and the Nairobi International Convention on the Removal of Wrecks 2007.

These regimes are implemented primarily through the Merchant Shipping Act 1995 (as amended) and associated regulations, imposing strict liability in defined circumstances, compulsory insurance and direct action against insurers, together with statutory powers for intervention, clean-up and recovery of costs. Wreck removal is supported in particular by the Wreck Removal Convention Act 2011 (which inserts relevant provisions into the Merchant Shipping Act 1995) and by domestic harbour and environmental legislation, depending on the location and nature of the incident.

3.2 International Conventions: Collision and Salvage

Collision liability in the UK is influenced by the Brussels Collision Convention 1910 (as implemented domestically), together with the general principles of English tort and maritime law, and the Collision Regulations (COLREGs), which set the navigational rules relevant to fault and causation.

Salvage is primarily governed by the International Convention on Salvage 1989 (implemented in the UK) and the Merchant Shipping Act 1995, supplemented in practice by standard-form salvage agreements (notably Lloyd's Open Form) and established Admiralty Court and arbitration practice. Salvage awards and special compensation issues are typically determined by reference to the convention framework and the contractual terms agreed.

3.3 Convention on Limitation of Liability for Maritime Claims

The UK applies the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), and has implemented subsequent increases to the limitation amounts (the IMO 2012 amendments) in domestic law.

The relevant domestic framework is found in the Merchant Shipping Act 1995 (as amended) and associated secondary legislation/orders implementing the LLMC regime. In broad terms, limitation amounts are calculated by reference to the vessel's gross tonnage and expressed in Special Drawing Rights (SDR), converted at the applicable rate.

3.4 Vienna Convention on the Law of Treaties

The UK is a party to the Vienna Convention on the Law of Treaties 1969 (VCLT), and English courts routinely apply the VCLT interpretative principles as part of the approach to treaty interpretation (including where those principles reflect customary international law). Accordingly, the UK Supreme Court's use of the VCLT approach in interpreting the LLMC in *MSC Flaminia* is consistent with the general position in this jurisdiction.

3.5 Procedure and Requirements for Establishing a Limitation Fund

A limitation fund may be constituted in England and Wales by commencing an Admiralty claim and applying to the court for an order to constitute the fund. The fund may be set up by any person entitled to limit (typically the shipowner, demise charterer, manager, operator and, in some cases, the liability insurer), depending on the claim and the LLMC provisions.

The amount is calculated by reference to the applicable LLMC limits (or other relevant limitation regime)

using the vessel's gross tonnage and the SDR-based formula, with interest (where ordered) from the relevant date. The court will usually require security to be provided in a form acceptable to it, which may be by payment into court or by the provision of an acceptable guarantee/undertaking (the acceptability of which will depend on the circumstances and the parties' positions).

3.6 Seafarers' Safety and Owners' Liability

The UK has ratified the Maritime Labour Convention 2006 (MLC), and it is implemented through domestic regulations enforced by the MCA. Domestic law on seafarers' rights and safety includes the MLC implementing regulations, the Merchant Shipping Act 1995 and extensive secondary legislation on maritime health and safety, hours of work and rest, training and certification.

General employment and safety legislation may also apply depending on the individual's status and the ship's operations, including the Employment Rights Act 1996 (as modified for seafarers), the Equality Act 2010 and the Health and Safety at Work etc. Act 1974 (as applied offshore/at sea through specific maritime regulations).

4. Cargo Claims

4.1 Bills of Lading

The Hague-Visby Rules apply in the UK by virtue of the Carriage of Goods by Sea Act 1971 (COGSA 1971). The UK is not a party to the Hamburg Rules or the Rotterdam Rules. Domestic carriage and bill of lading issues are also governed by English common law and (in relation to contractual rights under bills, sea waybills and delivery orders) the Carriage of Goods by Sea Act 1992 (COGSA 1992).

Charterparty disputes are determined by the applicable contract law principles (and any contractual incorporation of the Hague-Visby Rules), with London arbitration remaining a common forum.

4.2 Title to Sue on a Bill of Lading

Title to sue under a bill of lading is principally determined by COGSA 1992. In broad terms, the "lawful

holder" of the bill of lading (and, in the case of a sea waybill, the person entitled to delivery) acquires the carrier's contractual obligations and the corresponding rights of suit, provided the statutory conditions are met.

COGSA 1992 effects a statutory transfer of rights of suit (rather than a conventional assignment), but English law also recognises assignment of contractual rights in principle. In practice, however, COGSA 1992 is the primary mechanism relied on for transfer of rights and liabilities under bills of lading in the ordinary course of trade.

4.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Where the Hague-Visby Rules apply, the carrier's liability is subject to the standard defences and limits in the Rules, including the package/kilogram limitation (currently 666.67 SDR per package or unit, or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is higher), subject to any declaration of value and subject to the loss of limitation in cases of intent/recklessness within the Rules' meaning.

The position can differ depending on whether the shipowner is the contractual carrier or the actual carrier. The contractual carrier is liable on the bill of lading contract; the actual carrier (including the shipowner where it is not the contractual carrier) may be liable in tort/bailment, but is commonly protected by Himalaya clauses and contractual defences/limits extended to servants, agents and subcontractors. In addition, shipowners and other limiters may seek to rely on global limitation under the LLMC regime, where applicable, as a further cap on overall exposure.

4.4 Misdeclaration of Cargo

English law generally permits a carrier to pursue the shipper for misdeclaration or misdescription of cargo, depending on the legal basis and facts. Under the Hague-Visby Rules, the shipper gives a statutory guarantee as to the accuracy of marks, number, quantity and weight as furnished by it (Article III rule 5), and the shipper may be liable to indemnify the carrier for losses arising from inaccuracy. There are also specific provisions concerning dangerous goods (Article IV rule 6) and corresponding common law rights.

The leading English authority in the dangerous goods context remains *Effort Shipping Co Ltd v Linden Management SA* (The “*Giannis NK*”), where the shipper’s strict liability to indemnify the carrier was confirmed in circumstances involving dangerous cargo. In practice, claims are fact-sensitive and often turn on the wording of the contract of carriage/charterparty, the extent of the shipper’s knowledge, and the causal link between the misdeclaration and the loss.

4.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Where the Hague-Visby Rules apply, suit against the carrier is time-barred unless proceedings are brought within one year of delivery of the goods or the date when they should have been delivered (Article III rule 6). In November 2024, the UK Supreme Court confirmed that this one-year time bar can apply to misdelivery claims even if the misdelivery occurs after discharge.

Where the Rules do not apply, the usual English limitation periods are generally six years for contract and six years for tort (subject to specific statutory regimes and extension provisions). Time limits under the Hague-Visby Rules can be extended by agreement between the parties, and such extensions are commonly recorded by correspondence or standstill agreements.

5. Maritime Liens and Ship Arrests

5.1 Ship Arrests

The UK is not party to the 1952 or 1999 Arrest Conventions. Ship arrests in England and Wales are governed by domestic law, principally the Senior Courts Act 1981 (Sections 20–21), CPR Part 61 and the associated Practice Direction, and the Admiralty and Commercial Courts Guide.

