




Shipping Comparative Guide

Harris & Co
Maritime law office


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1. Legal framework

1. 1. Which legislative and regulatory provisions govern the shipping sector in your jurisdiction?

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Israel has been a member of the International Maritime Organization (IMO) since 1952 and adheres to various laws and international conventions on maritime law, shipping and the marine environment, including:

- the Convention for the Protection of the Mediterranean Sea against Pollution, 1978, updated as the Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean 1995;
- the Brussels International Convention Relating to the Limitation of Liability of Owners of Sea-going ships, 10 October 1957 and its amending protocol, Brussels 1979;
- the Hague-Visby Rules;
- Annexes 1, 2, 3 and 5 of the International Convention for the Prevention of Pollution from Ships, 1973; and
- the Admiralty Acts of 1840 and 1861.

In addition, Israel regulates other shipping matters under domestic legislation.

1. 2. Which bilateral and multilateral instruments on shipping have effect in your jurisdiction?

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See question 1.1.

1. 3. Which bodies are responsible for enforcing the applicable laws and regulations? What powers do they have?

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The main body that enforces the applicable laws and regulations is the Authority of Shipping and Ports, which is responsible for conducting investigations, imposing fines and detaining vessels. Other related bodies are the Ministry of Environmental Protection and the port captains of each port.

1. 4. What is the regulators' general approach in regulating the shipping sector?

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The shipping sector is regulated by primary or subsidiary legislation.

2.Registration

2. 1. What types of vessels may be registered in your jurisdiction? What requirements and restrictions apply in this regard? Is dual registration permitted?

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According to the Shipping Law (Vessels) 1960, “any vessel which might be capable of sailing” qualifies for registration. In addition, with the permission of the minister of transportation, even a vessel powered by oars can be registered. To register a vessel in Israel, more than half of its ownership must be held by:

- the state of Israel;
- an Israeli citizen; or
- a company incorporated under Israeli law.

The Israeli registration of vessels takes place before the registrar at the Authority for Shipping and Ports of the Ministry of Transportation. The register includes details of ownership rights, mortgages, liens and so on.

In *MV Badar* (2020), the Haifa Maritime Court held, in accepting an application for attachment of the vessel in the Israeli registry, that a vessel which is registered in a foreign register cannot be registered in Israel unless it is properly deleted from the former register.

In addition, a foreign vessel which is registered in a foreign register and is under the control of an Israeli citizen or entity must be registered with the Israeli registry as a vessel under an Israeli control.

2. 2. What entities may register a vessel in your jurisdiction? What requirements and restrictions apply in this regard?

Israel

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According to Clauses 9 and 10 of the Shipping Regulations (Vessels) (Registration and Marking) 1962, an application to register a vessel can be filed by either an Israeli or a foreign citizen/entity.

2. 3. What body administers the shipping register in your jurisdiction?

Israel

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The registrar of vessels, under the Authority of Shipping and Ports of the Ministry of Transportation.

2. 4. What information is included in the shipping register? Is this publicly accessible?

Israel
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According to Clause 109 of the Israeli Shipping Act (Vessels)1960, the registration books and certificates provided to the registrar in connection with the registration or deletion of a vessel, or in connection with any transaction involving the vessel, are open to the public.

2. 5. What are the formal and documentary requirements for registration of a vessel? What is the process for registration? What is the effect of registration? What is the effect of deregistration?

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The main documentary requirements are as follows:

- a certified copy of the document on which the application for registration of the ownership of the vessel is based (eg, a bill of sale);
- a deletion certificate for the former registration of the vessel and confirmation that the former registration certificate has been returned;
- written consent of the mortgagee to registration of the vessel with the Israeli registry;
- a marine engineer's approval for registration of the vessel; and
- any other certificate required under any international convention to which Israel is a party.

Registration has a declaratory status rather than creating substantive rights. In other words, according to Clause 83 of the Shipping Act (Vessels) 1960, “the registration in the registration books is not a guarantee for a title right”; but where a *bona fide* buyer of the vessel (or any part thereof) purchases the vessel from the person registered as the owner in the registry, that purchase will not be cancelled merely because the seller did not have the right to transfer title in the vessel.

