

## SHIPPING 2020

### SUBMISSION GUIDELINES

We would be very grateful if you could answer the questions below with reference to your jurisdiction. The intention is to provide a quick reference guide for non-specialists.

Please note:

- Please provide your answers in this document. Please answer all questions in reference to your jurisdiction. If the question is not relevant, please note this.
- Please note that the text in italics will not appear in the published version and is intended only for the author's information.
- Please ensure you also provide the author and firm information as requested in the final section of the document.
- Your submission should be between 3,000 and 5,000 words in length. Please do not include the questionnaire (2,687 words) in your word limit.
- We request that you do not use footnotes. Authors must acknowledge all copyright material and the work of other authors in the body of the text. Contributors should obtain permission from all right holders to reproduce copyrighted material consisting of an extract over 400 words; a series of extracts of more than 800 words containing at least one extract of 300 words; or an extract or extracts making up more than a quarter of the previously published work. Copyright infringement can incur liability. As authors you have warranted that you are the sole holders of rights in the text and have undertaken to indemnify the publisher for any liability arising from infringement of third-party rights.
- We request that you do not quote extensively from statutes, without due analysis of the law. Simple tables will be allowed where this is warranted. Please do not include other charts, images or diagrams in your text.
- We request that any legal citation be kept to a strict minimum in terms of both length and frequency. The Lexology GTDT series is a quick-reference guide co-written by eminent professionals from legal systems with different approaches to writing on the law. For the sake of simplicity, conciseness and stylistic consistency we minimise the use of legal citation. Although reference to legal authority is necessary, our editorial team is briefed to work with authors to redact uniform citation where possible. As such we advise authors not to include detailed Bluebook-style citation. Please contact us if you require further guidance in this regard.
- The deadline for returning your chapter is **15 November 2019**.
- We will revert with an edited proof for approval before publishing.

## NOTES ON HOUSE STYLE

House style will be applied when editing your submission, including, among others, the following rules. We would be most grateful if you could use them when drafting your submission:

- single spacing;
- single quotation marks;
- British English spelling (OUP);
- minimal capitalisation;
- minimal use of non-English terms;
- full sentences;
- no full points in abbreviations;
- no boldface or underlined type in running text.

## QUESTIONNAIRE

Newbuilding contracts

### *Transfer of title*

- 1 When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

A shipbuilder can register its ownership over a ship which is being build. Once ownership is registered (at the Israeli vessels registry) ownership can only pass under a transfer of ownership bond and by registration (Shipping Act (Vessels), 1960, Articles 4, 25).

### *Refund guarantee*

- 2 What formalities need to be complied with for the refund guarantee to be valid?

A (refund) bank's guarantee is considered as the bank's commitment to pay the beneficiary. As long as the guarantee issued by the bank is drafted in the manner that payment will be effected upon the beneficiary's presentation of the guarantee with in 7 or 10 days and "with no need to prove your claim and with no need to demand first from the debtor" the guarantee should be considered as "autonomous" as an equivalent to bank's L/C and should be paid by the bank except for rare exceptions of fraud or extreme bad faith (Supreme Court judgment in civil appeal 3130/99).

### *Court-ordered delivery*

- 3 Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

The Haifa Maritime Court is authorized to decide on matters relating to title and ownership and every "regular" civil court is authorized to order a restrain order preventing a registered owner from having transactions in the ownership and title of the vessel (Admiralty Court Act 1840, clause 4; Admiralty Court Act 1861, clause 8; Shipping Act Shipping Act (Vessels), 1960, clause 1, 34, 38).

### *Defects*

- 4 Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

All claims are possible, depends on the status of ownership of the vessel and/or on the existing of circumstances which give grounds to a tortious claim. Under the Liability for Defect Products Act, 1980, (clause 2) a shipbuilder or an importer of a vessel, might be liability in tort to any third party suffered an injury as a result of a defected vessels, regardless if there was or was not fault on its behalf.

## Ship registration and mortgages

### *Eligibility for registration*

- 5 What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Any vessel capable of navigating not propelled by oars and being at more than its half under the ownership of either the state, an Israeli citizen or an Israeli company, is eligible to be registered under the Israeli registration.

### Application

- 6 Who may apply to register a ship in your jurisdiction (*eg, nationals or citizens of your jurisdiction, companies incorporated or with their principal place of business in your jurisdiction*)?

