



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Israel: Shipping

This country-specific Q&A provides an overview of the legal framework and key issues surrounding Shipping in Israel.

This Q&A is part of the global guide to Shipping.

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1. **What system of port state control applies in your jurisdiction?** **What are their powers?**

The Authority for Shipping and Ports is a statutory authority within the Ministry of Transport. The Authority supervises the three Israeli ports (Haifa, Ashdod, Eilat), is responsible for marine traffic. The licensing and registration of vessels, certification of seaman, supervises the safety of vessels, conducts port state control, issues notices to mariners and acts as the Israeli representative in the international marine community.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

Pollution:

Israel is a signatory party to the Convention for the Protection of the Mediterranean Sea against Pollution 1978 and re-affirmed its updated version known as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995.

In addition, Israel joined MARPOL in 1983 and has re-affirmed Annexes 1, 2, 3 and 5.

Wreck removal:

The law relating to a distressed vessel, wrecks and lost merchandise is the Salvage Fee and Lost Merchandise Order of 1926. Under this order, whoever finds lost merchandise or discovers any wreck must inform the receiver of wrecks at the Authority for Shipping and Ports of the Ministry of Transportation who will publish a notice about the finding of same, serve a copy of the notice to Lloyd's agent in Israel or else to Lloyd's offices in London. If the merchandise or the wreck is not claimed within six months, it will be sold by the Receiver of the Wreck and the balance from the sale after deducting salvage fee and expenses will be applied by the Minister of Treasury as part of the national income.

3. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

Collision:

Under the Ports Regulations (Prevention of Collisions), 1977, Israel has adopted the Convention on the International Regulations for Preventing Collisions At Sea 1972.

Salvage:

Under the Salvage Fee and Lost Merchandise Order of 1926 , Article 19 (1), whoever salvaged a distressed vessel or its cargo is entitled to a "fair fee" which has to be paid by the owner of the vessel or the receiver of the cargo, as the case may be. Under Article 20 (1) any dispute in relation to the fair (salvage) fee if not settled by an agreement should be brought to arbitration.

The Israeli law, Under clause 42 (5) of the Shipping Act (Vessels) 1960, or clause 9 of the Admiralty Courts Act 1861 (which also governs the Israeli Admiralty Court's authority) recognizes that debts due to salvage (either of the vessel and/or its cargo) and General Average constitute a maritime lien.

In addition, the Israeli Courts will consider customary law or foreign judgments when dealing with such matters.

4. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Israel has adopted the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships, Brussels 10 October 1957 and its amending Protocol, Brussels 1979, as part of the Shipping Act (Limitation of Liability of Sea-going Ships), 1965. The 1976 Convention is not adopted by Israeli law but might be considered as a customary law.

Owners can apply to the Maritime Court for the establishing of a Limitation Fund. If the Court will be satisfied with the Owner's application it will order the establishment of the Limitation fund and will give orders as to the Owner's deposit and the publishing of notices to Creditors. Creditor's claims or participation claims are to be filed by a local creditor within 30 days. If the creditor is a foreign creditor, claims must be filed within 60 days.

5. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit

the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Israel is not a party to either the 1952 or the 1999 Conventions.

The Israeli Maritime Court was established during the British Mandate over Palestine-Israel which took place formally between 1922-1948, and in-fact from the year 1917 and until 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 Admiralty Act, 1890. On the date when the Colonial Court Admiralty Act was enacted, the relevant acts of Admiralty which were in force were the Admiralty Acts of 1840 and 1861 and also the Naval Prize Act of 1864. These continue to apply to the Israeli Haifa Maritime Court's (being a division of Haifa District Court) jurisdiction (which was granted the maritime jurisdiction formerly held by the Supreme Court) up to this present date.

In addition, the Israeli legislator, when enacting the Israeli Shipping Law (Sea-going Vessels-Law), 1960, in relation to maritime lien, has chosen to follow International Convention For The Unification of Certain rules of Law Relating to Maritime Liens And Mortgages, Brussels 1926.