2. 6. What are the formal and documentary requirements for registration of a shipping mortgage? What is the process for registration? What is the effect of registration? What is the effect of deregistration?

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In order to register a shipping mortgage, the mortgage deed must be signed in Israel before the registrar; if it is signed in a foreign country, it should be signed before a diplomatic or consular representative of the state of Israel.

In *MV Hurriye Ana* (2020), the Haifa Maritime Court denied a bank's claim to enforce a mortgage which had been registered for a foreign vessel. The court held that the validity of the loan agreement was not proven; and that no information had been provided in relation to the payment schedule agreed with the debtor (which was not the owner) and the exact amount of debt which remained. Therefore, the mere fact that a mortgage has been registered for a vessel is not enough to enforce it.

The effect of registration of a mortgage is that the mortgagee has priority over any debt or other lien regarding the vessel, except for recognised maritime liens, but not including a lien for 'necessaries' – which means that a mortgage ranks before a lien for necessaries. However, if a dispute arises – either with the owners or with other debtors – the mortgagee must prove that it loaned money to the owners and prove the amount of the remaining debt under the loan agreement, in addition to registration of the mortgage.

3. Port state control

3. 1. Which body is responsible for port state control? What powers does it have?

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The Authority for Shipping and Ports is a statutory authority within the Ministry of Transport. The authority:

- supervises Israel's three ports (Haifa, Ashdod and Eilat);
- is responsible for marine traffic, the licensing and registration of vessels, and the certification of seafarers;
- supervises the safety of vessels;
- conducts port state controls;
- issues notices to mariners; and
- acts as the Israeli representative to the international marine community.

As a member of the International Maritime Organization (IMO) since 1952, Israel conducts port state control inspections through the Authority for Shipping and Ports.

Under Articles 99 and 100 of the Israeli Regulations on Port Safety (Vessels) and the IMO Code for the Investigation of Marine Casualties and Incidents, the Authority for Shipping and Ports investigates marine casualties and issues reports. In *HDI Global Antwerp v State of Israel* (Folio 67484-03-19), the Haifa District Court ordered that the administration disclose to foreign cargo interests the rescue coordination centre (RCC) communications between the distressed M/V Diana and the RCC centre at Haifa Port prior to its grounding on 19 January 2018, 250 metres from the Haifa Bay shore, which were collected by the authority while investigating the incident. The court found that the foreign cargo interests were entitled to receive information obtained by the administration regarding their interests (their cargo which was damaged as a result of the grounding) under the Freedom of Information Act 1998 and the Arbitration Act 1968, in view of the London arbitration being conducted between the cargo interests and owners; and to have the matter open for further disclosure if so ordered by the arbitral award.

3. 2. What penalties may be imposed for breach of the applicable laws and conventions?

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The penalties include fines, detention and criminal charges, depending on the circumstances.

3. 3. Can decisions of the port state control authority be appealed? If so, what is the process for appeal?

Israel
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Some decisions can be appealed directly to the Haifa Maritime Court. Others – such as decisions relating to the registration of vessels as foreign vessels under the control of an Israeli entity or relating to co-shipping permission – can be appealed through an administrative petition filed with the Haifa District Court.

4. Marine casualty

4. 1. What key domestic and international provisions apply to marine casualties in your jurisdiction, and what specific considerations should be borne in mind with regard to the following? (a) Collisions; (b) Pollution; (c) Wreck removal; and (d) Salvage.

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(a) Collisions

The International Regulations for Preventing Collisions at Sea 1972 have been adopted into Israeli law under the Port Regulations (Preventing Collisions at Sea) 1972.

(b) Pollution

Israel is a signatory to the Convention for the Protection of the Mediterranean Sea against Pollution 1978, updated as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995.

In addition, Israel acceded to the International Convention for the Prevention of Pollution from Ships, 1973 in 1983, and has reaffirmed Annexes 1, 2, 3 and 5.