Any owner of an eligible vessel can and must apply for its registry.

### *Documentary requirements*

- 7 What are the documentary requirements for registration?

The Applicant will have to file the Shipping and Ports Authority with: (1) contract; (2) vessels' planning; vessels' maintenance and mooring planning and to authenticate these documents by a recognized marine organization or a marine engineer (Shipping Regulations (Vessel) (Building and Purchasing of Vessels and Mortgages), 2002).

### *Dual registration*

- 8 Is dual registration and flagging out possible and what is the procedure?

Under the Shipping Act (foreign vessels controlled by an Israeli entity), 2005 a foreign vessels which is under the control for an Israeli entity, such control is defined widely as the ability to order on the operation of the vessel, either by controlling its registered owner or the corporation responsible to the vessels operation or out of contract, must be registered at the Shipping and Ports Authority at the Foreign Vessels Under an Israeli Control registry, which is an internal registry effecting Israeli laws and regulations on the vessel especially in relation to safety and a recruiting Israeli Master and safety crew-unless being exempt by the Authority.

As a result, a vessel could be registered both at a foreign registry and at the Israeli registry of foreign vessels controlled by an Israeli entity.

### *Mortgage register*

- 9 Who maintains the register of mortgages and what information does it contain?

The registration of Mortgages is handled by the Shipping and Ports Authority. The registry includes the no. of the mortgage bill, its date and time of its handing to the registry, the beneficiary and the amount secured.

## Limitation of liability

### *Regime*

- 10 What limitation regime applies? What claims can be limited? Which parties can limit their liability? (*If your country is a state party to the Convention on Limitation of Liability for Maritime Claims 1976, will, and if so, when will the new limits, which take effect in June 2015, apply in your jurisdiction, pursuant to their enactment in domestic legislation or otherwise?*)

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.

#### *Procedure*

- 11 What is the procedure for establishing limitation? *(Is it necessary to provide a cash deposit? How is the limitation fund calculated? Is there a separate right to plead limitation without setting up a fund? Can a shipowner or other entitled person apply to constitute a limitation fund before legal proceedings have been initiated and before it has been required to respond to a claim that has already been commenced?)*

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.

The Owner will be required to file the limited amount -as calculated according to Article 3 to the Brussels Convention 1957 and its amending protocol of 1979, within the court's treasury or to provide other security to satisfy the limitation fund amount. (Shipping Act (Limitation of Liability of Sea-going Ships), 1965, clause 7).

#### *Break of limitation*

- 12 In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction? *(What happens with any fund that has been established if limitation is broken?)*

If the occurrence giving rise to the claims subject to the applied limitation fund resulted from owners' actual fault or privity, then the Court will deny owners' application (Article 1 to the Brussels 1957 convention adopted by the Israeli law).

#### *Passenger and luggage claims*

- 13 What limitation regime applies in your jurisdiction in respect of passenger and luggage claims? *(Is it the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea or some other limitation regime?)*

Israel is not a party to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974. Therefore, passenger's claim will be governed by general contract and tort law and general law relating to the law and jurisdiction clauses -which might compel a passenger-claimant to either have his claim filed in the jurisdiction stated in the law and jurisdiction clause and/or be subject to the Athens Convention and to its limitation on liabilities -if governs the contract according to the law and jurisdiction clause.

According to the Order of Carriage of Goods by Sea as amended on 21<sup>st</sup> 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 the 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.

Accordingly, a cargo-claim claimant must file its claim within one year after the date of discharging the cargo or the date it should have been discharged (Article III 6 of the Rules); The claim would be subject to Owner's limitation of liability of either 666.67 SDR per package or unit or 2 SDR per 1 kg of the cargo lot or damaged- according to the highest of the two (Article VI (5)(a)); and the Owner will be responsible only to damage caused as a result of its failure to exercise due diligence at the beginning of the voyage to make the vessels sea-worthy and properly manned and equipped (Article III (1)(a)-(c)/Article IV (1)) and will not be responsible to damage arising of perils of the sea or from any other cause which is without actual fault or privity of the carrier or fault or neglect of its agents or servants (Article IV (2) (a)-(q)).