The Admiralty Court has jurisdiction to order the arrest of a ship (and, in appropriate cases, other property such as cargo) to obtain security for maritime claims falling within the statutory categories, subject to the requirements for bringing an action in rem.

5.2 Maritime Liens

English law recognises a narrow class of maritime liens, which arise by operation of law and attach to the vessel from the moment the cause of action arises. The traditional categories are: (i) salvage; (ii) damage done by a ship (tort); (iii) seamen’s wages (and certain master’s claims); and (iv) bottomry (now largely obsolete).

English law distinguishes between maritime liens and the wider range of “statutory rights in rem” (often referred to colloquially as maritime claims) under the Senior Courts Act 1981. Personal injury claims of crew do not generally give rise to a maritime lien, but they may fall within the statutory in rem jurisdiction (and therefore support arrest) if the statutory conditions are met. Liabilities arising under contracts for chartering a vessel (eg, charterparty disputes) are maritime claims within the statutory categories (for example, a claim arising out of an agreement relating to the use or hire of a ship), but arrest in rem will depend on satisfying the ownership/demise charterer requirements in Section 21.

Time limits depend on the underlying cause of action and any applicable convention/statute; maritime liens are not subject to a fixed statutory expiry date, but may be defeated by judicial sale (which generally delivers the ship free of liens) and may be affected in practice by delay (laches) and evidential issues.

5.3 Liability in Personam for Owners or Demise Charterers

For most statutory in rem claims in England and Wales, the claimant must show that the person who would be liable in personam was the owner or demise charterer of the vessel when the cause of action arose, and that the relevant ownership/beneficial ownership condition is met at the time proceedings are commenced. In that sense, a nexus to a person liable in personam is generally required.

Maritime liens are different: they attach to the ship itself and can be enforced in rem regardless of changes in ownership after the lien has arisen. Accordingly, where a true maritime lien exists, a vessel may be arrested notwithstanding that the current owner is not personally liable on the merits.

5.4 Unpaid Bunkers

England does not recognise a maritime lien for the supply of bunkers/necessaries. A bunker supplier may, however, have a statutory right in rem for “goods or materials supplied to a ship for her operation or maintenance” under the Senior Courts Act 1981, provided the statutory ownership requirements are met.

In practical terms, where bunkers are ordered by and supplied on the credit of a time charterer (not being a demise charterer), the supplier will usually have contractual recourse against the charterer but will often be unable to arrest the ship in rem, because the owner is not the relevant person liable in personam. The position can differ where the bunkers are ordered by the owner or a demise charterer, or where the charterer is in fact a demise charterer. Whether the claimant is the contractual supplier or the physical supplier may matter to entitlement and quantum, because privity and chain-contract issues can affect who has a claim.

5.5 Arresting a Vessel

To arrest a vessel in England and Wales, the claimant must issue an Admiralty claim form in rem and apply (usually without notice) for the issue of a warrant of arrest. The application is supported by a witness statement/affidavit verifying the claim, the grounds for arrest and the relevant ownership/beneficial ownership facts. The claimant must also provide an undertaking to the Admiralty Marshal for the Marshal’s fees and expenses, and arrange service/execution.

The court will generally accept copies of supporting documents at the arrest stage, but reliable evidence of authority and ownership is important. Documents in a foreign language should be accompanied by a certified translation. The court does not typically require the arresting party to provide security for damages as a condition of arrest, but the claimant is exposed to potential costs consequences and (in the rare case of wrongful arrest meeting the high threshold) damages.

5.6 Arresting Bunkers and Freight

The Admiralty Court’s in rem jurisdiction extends beyond ships and can include other property such as cargo, and proceedings can be brought to enforce certain claims against freight as property of the person

liable, depending on the statutory basis and factual ownership.

Arrest of bunkers as separate property is less common in practice, largely because bunkers may be owned by parties other than the shipowner (eg, a charterer) and issues of identification and ownership arise. However, where bunkers or freight are the property of a person liable in personam and the statutory tests are met, the court can make orders aimed at securing the claim. In practice, parties often rely on arrest of the vessel (where available) and/or freezing relief or third-party debt orders as the more straightforward means of obtaining security.

5.7 Sister-Ship Arrest

England and Wales permits “sister-ship” arrest, but only on a beneficial ownership basis. In broad terms, where the claimant has a statutory right in rem against a ship in respect of a claim against a particular person, the claimant may arrest another ship which, at the time proceedings are commenced, is beneficially owned as respects all the shares by that same person.

England does not recognise a broader “associated ship” concept based solely on common control; beneficial ownership of all shares (or, for some claims, ownership/demise charter status) is the key test.

5.8 Other Ways of Obtaining Attachment Orders

Common alternatives (or complements) to arrest in England and Wales include freezing injunctions (*Mareva* relief) to restrain dissipation of assets, proprietary injunctions, and third-party debt orders. In support of arbitration, the court has powers under Section 44 of the Arbitration Act 1996 (and Section 37 of the Senior Courts Act 1981) to grant interim measures, including freezing relief, where the statutory requirements are met.

Parties also frequently obtain contractual security such as P&I club letters of undertaking (LOUs), bank guarantees or escrow arrangements, and may seek security for costs in appropriate litigation/arbitration circumstances.

5.9 Releasing an Arrested Vessel

An arrested vessel can be released by (i) providing security acceptable to the court (commonly by paying money into court, or providing bail), (ii) providing alternative security agreed with the claimant (often a P&I club LOU), and/or (iii) successfully applying to set aside the arrest (for example, where the statutory basis is not made out).

In practice, P&I club LOUs are routinely accepted in appropriate cases by agreement and, where necessary, can be embodied in a court order. Foreign bank guarantees can also be acceptable, but the court will scrutinise form, issuer creditworthiness and enforceability; issues such as governing law, jurisdiction and demand mechanics often determine whether a particular guarantee is suitable.

5.10 Procedure for the Judicial Sale of Arrested Ships

Judicial sale in the Admiralty Court is typically ordered where (i) the claimant has obtained judgment, (ii) the vessel is a wasting asset or the costs of maintaining it are disproportionate, or (iii) the parties' consent. The court orders appraisal and sale by the Admiralty Marshal, who conducts the sale (traditionally by sealed bids/tender, though the procedure can be adapted). Private sale is not the default, but the court may approve an alternative sale process where this is demonstrably in the best interests of the parties and creditors.

From arrest to sale, the vessel is in the custody of the Admiralty Marshal; the arresting party will ordinarily be required to fund the Marshal's expenses and custodianship initially, with those expenses enjoying high priority and being reimbursed out of sale proceeds. The distribution of proceeds follows established priorities: Marshal's expenses and costs of sale first, then (broadly) maritime liens (such as salvage and seamen's wages) and certain possessory liens, followed by registered mortgages (ranked by order of registration) and then other statutory in rem claims, subject to case-specific issues.