(c) Wreck removal

The law relating to distressed vessels, wrecks and lost merchandise is set out in the Salvage Fee and Lost Merchandise Order of 1926. Under this order, anyone that finds lost merchandise or discovers a wreck must inform the receiver of wrecks at the Authority for Shipping and Ports, who will publish notice of the discovery and serve a copy of the notice on the Lloyd's agent in Israel or directly to Lloyd's offices in London. If the merchandise or wreck is not claimed within six months, it will be sold by the receiver of wrecks and the balance from the sale, after deducting salvage fees and expenses, will be applied by the minister of treasury as part of the national income.

(d) Salvage

Under Article 19(1) of the Salvage Fee and Lost Merchandise Order of 1926, anyone that salvages a distressed vessel or its cargo is entitled to a 'fair fee', which must be paid by the owner of the vessel or the receiver of the cargo, as may be. Under Article 20(1), any dispute in relation to the fair (salvage) fee, if not settled by agreement, should be brought to arbitration. Clause 42(5) of the Shipping Act (Vessels) 1960 and Clause 9 of the Admiralty Courts Act 1861 (which also governs the Israeli Admiralty Court's authority) recognise that debts arising from salvage (of either a vessel and/or its cargo) and general average constitute a maritime lien.

4. 2. Which parties may bring a marine casualty claim in your jurisdiction, and against whom?

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Compensation for marine casualties and for damage caused by collisions is a recognised maritime lien under Clauses 41(6) and (7) of the Shipping Act (Vessels) 1960. Accordingly, claims *in rem* and arrest applications can be brought for the arrest of the relevant vessel and a compensation payment can be obtained from its sale.

4. 3. What limitation of liability regime applies to marine casualty claims and who may avail of it? What types of claims may be limited?

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Israel acceded to the Brussels International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships, 1957 and its amending protocol, Brussels 1979, as part of the Shipping Act (Limitation of Liability of Sea-going Ships), 1965. The Convention on Limitation of Liability For Maritime Claims, London 1976, has not been adopted into Israeli law, but may be considered as customary law.

According to Clauses 1(1) (a), (b) and (c) of the Brussels Convention, the types of claims that can be limited are:

- claims in respect of loss of life to persons on board the ship and loss of or damage to property on board the ship;
- claims in respect of personal injury or loss of or damage to property caused to any other person or property, either on land or in water; and
- claims in respect of the removal of wrecks.

According to Clause 1 of the convention, the parties that may bring such claims are the owners of a seagoing vessel.

4. 4. How is the limitation fund constituted? What requirements and restrictions apply in this regard?

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Shipowners can apply to the Maritime Court for the establishment of a limitation fund. If the court is satisfied with the application, it will order the establishment of the limitation fund and will issue orders regarding the owner's deposit and the publication of notices to creditors. Creditors' claims and participation claims must be filed within 30 days by local creditors and within 60 days by foreign creditors.

4. 5. Under what circumstances is the limitation of liability unavailable?

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According to Article (1)(4)(a)9(b) of the Brussels International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships and Clause 3 of the Israeli Shipping Act (Limitation of Liability of Sea-going Ships), 1965, the limitation of liability will not apply to:

- claims for salvage;
- claims for contribution in general average; and
- claims by the master, a crew member, any servant of the owners on board the vessel or any servant of the master whose duties are connected to the ship, including claims of the owners' heirs and representatives, if the contract of their service is governed either by Israeli law or by any other law that does not permit the owners to limit their liability.

4. 6. What defences are available to marine operators in the event of a marine casualty claim?

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Limitation of liability is available to the owners of seagoing vessels.

4. 7. Which bodies are responsible for investigating and responding to marine casualties? What powers do they have?

Israel
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As a member of the International Maritime Organization since 1952, Israel conducts port state control inspections through the Authority of Shipping and Ports. In addition to regular safety controls, the authority conducts investigations into matters of grounding and pollution.

Under Chapter 12 of the Ports Regulations (Safety of Navigations), 1982, the manager of the authority is authorised to conduct investigations into any marine accidents that take place in Israeli maritime waters. The investigation will involve:

- the examination of witnesses;
- the collection of documents and evidence; and
- an examination of the place where the event took place.