## Port state control

### *Authorities*

14 Which body is the port state control agency? Under what authority does it operate?

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), responsible to marine traffic, licensing and registration of vessels, certification of seaman, supervises the safety of vessels, conducts ports state control, issues notices to mariners and acts as the Israeli representative in the international marine community.

### *Sanctions*

15 What sanctions may the port state control inspector impose?

As being responsible for the safety of vessels the Authority can order on the detention of a vessels which is not sea-worthy, or not to provide an annual license to the vessel subject to the Israeli registry or the Israeli registry of foreign vessels controlled by an Israeli entity

### *Appeal*

16 What is the appeal process against detention orders or fines?

Usually the Appeal would be before the Haifa Maritime Court (which sits at the Haifa District Court) or to the Haifa District Court as a "regular" administrative Appeal.

## Classification societies

### *Approved classification societies*

17 Which are the approved classification societies?

Any classification society member of IACS and recognized by IMO will be recognized by the Shipping and Ports Authority (Shipping Regulations (Purchase and Build of Vessels and Mortgages), 2002, Article 1)).

### *Liability*

18 In what circumstances can a classification society be held liable, if at all?

There is no specific law or judgment relating to liability of a classification society. Liability would be imposed under general tort or contract law.

## Collision, salvage, wreck removal and pollution

### *Wreck removal orders*

#### 19 Can the state or local authority order 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.

Under clause 4 (1) of the 1926 Order, the personal nominated at the Authority for this purpose, when being advised on a vessels grounded or distressed with in the Israeli territorial waters, will arrive at the place and will take command and order whatever he believes is right in order to preserve the vessels and safety of people.

Considering the orders of the 1926 Order and the Israeli law relating to maritime liens (which includes "damage done by a ship") the authority can order on wreck removal.

### *International conventions*

#### 20 Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution? (*In particular, is the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 in force? Is the Nairobi International Convention on the Removal of Wrecks 2007 in force and, if so, does it apply to territorial waters? Is the International Convention on Civil Liability for Oil Pollution Damage (CLC) in force? Is the International Convention on Salvage 1989 in force?*).

**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 intitled to a "fair fee" which has to be paid by the owner of the vessel of or the receiver of the cargo, as the matter 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.

**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 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.*

### Salvage

- 21 Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no local form of salvage agreement. Any form or agreement which will be agreed by two parties including through their authorized representatives, will be accepted.

There is not definition on who can carry out salvage operations. Marine salvage operations should be coordinated with the Shipping and Ports Authority and with the relevant Port.

### Ship arrest

#### *International conventions*

- 22 Which international convention regarding the arrest of ships is in force in your jurisdiction (*Is it the International Convention Relating to the Arrest of Sea-Going Ships 1952 or the International Convention on the Arrest of Ships 1999*)?

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 Court 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), 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

#### *Claims*

- 23 In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Vessels can be arrested in respect of claims giving rise to a maritime lien (see our answer to question 24). Under clause 53 of the Shipping Act (Vessels) 1960, maritime liens mentioned in the Act will be valid also on a vessel operated by a charterer or any other person which is not the vessels' owner".

Which means that allegedly a bareboat chartered vessel could be arrested for the debts (for example unpaid bunkers ordered by the demise charterer).

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 baggage" 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 Tomastos* (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.

Coming back to the question of arresting a demised chartered vessel for charterers' debt for example unpaid bunkers, it seems that in order to arrest the vessel due to "necessaries lien" there should be an Owner's liability to the debt or to the ordering of the vessel. It might be that the Court will accept that by demise chartering the vessel the Owners allowed the demise charterer to take obligation them might give rise to a maritime lien. However, this aspect is not completely decisive.

#### *Maritime liens*

24 Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

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 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) 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 necessities.

#### *Wrongful arrest*

25 What is the test for wrongful arrest? (For example, *bad faith* or *the ultimate failure of the claim*?).

There are no leading judgements or authorities in the matter of wrongful arrest. Therefore, it seems that the Maritime court will follow both the general law imposing liability on a claimant which obtains a temporary relief but later his claim is denied (Supreme Court judgment in civil appeal 732/80) and the "Evangelismos Test" (1858) As interpreted by Singapore Court of Appeal in the matter of *Vasiliy Golovnin* (2008), being that the plaintiff has filed the arrest application with *mala fides* or *crassa negligentia* which implies malice, and where the action was so unwarrantably brought or brought with so little colour, or so little foundation, that it implies malice on part of the plaintiff.