5.11 Insolvency Laws Applied by Maritime Courts

The UK does not have a direct equivalent to US Chapter 11, but it has a sophisticated corporate rescue framework, including administration, company voluntary arrangements and restructuring plans under the Companies Act 2006 (Part 26A). These regimes can provide moratorium-like protection and facilitate restructuring.

Where an owner is subject to US Chapter 11 or other foreign insolvency proceedings, English courts may recognise and grant relief in support under the Cross-Border Insolvency Regulations 2006 (implementing the UNCITRAL Model Law), including stays of proceedings and relief affecting enforcement. Accordingly, while the Admiralty Court has jurisdiction to arrest and sell a vessel, in practice the court will consider recognition/stay issues and the balance of interests; arrest may be stayed or security arrangements adjusted where appropriate.

5.12 Damages in the Event of Wrongful Arrest of a Vessel

Damages for wrongful arrest are available in England and Wales only on a high threshold: the claimant must generally show that the arresting party acted in bad faith (malice) or with gross negligence in obtaining the arrest. If that threshold is not met, the usual remedy is costs rather than damages.

The court will consider the claimant's conduct and the reasonableness of the steps taken to investigate ownership and the legal basis for arrest. Prompt applications to set aside an arrest may be made where jurisdictional or statutory requirements are not satisfied.

6. Passenger Claims

6.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Passenger claims in the UK are governed by a combination of domestic law and the Athens Convention regime as given effect through retained Regulation (EC) No 392/2009 and implementing domestic regulations, including the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012.

The Athens regime provides a two-year limitation period (subject to the Convention's rules on when time starts to run) and sets out liability standards and limits (expressed in SDR) for death/personal injury and luggage. Passenger personal injury claims do not generally constitute a maritime lien under English law, but they are within the Admiralty Court's statutory in rem jurisdiction (subject to the Section 21 requirements) and therefore may constitute a "maritime claim" capable of supporting arrest in appropriate cases.

7. Enforcement of Law and Jurisdiction and Arbitration Clauses

7.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

English courts generally recognise and enforce governing law and jurisdiction clauses in bills of lading, subject to ordinary contract principles and any applicable statutory constraints. Where a bill contains an exclusive foreign jurisdiction clause, the English court will ordinarily stay proceedings in favour of the chosen forum unless there is strong reason not to.

Post-Brexit, enforcement and anti-suit relief issues are primarily addressed under English common law and any applicable international instruments (as relevant). In practice, properly drafted jurisdiction clauses in shipping documents are routinely upheld.

7.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

English courts will generally enforce arbitration clauses (and law/jurisdiction clauses) incorporated from a charterparty into a bill of lading, provided incorporation is effective as a matter of construction. This typically requires clear wording identifying the relevant charterparty and incorporating its dispute resolution clause.

Where incorporation is effective, the court will generally grant a stay of court proceedings in favour of arbitration under Section 9 of the Arbitration Act 1996, and will support arbitration through interim measures where appropriate.

7.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The UK is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention is implemented domestically by the Arbitration Act 1996, in particular Sections 100–104 and related provisions governing recognition and enforcement of Convention awards.

English courts take a pro-enforcement approach, subject to the Convention grounds for refusal (which are construed narrowly).

7.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The Admiralty Court can order the arrest of a vessel and/or grant interim relief to obtain security even where the merits are subject to foreign arbitration or foreign court jurisdiction, provided the statutory requirements for the in rem claim (or other relief) are met.

In practice, the court may permit arrest to stand as security while staying the substantive proceedings in favour of the agreed forum. In support of arbitration, the court may also exercise its powers under Section 44 of the Arbitration Act 1996 to grant interim measures where the statutory conditions (including urgency/necessity) are satisfied.

7.5 Domestic Arbitration Institutes

London is a major centre for maritime arbitration. The LMAA provides widely used procedural terms and a panel/market of specialist maritime arbitrators for charterparty, bill of lading, shipbuilding and related disputes.

In addition, institutions such as the London Court of International Arbitration may be used for maritime disputes, but the LMAA framework remains the predominant specialist option in this jurisdiction.

7.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

Remedies in England and Wales where proceedings are commenced in breach of a foreign jurisdiction or arbitration clause include applying for a stay of the

English proceedings (or to set aside service out) and seeking an anti-suit injunction to restrain the foreign proceedings (where the English court has jurisdiction and it is appropriate to grant such relief).

A party may also seek damages for breach of an arbitration agreement in appropriate circumstances, and will typically pursue costs on an indemnity basis where the breach is clear and the court considers it just to do so. Contractual rights to security or to terminate may also be engaged depending on the underlying contract.

8. Ship-Owners' Income Tax Relief

8.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The UK operates an elective tonnage tax regime for qualifying shipping companies, which (broadly) taxes certain shipping profits by reference to the net tonnage of operated ships rather than actual profits, subject to detailed eligibility conditions and compliance requirements.

In addition, the UK capital allowances regime may provide relief for qualifying expenditure (subject to the specific facts and any ring-fencing rules), and the wider UK corporate tax framework (including group relief and financing deductibility rules) will apply to ship-owning structures depending on how they are organised and managed.

9. Implications of Non-Performance, IMO 2020, Trade Sanctions and International Conflict

9.1 Force Majeure and Frustration

Under English law, "force majeure" is not a free-standing doctrine: it applies only if the contract contains a force majeure clause and the clause is construed as covering the event and the relevant non-performance. The clause will typically require that performance is prevented or hindered beyond the party's reasonable control, and may impose notice and mitigation obligations.

In the absence of a force majeure clause, relief may arise only through the doctrine of frustration, which is applied narrowly. Frustration requires a supervening event which, without fault of either party, renders performance impossible or transforms the obligation into something radically different from that undertaken. Delays, increased cost, or a change in market conditions are rarely sufficient; many shipping disruptions are dealt with contractually through war risk, safe port, deviation and laytime/demurrage provisions rather than frustration.

9.2 Enforcement of the IMO 2020 Rule Limiting the Sulphur Content of Fuel Oil

The UK enforces the IMO 2020 sulphur limits through its implementation of MARPOL Annex VI, principally via the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (as amended) and associated enforcement powers.

The global sulphur limit for fuel oil used on board ships outside designated Emission Control Areas (ECAs) is 0.50% m/m. Within the North Sea and English Channel Sulphur ECA, the stricter 0.10% limit applies. Enforcement is primarily undertaken by the MCA through inspections (including under port state control), detentions and, where appropriate, prosecution. Publicly reported enforcement tends to take the form of deficiency action and detention, with criminal proceedings being less common and fact-specific.

9.3 Trade Sanctions

The UK has an autonomous sanctions framework implemented through the Sanctions and Anti-Money Laundering Act 2018 and country-specific regulations (including, for Russia, the Russia (Sanctions) (EU Exit) Regulations 2019). Enforcement is carried out by a range of authorities, including the Office of Financial Sanctions Implementation (OFSI), the Office of Trade Sanctions Implementation (OTSI), Her Majesty's Revenue and Customs (HMRC) and the National Crime Agency (NCA), with licensing and exemptions available in defined circumstances.

The war in Ukraine has led to extensive UK sanctions affecting shipping and trade, including asset freezes, trade restrictions and targeted measures relating to Russian oil, maritime services and the oil price cap.