Accordingly, there are two set of rules governing the Israeli Maritime Court: The English Admiralty Acts of 1840 and 1861 and the Israeli Shipping Law (Sea-going Vessels), 1960, which follows the 1926 Brussels Convention.

Following clauses 16 (a) and 39 A. of the Israeli Arbitration Act, 1968, a District Court is authorized to order on supportive remedies such as liens and restraining orders in order to secure arbitration proceedings, including proceedings taking place in foreign jurisdictions. The Haifa Maritime Court, situated in the Haifa District Court, exercises this authority and will order on the arrests of the vessel even if the claim itself should be determined in arbitration or foreign jurisdiction.

6. For an arrest, are there any special or notable procedural

requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

There is no formal requirement for a POA, but in practice a POA is served with the Maritime Court. A copy scanned PDF is sufficient.

7. What maritime liens are recognised?

According to the Israeli Shipping Law (Sea-going Vessels), 1960 clauses 40-41 (1)-(8) the recognized maritime liens include, *inter alia*, the following: (1) the costs of the Court's auction for the sale of an arrested vessel; (2) port dues of all kind and other payments for such port services in as much as these payments are due either to the state, to another state, authority, or have been paid to them by a third party; (3) the cost of the preservation of an arrested vessel (from the date of its entry to the port and until its sale by the Court); (4) wages; (5) salvage; (6) compensations for death or injuries of passengers; (7) compensations for damages caused as a result of a collision at sea or any other navigation accident, or for damages done by a vessel to port facilities and indemnities for loss or damage to cargo or to passengers' baggage; and (8) payments due for a supply of necessaries.

8. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

There is no such direct requirement. However, in the matter of the *M/V Ellen Hudig* (2004) the Maritime Court denied a maritime lien for "indemnities for loss or damage to cargo" reasoning that the alleged damage of additional expenses and freight payments related to the discharge of claimants' cargo from an arrested vessel as a result of the vessel's arrest by the crew claiming unpaid wages and owners subsequent appearance before a Belgian Court under bankruptcy proceedings, do not fall under the owner's personal liability.

Ever since, the *Ellen Hudig* matter has been cited by the Haifa Maritime Court as authority establishing the need to show owner's liability in order to have the Court recognize a maritime lien. In the matter of *M/V Emmanuel Tomasos* (2004) the actual bunker supplier's claim was

denied reasoning that only the contractual supplier who contracted with the owners can be a creditor under the necessities lien. In the matter of the *M/V Nissos Rodos* (2016) it was held that the local agent which was nominated by the operator of the vessel, and paid the port dues for the 17 calls of the vessel at Haifa Port is not entitled to the maritime lien for "port dues of any kind...been paid by a third party" reasoning that the agent had no agreement with the owners and that there was no personal liability on behalf of the owner to pay the agent, as commercial relations were between the owner and the operator and the operator and the agent, but not directly between the agent and the owner.

In the matter of *M/V Captain Hurry* (2016), while dismissing a suppliers' claim due to a lack of owner's liability, the Haifa Maritime Court mentioned that the maritime liens differ from each other and that, for example, the maritime lien for salvage exists even if the owners are not liable for the circumstances which led the vessel to distress.

Therefore, a path to diversity in relation to the requirement of owner's liability, might exist.

9. **Are sister ship or associated ship arrests possible?**

No. Israel is not a party neither to International Convention Relating to Arrest At Sea 1952 (Brussels) nor to the International Convention On The Arrest Of Ships 1999 (Geneva). In the matter of *M/V Huriye Ana* (2017) the Haifa Maritime Court held that it has no authority to order a "sister-ship arrest".

10. **Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?**

The arresting party is not required to put- any counter security when arresting the vessel. The Court is authorised to order the deposit of a counter-security when issuing the arrest order. However, in the matter of *M/V Tara Kaptanoglu* it was held that the Court will exercise its ability on rare occasions such as when the documents which constitute the arrest application are under dispute and their validity is questioned.