### *Bunker suppliers*

- 26 Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

As mentioned in answer 23 above it seems that due to the fact that the lien for "necessaries" is a "contractual lien" the plaintiff will have to show the court that he has contracted with the owner (either directly or through its representative being the master or the technical or commercial managers of the vessel). The actual supplier which is not the contracting party or the contracting supplier which contracted with the charterer but did not contract with the owners, will not be entitled for a lien due to unpaid bunkers. (*M/V Emmanuel Tomasos* (2004)).

### *Security*

- 27 Will the arresting party have to provide security and in what form and amount?

The arresting party is not required to put any counter security when arresting the vessel. The Court is authorised to order on 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 or under dispute and their validity is questioned

- 28 How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

Following 27 above, if there would be a rare occasion where the Court will order on a counter security it would be under a court's discretion considering the claimed amount, the daily charter rate and expenses, etc.

### *Formalities*

- 29 What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents? (*In what form should the power of attorney or other documents be provided to the court? Which, if any, of the documents need to be notarised, legalised and authenticated? Is your country a signatory to the Apostille Convention? Are original documents required or will scanned copies suffice? If translations are required, what formalities apply to the translations? For example, must they be from a sworn public translator? If there is insufficient time available before filing the arrest application to comply with all the required formalities, is it nonetheless possible to set the arrest procedure in motion while undertaking to the court to complete the formalities as soon as practicable? Can the relevant documents be filed electronically? On average, how many days' notice is required to prepare an arrest application?*)

A signed POA forwarded by electronic scan would be sufficient. There is no formal requirement to support the Arrest application by an Affidavit by for the sake of good order it is recommended to have the arrest application signed by a form of an Affidavit signed before applicants' lawyer and forwarded by scan. There is no need to neither authenticate or translate or to present originals of the documents for the purpose of filing the arrest application as long as the documents are in English and can be well noticed as ordinary shipping documents such as delivery notes, loan and mortgage agreement, etc. For this purpose, if a document is not in English and is not a regular shipping documents than it would be advised to have a translated copy.

Usually, provided the documents are in order it would take 24 hours or less to file and obtain an arrest order.

#### *Ship maintenance*

30 Who is responsible for the maintenance of the vessel while under arrest?

If the claimant files a claim in rem and the arrest order the owners file a notice of appearance, then owners are under liability for the maintenance of the vessel. If no such notice is filed within 7 days then the claimant will ask the Court to nominate a liquidator/receiver on the vessel which will be responsible for its maintenance until the vessel will be sold at Court's auction.

#### *Proceedings on the merits*

31 Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

The arrest application should be filed together with the claim in rem and payment of court's fee being 1.25% of the claimed amount. The Court is authorized to order on the arrest of the vessel and to after refer the claim itself to be handled in a foreign jurisdiction following either an arbitration clause of law and jurisdiction clause (under an order of a "stay of proceedings"). Arbitration Act, 1968 clauses 16 (a), 39 A. Civil Appeal 102/88, Haifa District Court claim no. 59972-07-19).

#### *Injunctions and other forms of attachment*

32 Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

The court can order on attachment/s on amounts due to the owners such as unpaid freight/hire which should be paid by an Israeli entity. Other court's authorities such as restrain order or "Mareva Injunction" if the plaintiff can show the court that such remedies are relevant and required to secure the claim.

#### *Delivery up and preservation orders*

33 Are orders for delivery up or preservation of evidence or property available?

Any intermediary relief that is proved to the court to be necessary to either to secure the claim or for preservation of evidence can be provided by the Court including for example the checking of the vessel and examining master or another crew member. Obviously, such remedies will be ordered by the Court on rare occasions and only if required as disclosure of documents and hearing of witnesses should take place during the trial itself.

#### *Bunker arrest and attachment*

34 Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Yes. Usually when filing an arrest application, the Court is asked to order on the arrest of the vessel itself, the bunkers and the freight due.

## Judicial sale of vessels

### *Eligible applicants*

35 Who can apply for judicial sale of an arrested vessel?

If no "notice of appearance" is filed within 7 days of the service of the "writ of summons" (the service of the claim in rem and the arrest application and arrest order to the vessel), then the claimant can apply for the nomination of a liquidator/receiver over the vessel and have it sold under a judicial sale.