OFSI has issued sector-specific guidance on the maritime services ban and oil price cap, and has taken enforcement action in the shipping sector (for example, a published penalty against a UK-registered shipping company for a Russia sanctions breach). Lawful trade that would otherwise be prohibited can in some cases proceed under a specific licence or general licence (where available), subject to strict conditions and reporting requirements.

9.4 International Conflict

International conflicts and related security risks can have material legal and commercial implications for shipping contracts and disputes in this jurisdiction. In practice, parties frequently rely on express contractual machinery rather than frustration, including war risk clauses (eg, CONWARTIME/VOYWAR), safe port/safe berth warranties, sanctions clauses, deviation liberties and off-hire/laytime provisions.

From an insurance perspective, war risks, kidnap and ransom, and increased premiums/exclusions can materially affect voyage economics and operational decisions, and disputes may arise concerning cover, constructive total loss and the reasonableness of rerouting. Conflict-driven disruption (including Red Sea/Suez issues) also commonly gives rise to claims for delay, cargo deterioration, extra expenses and general average, with outcomes turning on the particular contract wording and causation evidence.

10. Additional Maritime or Shipping Issues

10.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Two further themes are increasingly important in the UK shipping market. First, environmental and decarbonisation regulation is driving contractual and disputes activity, including compliance with IMO carbon-intensity measures, fuel quality rules and (where relevant) emissions trading/greenhouse gas reporting regimes impacting voyages and charterparty performance.

Secondly, sanctions and enhanced compliance expectations continue to reshape shipping due diligence, payments and enforcement strategy, particularly in relation to beneficial ownership transparency, use of flags/class, and the risk allocation in charterparty and trade documentation. These issues frequently intersect with security (arrest/freezing), insurance response and the practicalities of enforcing judgments and arbitral awards.

Trends and Developments

Contributed by:

Quentin Bargate and Elliot Bishop
Bargate Murray

Bargate Murray is a leading maritime, dispute resolution and aviation law firm based in Mayfair, London, UK, founded and led by Quentin Bargate, FCI Arb, a renowned expert in maritime law and arbitration. The key players in the firm are Quentin Bargate, Elliot Bishop, who focuses on work for yacht marinas, Robert Caleja, who heads the aviation department,

and Andrew Giles, who works closely with Quentin in handling major maritime arbitrations, representing owners, managers, yards, and family offices by providing advisory services and representing clients in complex yacht and ship construction projects, sale and purchase, structuring, tax and before arbitral tribunals.

Authors



Quentin Bargate qualified as a solicitor in 1981, founded Bargate Murray in 2004, following a distinguished City career at Lovell White and King and as partner and as head of the international trade and

shipping group at Simmons & Simmons. He is the CEO of Bargate Murray and widely regarded as one of the top advisors in major maritime arbitration and litigation and transactional shipping matters, particularly all aspects of superyacht work. Quentin is also regularly appointed as a maritime arbitrator under LMAA Terms. He holds an MSc in Marine Law, a Diploma in International Maritime arbitration, and is a Fellow of the Chartered Institute of Arbitrators (FCI Arb) and a member of the Baltic Exchange and the Nautical Institute.



Elliot Bishop operates at the intersection of law and commerce and has acted in multi-jurisdictional litigation on behalf of major banks and insurers in respect of policy coverage issues and international

enforcement of loan security against pleasure boats and superyachts. He is a highly motivated and technically adept individual, with extensive commercial and organisational experience, who sees the “big picture” with ease. An instinctive leader and team player, Elliot facilitates innovative and efficient solutions to often complex issues. He is also a Freeman of the City of London.

Bargate Murray

16 Berkeley St
London
W1J 8DZ
UK

Tel: +44 020 7375 1393
Fax: +44 020 7392 9529
Email: contact@bargatemurray.com
Web: www.bargatemurray.com



An English Law Perspective for International Businesses

Introduction: uncertainty to continue throughout 2026

Shipping has always been cyclical with uncertainty fluctuating but ever present. The present cycle is being driven as much by non-commercial forces as by freight fundamentals. This includes route disruption, increased sanctions enforcement, emissions controls pushing up pricing, and global political uncertainty. These variables are changing the economics of shipping.

For parties using English law (which is still the most popular choice for maritime and trade contracts), the most visible shift is the premium now placed on operationally workable risk allocation. Commercial shipping teams are not only asking what the contract says, but whether it provides a usable decision-making framework when, for example, a route or port suddenly becomes unsafe, an additional war risk premium is demanded, or a bank blocks a payment.

English law remains popular because it is familiar, heavily tested and comparatively predictable. But it does not remove the need for careful drafting, disciplined contemporaneous record-keeping, and front-end due diligence that is realistic about what can go wrong in performance.

What follows is a more specific account of the themes that are seen repeatedly in UK/English law shipping work, with concrete regulatory and case-law reference points where they affect contracting and disputes in 2026.

Geopolitics and chokepoints: routing risk is now negotiated, not assumed

The last two years have made it plain that major shipping corridors can become commercially unattractive (or uninsurable at sensible cost) at short notice. For many operators, the practical question is no longer “what is the shortest route?” but “what is the route that remains bankable and insurable on the day, and how do we evidence the decision if challenged?”

All this is important from a legal and commercial perspective. Diversions are not merely operational; they

affect laycan and ETA/ETD commitments, bunker consumption, speed/consumption warranties, emissions exposure, and (in a sale chain) documentary timing. Unless the contract clearly allocates decision rights and consequences, the dispute tends to re-appear as:

- an “unsafe port/unsafe route” argument;
- a war risks clause dispute;
- an off-hire/performance/time counting dispute; or
- a deviation/cargo claim risk issue.

War risks clauses are increasingly doing more work than many parties expected. Market practice continues to lean heavily on the Baltic and International Maritime Council’s (BIMCO) CONWARTIME/VOYWAR architecture (and bespoke rider clauses), with owners seeking broad discretion to refuse orders or alter routes where there is a reasonable exposure to “War Risks”.

The wording of the clause matters, because many disputes turn on whether it requires a material change in risk, who makes the judgment call, what evidence supports it, and whether the owner must accept mitigations offered by the charterer (eg, armed guards, routing constraints or convoy). BIMCO’s standard definitions and structure remain a common baseline in negotiations. The Supreme Court has reinforced the need to read risk-allocation clauses as real allocation clauses. In *Herculito Maritime v Gunvor (The Polar)*, the Supreme Court considered war risks and insurance allocation provisions (including an additional Gulf of Aden clause and an amended British Petroleum Voyage Charterparty (BPVOY) war risks clause), and examined whether the contractual scheme precluded the owner from recovering losses that sat within the risk the parties had agreed would be insured and paid for via additional premium mechanisms. The decision is regularly cited in current drafting debates because it underlines that where parties build a specific insurance/premium allocation into the contract, tribunals and courts will treat that structure seriously.