There is no leading authority relating to the matter of wrongful arrest. Under the general civil

law a party seeking a temporary relief (such as a lien or restraining order) might be liable in tort or in a commitment emerging out of the Court's order to compensate the other party for its damages if the temporary relief is cancelled and if the seeking party acted unreasonably or in malice (Civil Appeal 732/80 *Arens Vs. Bait-El*). It seems that when deciding on an application or claim for damages for wrongful arrest the Haifa Maritime Court will follow the Evangelismos Tests of 1858 as interpreted By the Court of Appeal of Singapore in the matter of *M/V Vasilij Golovnin 2008*.

11. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

A respected Club Lou is an acceptable security. Obviously, the owner can also deposit the claimed amount or an Israeli bank guarantee, in the Court's treasury.

12. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

If no Notice of Appearance is filed on behalf of the vessel within 7 days after the service of the maritime-claims documents (including a writ of summons) the Court may order on the judicial sale of the vessel in order to save maintenance, port due and crew costs. According to the Vice Admiralty Rules, 1883, the court is authorized to order the vessel will be sold either by public auction or by private contract.

The priority of ranking is as according to the list of the liens as listed above the mortgage being ranked before the necessaries-man thus placing the lien for necessaries at the bottom of the rank.

The ranking are:

(1) the costs of the Court's auction sale of an arrested vessel; (2) port dues of all kind and other payments for such port services as much as these payments are due either to the state, to another state, authority, or have been paid to them by a third party; (3) the cost of the preservation of an arrested vessel (from the date of its entry to the port and until its sale by the Court); (4) wages; (5) salvage; (6) compensation for death or injuries of passengers; (7)

compensations for damages caused as a result of a collision at sea or any other navigation accident, or for damages done by a vessel to port facilities and indemnities for loss or damage to cargo or to passengers' baggage; (8) Mortgages (9) payments due for the supply of necessities.

13. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

Israeli law has adopted the Hague-Visby Rules, which identify, under Rule 1 the "carrier" as "including the owner or the charterer who enters into the contract of carriage with a shipper". In a Supreme Court judgment in the matter of civil appeal 7779/09 HDI Vs. ORL, it was held that the quantities stated in the B/L are PRIMA-FACIA evidence not only towards the owner but also towards the underwriter insuring the cargo in a marine insurance.

14. Is the proper law of the bill of lading relevant? If so, how is it determined?

According to the Israeli Order of Carriage of Goods by Sea as amended on 21st January 1992, the Hague-Visby rules will apply to any Bill of Lading (B/L) which governs the sea carriage of cargo either from any Israeli port; or from a port of a country which is a party to either the Hague or Hague-Visby Rules; or the sea carriage of a cargo when the B/L incorporates the Hague-Visby Rules or is governed by the laws of a country that applies the Rules.

15. Are jurisdiction clauses recognised and enforced?

A law and jurisdiction clause will be recognized and enforced if it can be evidenced from its wording that the parties have agreed that the jurisdiction stated in the clause will supersede any other jurisdiction. Therefore, the Court will seek for wording such as "exclusively" or "exclusively and only" or "all claims shall be brought before..." in order to recognize a law and jurisdiction clause and order a stay of proceedings.

In addition, the Court is also authorized to order a stay of proceedings if he finds that the Israeli forum is "Forum Non-Convenience" in the sense that, for example, considering the place where

the cause of action took place and the location of the expected witnesses, there if a foreign jurisdiction which can considered as the appropriate forum to hear the claim.

16. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

The Courts attitude in relation to enforcement of Arbitration clauses vary between the presumption that arbitration clauses are compelling and the presumption that in order to a party to give up its procedural and substantial rights before a court in favor of arbitration, clear evidence of the party's intention and agreement to enter an arbitration agreement are to be defined (Supreme Court judgment in civil appeal 7608/99 *Lucy Projects Vs. "Mizpe Kinneret"*). Therefore, it might be a circumstantial questions depending for example if incorporation of the charterparty was made on the face of the B/L or on the back page and if the charterer was aware of the conditions from say, a previous fixture, etc.

17. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Israel has ratified the Hague-Visby Rules under the Order of Carriage of Goods by Sea as amended on 21st January 1992, ordering, that the Rules apply to any Bill of Lading (B/L) which governs the sea carriage of cargo either from any Israeli port; or from a port of a country which is a party to either the Hague or Hague-Visby Rules; or the sea carriage of a cargo when the B/L incorporates the Hague-Visby Rules or is governed by the laws of a country that applies the Rules. The Rules themselves are attached as an annex to the Order of Carriage of Goods by Sea.

The Hamburg Rules have not been adopted by the Israeli legislature.

18. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Israel is a Party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In order to enforce a foreign award the Court has to be filed with a verified copy of the arbitration award and of the arbitration agreement.

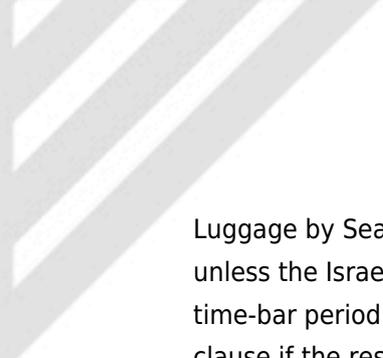
According to clause 29 of the Israeli Arbitration Act 1968, matters regarding enforcement or cancellation of an arbitration award governed by an international convention that Israel is a party to, will be dealt according to the orders of that convention.

Therefore, the available grounds to resist an enforcement of an arbitral award governed by the New-York Convention are those which were set in Article V. 1 (a)-(e) and Article 2. (a)-(b) (the subject matter is not capable of settlement by arbitration under the law of Israel and the recognition or enforcement of the award would be contrary to the Israeli public policy).

19. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

Following Article III (6) of the Hague-Visby Rules and the Israeli Law a cargo claim is barred unless a law-suit is filed in court with in one year after the cargo has been delivered or from the date it should have been delivered. In a Supreme Court judgement in civil appeal 6260/97 *Polska Morska Vs. Bank National*, it was held, that even a claim filed in foreign jurisdiction within one year after the discharge of the cargo is sufficient to "break" the one-year limitation. Recently in another Supreme Court's decision in civil appeal 7195/18 *Fhya Maritime Vs. Millobar* (2019), it was held that if the claim filed within one year after the discharge of the cargo was filed by a claimant which had no title to sue, the one year time limit will not be "broken" and a later amendment of the claim (after one year) by adding an additional claimant with title to sue should not be allowed due to time-bar.

Israel is not a party to the Athens Convention relating to Carriage of Passengers and their



Luggage by Sea. Therefore, the Israeli regular seven years' statute of limitation might apply- unless the Israeli court will enforce a foreign law and jurisdiction clause providing a shorter time-bar period. However, the Israeli court might be reluctant to enforce a law and jurisdiction clause if the result would be that the claim will be time barred due to a shorter limitation period under the foreign law.

Recognized maritime liens for salvage and loss or injuries or damage or loss to goods expire within one year from the end of providing the salvage service or the date of injury or the date the goods should have been delivered, respectively. However, if at the end of the above mentioned one years' expiry term, the vessel is not in Israel., the expiry will be delayed until the vessel calls at an Israeli port, provided, that in any case the maritime lien will expire within 3 years after the expiry date.

Prize:

In the matter of *M/V Estelle* (2014), reasoning its authorities from the Colonial Courts Act of 1890 and the Naval Prize Act of 1864, the Haifa Maritime Court held that it is authorised to act as a Prize Court and to order the confiscation of vessels attempting to breach the naval blockade imposed on Gaza. In the specific matter of the *M/V Estelle* the vessel was released because the Israeli Navy did not bring the matter to adjudication promptly. Later, in the matters of *M/V Marianne* (2016) and the *M/V Zaytouna- Oliva* (2019) the Maritime Court ordered the confiscation and judicial auction of the vessels and ordered that the amount received from their sales will be transferred to the State of Israel.