### *Procedure*

36 What (*in brief*) is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The judicial sale begins with an application to order on the nomination of a liquidator/receiver over the vessel and have it sold under the judicial sale. The selling can take between few weeks to few months as long as the Court is satisfied that the sale of the vessel was well published and that no additional better purchasing proposal can be obtained. The costs associated with the judicial sale itself are the liquidator/receivers fee which might be at the range of 5%-7% of the amount received from the selling (depends on the amount received and the receiver's efforts and difficulties).

### *Claim priority*

37 What is the order of priority of claims against the proceeds of sale?

The order of priorities is the same as the priorities of the liens as mentioned in 24 above. Mainly, first priority are the costs of the selling of the vessel and any tax or levy due to the state as a result of the sale, after ports' due -including port due that should be paid to a foreign port or paid by a third party; and after the costs of the preservation of the vessel during the period beginning with the vessels entry to the latest port and until its sale, and after the other liens.

### *Legal effects*

38 What are the legal effects or consequences of judicial sale of a vessel? (*For example, will the judicial sale serve to extinguish all prior liens and encumbrances on the vessel, including maritime liens, and thereby give the purchaser clean title?*)

The purchaser will receive a clean title. Creditors will be satisfied either in full or less from the actual amounts remains from the sale after the selling costs.

### *Foreign sales*

39 Will judicial sale of a vessel in a foreign jurisdiction be recognised?

No. If the vessel is arrested before the Haifa Maritime Court than the Haifa Maritime Court is the only court that can decide on its selling- as long as the lien or the arrest or the claim in rem is not lifted or denied.

### *International conventions*

40 Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

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 Court 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), 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.

#### Carriage of goods by sea and bills of lading

##### *International conventions*

- 41 Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (*the Rotterdam Rules*)? When does carriage at sea begin and end for the purpose of application of such rules?

Israeli law has adopted the Hague-Visby Rules. According to Article I (e) the carriage of the goods covers the period from the loading of the goods until they are discharged.

##### *Multimodal carriage*

- 42 Are there Conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

The inland carriage of cargo is subject to the orders of the domestic Carriage Services Act, 1997 which relates mainly to aspects of safety and environment. A land carrier must be licensed and the carriage itself must be done under a bill of lading or any other carriage contract, which will include, inter alia, the description of the cargo and if it is a dangerous cargo.

##### *Title to sue*

- 43 Who has title to sue on a bill of lading?

Under Article I (a) of the Hague-Visby rules the "carrier" as "includes the owner or the charterer who enters 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 facie evidence not only towards the owner but also towards the underwriter insuring the cargo in a marine insurance. Title to sue can be either in contract to a party to the B/L or in tort- to any third party that had title in the cargo and that the owners could have expected that he would suffer losses if the cargo would be damaged.

### *Charter parties*

- 44 To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

The Courts attitude in relation to enforcement of Arbitration clauses vary between, on one hand, the presumption that arbitration clauses are compelling and should be enforced, and on the other hand, the presumption that in order to a party to give up its procedural and substantial rights before a court in favor of arbitration, a 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, the validity of an incorporations of an arbitration clause into the B/L might be a circumstantial question, 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.

### *Demise and identity of carrier clauses*

- 45 Is the 'demise' clause or identity of carrier clause recognised and binding?

There are no leading authorities on this matter.

### *Shipowner liability and defences*

- 46 Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Owner's liability for a damaged cargo damaged while being carried in a chartered vessel, will be decided according to the construction of Rule I (a) of the Hague-Visby rules according to a "carrier" includes the owners or the charterer of the vessel which contracts with the shipper in a carriage contract and on general tort law where it will be examined if a negligent owner caused the damage and if he should have or could have anticipated the damage caused to the cargo interests.

### *Deviation from route*

- 47 What is the effect of deviation from a vessel's route on contractual defences?

It is a circumstantial matter depending for example who ordered on the deviation and what were the reasons for the deviation. In the matter of "Tasman Orient" (2010) (New Zealand Supreme Court judgment) it was held that the master decision to take a "short cut" and deviate from the vessels' route do not impose liability on the owners for the cargo damaged as a result of the grounding of the vessel at its "new" route taken by the master because it was the master's act which took place during the marine adventure which was not an actual fault or privity of the owner (Rule IV 2 (q) of the Hague-Visby rules).