Insurance is now intertwined with routing. Additional war risk premiums, security requirements and underwriter approvals can be commercially decisive, driving a drafting trend towards:

- clearer trigger language for an “unsafe” determination;
- notice and consultation mechanics (often with tight time limits);
- express treatment of additional premiums and kidnap and ransom or other specialist covers; and
- audit-style evidence provisions (intelligence relied upon, insurer communications, and records of Master/Company Security Officer decision-making).

Sanctions and trade controls: compliance is operational, not merely legal

Sanctions compliance has become one of the most commercially significant developments in shipping. Lawyers now spend significant time checking sanctions compliance. The key practical shift is that sanctions risk is no longer confined to who the counterparty is. It is increasingly embedded in the vessel's trading pattern, beneficial ownership/control questions, management arrangements, flags, financing structures, insurers, and – critically – payment routes.

The “shadow fleet” problem has moved into the centre of mainstream risk analysis. Enforcement attention has sharpened on non-EU/UK tankers used to circumvent restrictions, with the EU continuing to list vessels and apply port access and services bans to target circumvention of the oil price cap and other measures. UK authorities have likewise announced packages targeting large numbers of tankers and related facilitators, which has had knock-on effects for counterparties and service providers who want to avoid being caught in the wake of enforcement action.

Price cap compliance remains a live operational constraint. The UK's maritime services ban and oil price cap regime continues to be supported by detailed Office of Financial Sanctions Implementation (OFSI) industry guidance (updated during 2025), and businesses are often dealing with the reality that banks and insurers may apply a more conservative filter than the law strictly requires. For context, industry trackers and firm briefings recorded the UK/EU move in 2025 to lower the crude price cap from the original level; the point for contracting was the volatility and the need to be able to evidence compliance rather than an exact number.

Documentary integrity and “explainability” are now deal-critical. A charter that is lawful can still become unworkable if:

- a compliance team will not clear the vessel's recent Automatic Identification System (AIS) pattern or Ship-to-Ship (STS) history;
- ownership/control cannot be evidenced to the standard a bank requires; or
- an insurer refuses cover or insists on conditions that the fixture did not price in.

Contract drafting is responding. There is increased reliance on standard sanctions clauses (including BIMCO's sanctions clauses for time and voyage chartering and container trades) and, more importantly, heavier bespoke drafting around:

- ongoing warranties (not just at fixture);
- rights to refuse orders, terminate, or suspend performance for sanctions risk;
- documentary production obligations (including timing); and
- payment re-routing and cost allocation if a bank blocks or returns funds.

Contracting under stress: disruption, mitigation and payment friction

A large proportion of current disputes do not arise because performance is physically impossible. They arise because performance becomes slower, more expensive, or administratively blocked. Under English law, outcomes often turn on (i) the precise contractual machinery and (ii) what was realistically possible on the evidence at the time – not on a general sense of what would have been “fair”.

Force majeure and “reasonable endeavours” have become sharper tools (and sharper traps). The Supreme Court's decision in *RTI v MUR Shipping* is highly relevant to modern payment and sanctions disputes. The Court held, in substance, that a requirement to use “reasonable endeavours” to overcome a force majeure event did not oblige the affected party to accept an offer of non-contractual performance (in that case, payment in a different currency) absent clear wording. In practice, this has immediate drafting consequences for clauses dealing with alternative

payment routes, currency substitution, and the steps required to “overcome” banking friction.

Payment mechanics are no longer boilerplate. Issues that used to be treated as administrative – remitting bank, intermediary banks, timing, documentation and compliance narratives – now regularly decide whether a transaction can proceed. More parties are building in:

- agreed fallbacks (alternative banks, escrow structures, alternative currencies);
- escalation procedures and time-bound co-operation obligations; and
- express consequences if a proposed alternative is not acceptable (including whether time continues to count and who bears resulting costs).

Evidence wins cases. Where a party says “we could not pay” or “we could not call”, tribunals will scrutinise contemporaneous records: bank correspondence, compliance decisions, voyage orders, underwriter positions, and internal minutes. Parties who build simple evidential requirements into their clauses (what must be produced, by when) tend to reduce the temperature of disputes.

Decarbonisation: carbon cost has moved from policy to cash

By 2026, decarbonisation is not a reputational conversation; it is a pricing, financing and contractual allocation problem.

At international level, the International Maritime Organization (IMO) has continued to push towards an industry-wide framework that combines fuel standards with greenhouse gas pricing mechanisms. In April 2025, the IMO announced approval of draft “net-zero” regulations intended to introduce a mandatory marine fuel standard and a global GHG emissions pricing mechanism. Even in draft form, this influences investment decisions and contract negotiations, as it signals direction and future compliance costs.

The key commercial reality is that carbon exposure now behaves like a voyage cost: it can be measured, priced, allocated and disputed. The harder part is

aligning contractual responsibility with operational control (speed, routing, fuel choice, port time).

EU Emissions Trading System (ETS) in practice: where the money and disputes sit in 2026

For many trades, EU ETS exposure is now the most immediate carbon cost driver.

Scope basics (that matter commercially)

The EU ETS extension covers large ships (5,000 GT and above) and captures:

- 100% of emissions on voyages and port calls within the EU/EEA; and
- 50% of emissions on voyages into or out of the EU/EEA.

Phase-in and greenhouse gas scope

The surrender obligation is being phased in: companies were required to surrender allowances covering 40% of verified 2024 emissions in 2025, and are required to surrender allowances covering 70% of verified 2025 emissions in 2026, and 100% thereafter. The scheme also expands beyond CO₂: methane (CH₄) and nitrous oxide (N₂O) fall within scope from 2026, which is material for liquefied natural gas (LNG) and certain other trades.

Where disputes arise

The recurring friction points are:

- who is the “shipping company” with legal responsibility under the regime versus who bears economic cost under the charter;
- emissions data integrity (monitoring, reporting and verification processes, third-party verification, and audit trails);
- timing mismatches (voyage performed now, surrender/payment obligations later); and
- allocation where there is mixed trading (EU and non-EU legs) or redirection mid-voyage.

Contracting response

Market participants continue to use specialist ETS clauses and bespoke “carbon pass-through” drafting. The commercial objective is to prevent the ETS cost becoming a retrospective argument after performance

– particularly in time charters where the charterer controls orders and bunkering strategy.

FuelEU Maritime: fuel lifecycle compliance becomes a charterparty issue

Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport (FuelEU Maritime) applies from 1 January 2025 and, by 2026, has become a live issue in EU-linked trading because it regulates the greenhouse gas intensity of energy used on board and pushes attention to lifecycle emissions and certification.

From a commercial/contracting standpoint:

- it forces a more granular discussion of fuel pathways, certification and data;
- it interacts with safety and operational constraints (particularly for alternative fuels); and
- it drives more bespoke clauses allocating responsibility between owners/charterers/managers.

BIMCO has responded with dedicated FuelEU clauses (including for time charters), designed to provide a workable allocation of responsibilities and costs in contractual chains.

UK developments: emissions pricing comes closer to home

The UK remains central to shipping services, finance, insurance and dispute resolution. UK policy matters not only for UK-trading vessels, but also for how UK-based service providers assess risk.