### *Liens*

- 48 What liens (*whether contractual or by operation of law, for example on the vessel, cargo, freights and sub-freights, etc*) can be exercised?

Owner can impose a possessory lien over a cargo which is under its custody and control for example for unpaid freight, provided that the cargo did not leave the owner's hands and that the debt arises out of the carriage contract under which the cargo was handed to the owners.

#### *Delivery without bill of lading*

- 49 What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

Carriers might be liable for the full payment of the value of the cargo (as such act takes place after the discharge of the cargo- where the Rules' limitation of liability, if of any relevance might not apply). Following Article VII of the Rules the carrier can limit such a liability under an agreement with the shipper. In addition, and in practice, owners can be covered under a LOU provided by the consignee as much that such a LOU is indeed a security.

#### *Shipper responsibilities and liabilities*

- 50 What are the responsibilities and liabilities of the shipper?

According to Article III (5) of the Hague-Visby rules, the shipper is responsible towards the carrier for the accuracy of the cargo details and will compensate the carrier for any losses caused due to a discrepancy in the assurance of these details.

#### Shipping emissions

##### *Emission control areas*

- 51 Is there an emission control area (ECA) in force in your domestic territorial waters?

Under the intended regulations [see 52], at first stage only mooring vessels at ports and territorial sea will be subject to a sulphur content of .0.1.% m/m. However, the regulations provide the Minister of Transportation with the discretion to order on a ECA.

##### *Sulphur cap*

- 52 What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How (*briefly*) do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

Although the Shipping and Ports Authority has drafted the relevant regulations enforcing the IMO's sulphur content limitations, they have not been enacted and validated yet. According to the intended draft, the Manager is authorized to request the vessels records evidencing it has complied with the limitation set out in the IAPP and to report to the vessels intended next port on matters where the vessel was not able to purchase the fuel oil which is within the limitation set out in the IAPP.

#### Ship recycling

### *Regulation and facilities*

53. What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

Israel is a signatory party to the Convention for the Protection of the Mediterranean Sea against Pollution 1978 and re-affirmed its updated version 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. However, there are no special ship recycling regulations in the Israeli jurisdiction.

### Jurisdiction and dispute resolution

#### *Competent courts*

54 Which courts exercise jurisdiction over maritime disputes?

The Haifa Maritime Court is the maritime court governs all maritime liens and in-rem claims filed against all vessels located at any of the Israeli ports or territorial waters.

Cargo claims are being judged before either the Magistrate Court or a District Court- depends on the amount of the claim.

#### *Service of proceedings*

55 In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

Following rule 500 (1)-(10) of the Civil Procedure Regulations, 1984 the court can order on a leave for the service of proceedings at a defendant located out of the jurisdiction if he is satisfied that the claimant has a prima facie claim and that one of the service causes being, for example- a claim filed in relation to an agreement either concluded in Israel or intended to be executed in Israel, are satisfied. Recently, on 2018 an additional cause of service was added under rule 500 (7A) being when the claim is based on damage caused to an Israeli claimant from a product, service or defendants' behaviour provided that the defendant could have expected that the damage will take place in Israel and that the defendant or a related entity, deals in international trade or service at a significant volume.

#### *Arbitration*

56 Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration? (*How active is it?*)

No. Although there are few domestic arbitration institutes, there is no panel specialising in maritime arbitration.

#### *Foreign judgments and arbitral awards*

57 What rules govern recognition and enforcement of foreign judgments and arbitral awards?

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.

#### *Asymmetric agreements*

- 58 Are asymmetric jurisdiction and arbitration agreements (*where the parties have differing rights to select the forum for dispute resolution*) valid and enforceable in your jurisdiction?

Any agreement relating to jurisdiction or arbitration will be respected by the court as matter of general contract law. However, the court has a discretion not to enforce an arbitration or jurisdiction clause on circumstantial matters such as the clause refers the parties to an enemy's jurisdiction or if the enforcement of a jurisdiction clause would mean that a party will be deprived from its rights or that for example hic claim will be condemned to be time bared at the foreign jurisdiction.

#### *Breach of jurisdiction clause*

- 59 What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

The Defendant will be able to file an application for a stay of proceeding where he will have to prove that under the jurisdiction clause the parties have agreed that claims will be filed only before the agreed jurisdiction, mainly that the clause includes wording such as "exclusively and only" or "all claim shall be brought".

#### *Breach remedies*

- 60 What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

As mentioned in 59 above the defendant can file an application for a stay of proceedings. There is no authority relating to "anti-suit injunction" but Israeli court are authorized, when dealing in a civil matter to order on a restrain order.

#### *Limitation periods for liability*

##### *Time limits*

- 61 What time limits apply to claims (*for breach of contract, liability in tort, etc*)? Is it possible to extend the time limit by agreement?

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.

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.

In all other matters the Time-Bar Act, 1958 will apply and the time bar period would be 7 years regardless if the claim is under tort or contract.

The parties can agree on extending the time limit except for extending time limits for the expiry of maritime liens because an existence or non-existence of maritime liens affects other parties' (creditors or new owners of the vessel) rights and recoveries.

#### *Court-ordered extension*

62 May courts or arbitral tribunals extend the time limits?

Israeli courts apply the adversary method. Which means that usually the courts will not refer to matters of time bar unless the defendant will plead in this regard. If the claim is found by the court to be time barred under law it will not extend the time limit.

#### Miscellaneous

##### *Maritime Labour Convention*

63 How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

There is no specific Maritime Labour Convention which apply in the Israeli jurisdiction. The labour of Israeli seaman and crew is organized under the Shipping Act (Seaman), 1973, general labour law and collective agreements.

When filing a claim in rem before the Haifa Maritime Court for the recognized lien of unpaid wages, the court will impose the claimants rights according to any labour agreement governs his labour at the vessel at might add Israeli general labour law entitlement following the principle of "equality of law presumption" which means that unless being introduced differently, the Israeli court will assume that the merits of Israeli law relating to the matter also apply in the foreign jurisdiction governing the claim.

##### *Relief from contractual obligations*

64 Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract (*that is to say a contract for the building, sale/purchase or hire of a ship, or a contract for the carriage of goods on a ship*) where economic conditions have made contractual obligations more onerous to perform?

Under Israeli contract law a party to an agreement that gives notice on its termination is considered to be as not will to fulfil the agreement and unless he can justify his non willingness, he would be the party that has breached the agreement. Once a contract for building is breached by the buyer, the shipbuilder will be entitled to choose to claim either its expenses or loss of expected profit, subject to

his obligation to lessen its losses. Therefore, it is for the breaching party to consider if breaching the contract and paying compensation would be better than fulfilling the agreement.

#### *Other noteworthy points*

65 Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

#### Prize:

In the matter of *M/V Estelle* (2014), reasoning its authorities from the Colonial Courts Act of 1980 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 sale of the vessels and ordered that the amount received from the sales will be transferred to the State of Israel.

#### Sistership arrest:

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 he has no authority to order a "sister-ship arrest".

#### Coastal Shipping:

Any "coastal shipping"- being the commercial navigation of a vessel between two ports are facilities within the Israeli territorial waters must be licensed by the Shipping and Ports authority. Such license will be subject to examinations relating to the safety of the vessel and of a recruiting of a minimum of Israeli seaman as crew- unless exempt by the authority.

#### UPDATE & TRENDS

Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

The development of the new ports at Haifa and Ashdod and the location of these ports next to the Jordanian boarder together with increasing global interests for a trade route from the Mediterranean through land to the Persian golf countries and back are expected to increase the volume of marine traffic at the Israeli ports and to provide the Israeli courts with more matters to be dealt and decided. The Haifa Maritime Court provide services for claimants from all over the world – including to claimants from countries that have not yet constituted full formal relations with the state of Israel. We expect further development of the Israeli Maritime Law and that additional significant and interesting judgments will be handed in the future to come and for the benefit of international shipping.

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The firm Harris & Co. was established in 1977 by Adv. John Harris. The firm is dedicated to the practice of Maritime and Admiralty Law including ship-arrests, charterparty disputes, cargo claims, sale and purchase of ships and the financing of ship purchases, arbitration and commercial litigation. The firm receives “top tier” ratings from Chambers & Partners, The Legal 500, Dun & Bradstreet and BdiCoface .

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Yoav’s articles regarding the Haifa Maritime Court's authority to act as a Prize Court, were cited both by the Maritime Court and the Supreme Court (Civil Appeal 7307/14) when deciding on the matter of M/V Estelle.

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