A major practical development for 2026 is the UK ETS Authority's decision to bring domestic maritime emissions within the UK ETS from July 2026 (focused on domestic voyages between UK ports for vessels of 5,000 GT and above, including in-port emissions), with regulators running onboarding and preparing implementation. The UK has also been consulting on expansion to international maritime voyages, signalling that the policy direction is towards broader coverage (subject to international alignment).

For contracting, this reinforces two points:

- emissions reporting capability and governance are becoming table-stakes; and
- pass-through drafting must reflect operational control, otherwise the “wrong” party ends up carrying an unpriced regulatory cost.

Fleet transition and fuel choice: strategic optionality is the new premium

Owners are still taking risks in an uneven transition landscape: methanol, ammonia, LNG, biofuels and future synthetic fuels each bring different infrastructure, safety, pricing and regulatory profiles. In practice, the market is paying for optionality – eg, dual-fuel capability, retrofit readiness, and credible emissions data systems – because it reduces future compliance shock.

This is not purely technical because it now feeds directly into:

- charterparty performance and data undertakings;
- financing covenants and reporting obligations; and
- asset valuation (risk of regulatory obsolescence and trading limitations).

Digitalisation: electronic trade documents and the evidential advantage

Digitisation is no longer just a bank/trader initiative; it is becoming a mainstream operational expectation.

English law has reduced legal friction by recognising electronic trade documents. The Electronic Trade Documents Act 2023 came into force in September 2023, giving legal recognition (under English law) to electronic trade documents such as bills of lading, subject to meeting statutory requirements.

This is relevant to disputes. Digital systems can improve audit trails and reduce “paper gaps” if organisations invest in:

- access controls and governance;
- cyber-resilience and incident response; and
- consistent record-keeping practices (so the evidential story stands up under cross-examination).

Interoperability remains the practical obstacle: carriers, banks, traders, forwarders and insurers often sit on different platforms. The winners are those treating e-documentation as a controlled commercial process, not merely an IT roll-out.

Cyber, safety and class: contractual and regulatory expectations are rising

Cyber-risk can no longer be treated as an abstract IT issue, given it can stop port operations, disrupt cargo systems or compromise navigation and safety.

A concrete regulatory/classification development is the International Association of Classification Societies (IACS) Unified Requirements on cyber-resilience (UR E26/E27) applying to newbuilds contracted for construction from 1 July 2024 (as implemented by IACS members), which is now feeding into technical specifications, class discussions and contractual deliverables.

Commercially, this increases the importance of aligning:

- technical standards and warranties;
- incident notification obligations;
- evidence preservation; and
- insurance disclosure requirements.

Finance and investment: “explainability” and compliance narratives affect capital

Higher borrowing costs and more selective lending have pushed diligence and covenant discipline to the fore. Sanctions and reputational risk now sit at the heart of many financing decisions: banks and insurers may walk away where structures are opaque or trading patterns cannot be evidenced quickly.

There is an increasing inclusion of sustainability-linked features and reporting obligations in finance documentation. The practical advice is to test those obligations against real trading behaviour: if a finance covenant depends on operational metrics, the chartering strategy must allow compliance without constant renegotiation.

Dispute resolution in London: procedure has evolved

London remains the preferred seat for maritime arbitration because of its infrastructure, experience and a large body of English law and arbitral practice. A key 2026 development is the Arbitration Act 2025, which received Royal Assent in 2025 and came into force on 1 August 2025, updating the Arbitration Act 1996 in important respects (including codifying arbitrator disclosure duties and introducing a statutory basis for summary disposal, subject to party agreement). The London Maritime Arbitrators Association (LMAA) is by far the largest arbitral association in the world, and LMAA dispute resolution clauses are used widely in many shipping contracts.

For commercial parties, the point is practical; English law plus London maritime arbitration is a secure, private system supported wholeheartedly by the courts.

Practical steps: reducing dispute risk

The themes above can be managed with a small set of disciplines that are considered “best in class” in 2026.

Geopolitics and routing

- Build contingency into voyage planning where trade routes are exposed to war/security risk and avoid optimistic ETAs that assume stability.
- Keep contemporaneous records, ensure the company has intelligence that can be relied upon, crew training and the selection of good suppliers is essential. It is necessary to work with trusted service providers, including lawyers.

Sanctions and counterparties

- Treat sanctions as an ongoing operational process, because they are here to stay for the foreseeable future, and have in place the means to check vessel identity, its ownership/control, managers, insurers, trading patterns and AIS behaviour.
- Stress-test payment routes pre-fixture (banks and intermediaries), with documented fallbacks and escalation procedures.
- Ensure documentary compliance and institute sound checks on all stages of any transaction or trade.

Carbon exposure and compliance costs

- Map where EU ETS/FuelEU/UK ETS exposure sits across the trading profile, including timing mismatches between voyage and surrender/penalty dates.
- Align “who pays” with “who controls” (speed, routing, fuel, port time).
- Invest in data quality and governance: inaccurate emissions/fuel data is now both a cost risk and a dispute risk.

Digital trade and cyber-resilience

- Choose e-documentation systems with strong audit trails and controlled transfer mechanics; treat them as evidence systems as much as operational tools.
- Align cyber-incident response with contractual notice/evidence obligations and insurance disclosure.
- Train commercial teams so digital processes are followed consistently (inconsistent practice is what creates evidential vulnerability).

What to watch through 2026 and into 2027

The following three themes are likely to dominate board-level shipping discussions.

- Carbon regime overlap and convergence/divergence: EU ETS/FuelEU are already live; the UK is moving into domestic maritime emissions pricing from July 2026; and the IMO is pushing towards a global net-zero framework. The overlap risk is contractual: cost allocation and reporting obligations can collide.
- Sanctions enforcement and “shadow fleet” risk migration: designations and enforcement activity continue to expand, pushing counterparties to demand deeper transparency and stronger warranties.
- Evidence, speed and dispute leverage: the combination of digital documentation, tighter compliance expectations and evolving arbitration procedure means that the party with clean records and workable contractual machinery is increasingly the party with leverage when disruption hits.

Conclusion: commercial advantage increasingly comes from preparedness

The current market is shaped by overlapping pressures: geopolitical disruption, sanctions enforcement, emissions pricing, and digitisation/cyber-risk. These are burdens, but they also create opportunity. Businesses that can evidence compliance, manage data, and operate contracts in real time tend to transact more smoothly and often on better terms.

From an English law perspective, the jurisdiction’s strength is its clarity and predictability – but that value is maximised when contracts match operational reality. In 2026, the most successful operators are those who agree decision rights early, allocate costs transparently, and keep the records that make those decisions defensible. Success also depends on having an effective legal team that is involved before, and not only after, issues arise.

USA – CALIFORNIA



Trends and Developments

Contributed by:

Bradley Rose and Clint Mead

Kaye, Rose and Partners LLP

Kaye, Rose and Partners LLP was established in 1991 after its founding partners, Larry Kaye and Bradley Rose, left a pre-eminent international law firm to open a boutique firm specialising in maritime law. Representing a handful of cruise lines, commercial shipping companies and their insurers, the firm quickly grew, staffing offices in each of California's major port cities, Los Angeles/Long Beach, San Francisco/Oakland, and San Diego. More than three decades later – during which time the firm has been named as one of the Top 25 boutique law firms in

California – Kaye, Rose & Partners has diversified beyond its traditional maritime practice to provide an array of legal services to businesses worldwide in the areas of corporate transactions and litigation, business affairs consulting, inland transportation, government agency regulation and media entertainment. The firm serves as General Counsel to Cruise Lines International Association (CLIA), the world's largest cruise industry trade association representing cruise lines worldwide.

Authors



Bradley Rose is the firm's managing partner and co-founder. For the past 30 years, he has specialised in the litigation and transactional needs of multinational companies engaged in the global transportation of goods

and people. With a specialty in maritime and transportation law, Bradley routinely represents international shipping companies, cruise lines, third party logistics and trucking companies, and their insurance underwriters. He has defended ship-owners in large-scale pollution matters, labour strikes and contractual disputes. Bradley serves as Associate General Counsel for Cruise Lines International Association (CLIA) and has acted as lead trial counsel in several mass casualty lawsuits.



Clint Mead was a Jones Act seaman who worked as a commercial fisherman in Alaska and a roughneck and crane operator on oil rigs in the Gulf of Mexico prior to attending law school. He specialised in maritime

and admiralty law at Tulane University Law School and has over a decade of experience litigating maritime personal injury and wrongful death cases as well as complex contractual disputes. Clint continues to use his real world and legal expertise in a variety of areas including maritime and admiralty, contracts, cargo and shipping disputes, personal injury, and wrongful death.

Kaye Rose & Partners

Kaye Rose & Partners
1801 Century Park East
Suite 2400
Los Angeles
CA 90067
USA

Tel: +1 619 232 6555
Fax: +1 619 232 6577
Email: lkaye@kayerose.com
Web: www.kayerose.com

**KAYE, ROSE &
PARTNERS, LLP**
ATTORNEYS AT LAW

California's Climate Data Reporting Acts

California has enacted legislation (SB 253 and SB 261) requiring certain US-based entities to report specified greenhouse gas (GHG) emissions and climate-related financial risks. California Air Resources Board (CARB) is tasked with implementing this legislation and has recently held public meetings and released draft regulations regarding these Acts, their application, their requirements, and the updated timeline for compliance.

At the outset it should be noted that these Acts only apply to US entities. Many shipping companies, especially maritime shipping companies, as foreign businesses which were not formed under the laws of the United States, will not need to comply with the Acts. If a company is a foreign entity (organised under the laws of a non-US jurisdiction), no further analysis is needed. This is true regardless of whether the foreign entity has offices in the US and how much of its business is conducted in California or the United States.

It should also be noted that on 18 November 2025, the Ninth Circuit Court of Appeals issued an injunction temporarily halting the enforcement of SB 261, which otherwise would have required initial reporting on 1 January 2026. No stay was issued for SB 253, which has a tentative reporting date of 10 August 2026. The best practices for businesses subject to the requirements of SB 261 would be to prepare to comply with the requirements of the Act on short notice if and/or when the stay is lifted.

The California Acts: SB 253 and SB 261

SB 253 and SB 261, both enacted in 2023, require business entities formed under the laws of California, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States to report specified greenhouse gas (GHG) emissions and climate-related financial risks. The disclosures required under these laws will purportedly improve transparency from companies regarding their GHG emissions and climate-related risk management practices to better inform the decision-making of California consumers, investors and members of the public.

SB 253, the Climate Corporate Data Accountability Act, applies to US companies with more than USD1 billion in annual global revenue that also do business in California, defined as having sales in California exceeding approximately USD735,000D, or having 25% of overall sales in California, or being organised or commercially domiciled in California. Initial reporting is due by 10 August 2026, which requires a report posted to the business' website and reporting to CARB. Reporting entities must report their Scope 1 and Scope 2 greenhouse gas emissions in the initial 2026 report (subject to some leeway for entities that did not collect this data), and, starting in 2027 and annually thereafter, their Scope 3 greenhouse gas emissions from the reporting entity's prior fiscal year. SB 253 adds Section 38532 to the California Health and Safety Code and is sometimes referred to by this section number.

SB 261, the Climate-Related Financial Risk Act, applies to US companies with more than USD500 million in annual global revenue that also do business in California, similarly defined as being domiciled in California or having approximately USD735,000 in California sales or 25% of overall sales in California. During CARB's most recent meeting, on 18 November 2025, it stated that despite its own delays in the rule-making process, it would still require reporting on 1 January 2026. Later that same day, however, the Ninth Circuit Court of Appeals issued a temporary injunction preventing enforcement of this deadline, which is stayed for the time being. SB 261 requires businesses to biennially report any climate-related financial risks they have identified and any measures they have adopted to reduce and adapt to those risks. SB 261 adds Section 38533 to the California Health and Safety Code and is sometimes referred to by this section number.

US-based entities

Currently, the Acts only apply to US entities. As clarification, the Acts solely apply to business entities formed under the laws of California, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States. The exact text of SB 253 states as follows:

“‘Reporting entity’ means a partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of one billion dollars (\$1,000,000,000) and that does business in California. Applicability shall be determined based on the reporting entity’s revenue for the prior fiscal year.”

If an entity is organised under the laws of a foreign jurisdiction, even if it has offices in the US or conducts a significant amount of business in California or the US, it does not need to comply with the requirements of the Acts. Most shipping companies, as foreign businesses, are not subject to the requirements of the Acts.

The California legislature would need to amend the Acts if it wanted to apply them to foreign companies, as the legislation is clear and this is not within CARB’s discretionary rule-making implementation of the Acts. While CARB was asked during a recent meeting if there have been discussions about applying the Acts to foreign companies which do business in California, no answer was given other than that the legislation currently only applies to domestic companies.

Companies with US subsidiaries will need to determine if such subsidiary is a “reporting entity” for purposes of the Acts; however, the 500-million-dollar (USD500,000,000) and one-billion-dollar (USD1,000,000,000) thresholds are assessed for each individual subsidiary only, and the parent company’s revenue is not considered.

CARB has published a preliminary list of companies that may be subject to the Acts on its [website](#). Most international shipping companies are not included in this provisional list as they are foreign entities. However, inclusion in or exclusion from the preliminary list should not be relied on as a definitive determination, only as an initial guideline.

Doing business in California

The terminology “doing business in California” is not defined in either of the statutes. CARB intends to use

the interpretation of “doing business in California” as found in the California Revenue and Tax Code Section 23101, which defines “doing business in California” as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit and either:

- the entity is organised or commercially domiciled in California during any part of a reporting year;
- the entity has sales in California during the reporting year exceeding the inflation adjusted threshold of USD735,019 (2024); or
- the entity’s sales in California exceed 25% of the entity’s total sales.

The definition of “sales” includes sales by an agent or independent contractor of the entity (California Revenue and Tax Code Section 23101 (b)).

Revenue

CARB will primarily rely on filings with the California Franchise Tax Board (FTB) to identify business entities which are covered under the statutes. Interest and investment income should not be included as it does not correlate with GHG emissions. Total annual revenue will be defined as “gross receipts” as set forth in the California Revenue and Taxation Code (RTC) Section 25120 (f)(2). Section 25120 defines “revenue” as:

“The gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold.”

The qualifying annual revenue thresholds for covered business entities are substantial, so depending on how close an entity’s qualifying revenues come to meeting the threshold amount should guide its further handling and preparation in meeting the reporting requirements. CARB has noted that it intends to use the lesser of an entity’s last two years’ revenue, as

reported to the FTB, to avoid including companies that might otherwise fall under the requirements some years and not on others.

Exemptions

By statute, the following entities are excluded from the Acts' requirements: federal, state and local government entities, and companies that are majority-owned by government entities, as well as companies regulated by the California Department of Insurance or engaged in the business of insurance of any other state.

In addition to the governmental entities and insurance companies that are exempt by statute, CARB has proposed exempting non-profit or charitable organisations, defined as tax-exempt under the Internal Revenue Code. CARB will also exempt entities whose only business in California is the presence of teleworking employees.

Subsidiaries of parent companies

CARB has recently clarified issues surrounding the application of the Acts to subsidiaries of parent companies. CARB has clarified that the revenue thresholds are those of each individual entity and the revenue of a parent should not be included in the calculation of the revenue of a subsidiary or vice versa. CARB will allow companies to disclose data in one single parent-level disclosure rather than requiring individual subsidiary disclosures. The parent-level disclosure can be used for a subsidiary regardless of whether the parent company is required to file a report under the Acts, for example if a parent company already reports GHG emissions under European regulations.

As clarification, CARB has provided definitions of "parent" and "subsidiary" for determination of whether a joint report is allowed only. Whether a parent or subsidiary is required to file a report under either Act is still determined based solely on the individual entity's country of organisation and revenue, without considering the revenue or country of incorporation of an entity's parent or subsidiary.

Each entity, whether a parent, subsidiary or otherwise, should determine: (i) Is it organised under the laws of the United States? If yes, (ii) Is it categorically

exempted (non-profit or insurance company)? If no, (iii) Is it doing business in California (sales in California exceeding USD735,019 in 2024, or 25% of its overall sales)? If yes, (iv) Does its gross revenue exceed USD500 million or USD1 billion? If yes, only then must the entity file a report under one or both of the Acts. If that particular entity is a subsidiary then the parent entity may file a report covering the subsidiary, but the country of origin and revenue of a parent or subsidiary does not impact the other for determination of whether the Acts apply.

Annual fees

In addition to the reporting requirements, the Acts authorise CARB to assess an annual fee for the implementation and administration of the new programmes. CARB is considering a flat fee to be calculated as the total annual programme cost for each Act divided by the number of covered entities, estimating a fee of USD3,106 for SB 253 and USD1,403 for SB 261 based on initial estimates of the number of entities subject to the Acts. Companies that must report under both Acts will be subject to the fee for each. Fee assessment is estimated to take place in September 2026.

Timeline and requirements

As for the timeline, despite CARB's delays in the rule-making process, initial reports under SB 261 were required to be posted on the company's website by the statutory reporting deadline of 1 January 2026 (and every two years thereafter), and a link to that report was required to be submitted to the CARB docket by 1 July 2026. This January 1st deadline, however, has been temporarily stayed by the Ninth Circuit and the deadlines no longer apply while the injunction is in place. CARB will issue a new deadline after the appellate stay has been lifted.

Reports for SB 253 Scope 1 and 2 disclosures are due 10 August 2026. Scope 3 reporting begins in 2027. Entities must also submit a public link to CARB's docket. CARB's updated guidance emphasises that good faith efforts will be a key factor in early compliance, especially while the rule-making process continues.

CARB's draft checklist for SB 253 reporting

CARB has posted a Climate Related Financial Risk Report Checklist as well as a Microsoft Excel Draft Scope 1 and 2 GHG Reporting Template to its [web-site](#), which can be downloaded.

Reporting framework

Companies must identify which reporting framework is being applied. CARB's Draft Checklist is built on the Task Force on Climate-related Financial Disclosures (TCFD) framework.

Minimum requirements are as follows:

- state the reporting framework selected (eg, TCFD, IFRS S2, etc);
- identify which recommendations and disclosures for the chosen framework are included and which are not; and
- provide an explanation for omissions and discuss any plans for future disclosures.

Governance

Reports must describe the organisation's governance structure, if any, for identifying, assessing and managing climate-related financial risks.

Minimum requirements are as follows:

- describe governance processes and structure for identifying, assessing and managing climate risks;
- discuss management's role in overseeing risks and opportunities; and
- describe Board oversight, if applicable.

Strategy

Reports should describe how climate-related risks and opportunities might impact corporate strategy. CARB does not require Climate Scenario Analysis (CSA) for the initial reporting year.

Minimum requirements are as follows:

- describe actual and potential impacts of climate risks and opportunities on operations, strategy and financial planning (where material);

- identify climate-related risks and opportunities over the short, medium and long term, and note which are considered material; and
- explain the resilience of the company's strategy in relation to climate change.

Risk management

Reports must show how climate-related risks are incorporated into the broader corporate risk management framework.

Minimum requirements are as follows:

- describe how climate risks are identified, assessed and managed; and
- explain evaluation processes and integration into overall corporate risk management.

Metrics and targets

TCFD and IFRS S2 guidance recommends including GHG emissions data. However, CARB has specified that entities are not required to disclose GHG emissions in SB 261 reporting during the initial year, particularly if this data was not collected prior to the enactment of the Acts.

Minimum requirements are as follows:

- disclose metrics and targets used to assess and manage material climate-related risks and opportunities.

Evaluation of compliance

CARB has emphasised that initial compliance with the Acts will be evaluated based on a company's good faith efforts in their reporting. Strict compliance with the Scope 1 and Scope 2 reporting for the initial year is not required for companies that did not collect this data. Companies are encouraged to submit inquiries to CARB at Climatedisclosure@arb.ca.gov.

Conclusion

While the California Air Resources Board (CARB) is still receiving feedback and drafting approaches to the implementation of the climate disclosure acts, the initial deadline for SB 261 (originally set for 1 January 2026) may be reset in the near future depending on the outcome of the Ninth Circuit appeal. CARB has

now settled on how the key terms will be defined and has provided a checklist and form template for initial reporting under SB 253, which reports are due on 10 August 2026.

Most international shipping companies, as businesses formed under the laws of foreign jurisdictions, will not be subject to the requirements of the Acts. Shipping businesses with US subsidiaries will need to determine the applicability of SB 253 and SB 261 to each subsidiary, but the parent company's revenue is not considered in assessing whether a subsidiary meets the 500-million-dollar (USD500,000,000) or one-billion-dollar (USD1,000,000,000) thresholds. The California legislature has not yet amended the Acts to apply to foreign companies, but proposed legislation affecting the shipping and maritime industries will be monitored by specialist firms and clients advised of any new developments.

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