The investigation will conclude with the issue of a report detailing:

- the sequence of events leading to the accident;
- the investigators' observations and conclusions in relation to the circumstances and causes of the accident; and
- recommendations for amending any deficiencies which have been observed in relation to the accident.

The purpose of the investigations is to identify the circumstances that caused the accident in order to learn relevant lessons and avoid future accidents.

In *HDI Global Antwerp v State of Israel* (Folio 67484-03-19), the M/V Diana was grounded offshore of Haifa Bay on 19 January 2018. The foreign cargo interests applied to obtain the documents and evidence collected by the Authority of Shipping and Ports in investigating the accident, for the purposes of an arbitration taking place in London against the owners. In its judgment handed down on 10 June 2020, the Haifa District Court held that although the cargo interests were foreign entities, they were entitled under the Freedom of Information Act 1998 to obtain the rescue coordination centre (RCC) communications between the vessel and the RCC prior to the grounding, which were annexed to the authority's report. As the application was narrowed to these documents at this stage, the court's findings leave the door open to applications for additional documents and information (including the whole report which was provided with redacted portions) further to any future arbitral award in this regard and the Arbitration Act.

4. 8. What reporting requirements apply in relation to marine casualties and what are the consequences of non-compliance?

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According to Clause 98(A) of the Ports Regulations (Safety of Navigation), 1982, the owners, agent or master of an Israeli vessel or a foreign vessel located in Israel which is the subject of a marine accident must give immediate notice to the manager of the Authority of Shipping and Ports. The definition of a 'marine accident' is wider than 'collision' or 'grounding', and also includes, for example:

- a malfunction in the navigation system of the vessel;
- a fire in the vessel which requires the operation of the vessel's central fire system; and
- any malfunction which results in an inspection of the class of vessel to ensure its seaworthiness.

Non-fulfilment of this duty constitutes a felony on the part of the owners and the master, punishable by up to six months' imprisonment and a fine of NIS 50,000.

4. 9. What remedial measures may be ordered in the event of a marine casualty (eg, wreck removal, clean-up)?

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The Authority of Shipping and Ports is authorised to demand – either by serving notice on the vessel’s agent or otherwise by official publication of the notice – all measures and actions required for the safe removal of a grounded vessel or a sunken wreck, including the deposit of an amount specified at the authority’s discretion, to secure the performance of the required actions.

4. 10. Who may conduct salvage operations in your jurisdiction and what other requirements and restrictions apply in this regard?

Israel
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According to the Ports Regulations, 1971, the authorities that handle marine accidents and fires that take place in port are the captains and managers of the ports and the Authority of Shipping and Ports.

5. Cargo claims

5. 1. What key domestic and international provisions apply to cargo claims in your jurisdiction?

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Israel has adopted the Hague-Visby Rules as part of the Ordinance for the Carriage of Goods by Sea, as amended on 21 January 1992.

5. 2. Which parties may bring a cargo claim in your jurisdiction, and against whom?

Israel
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The shipper or consignee under the bill of lading, or its subrogated insurer, can bring a cargo claim against the carrier, which will be governed by the Hague-Visby Rules.

A claim can also be filed by the cargo interest, even if it is not named in the bill of lading, provided that either:

- the booking correspondence identifies it as a party to the contract carriage; or
- its claim is a tortious claim, which will also be governed by the Hague-Visby Rules (Article IV(1)).

In practice, cargo claims are filed against anyone that might have been part of the logistics chain, such as carriers, freight forwarders, sub-carriers and warehouse operators. In these matters, the claimant must prove (under the balance of probabilities):

- where the damage or loss took place; and
- each defendant's liability.

In Appeal 8518/19, the Supreme Court affirmed the decision of the Haifa Maritime Court in Civil Claim 35583-11-18, relating to the M/V Chrysopigi, that a foreign marine insurer has title to sue under the insured rights which have been subrogated to it, even if the foreign insurer is not included on the Israeli Insurance Supervisor's list as an insurer active in Israel and subject to its supervision. The court thus gave effect to the wording and meaning of the Israeli legislature when excluding marine insurance from supervision and other liabilities under the Insurance Agreement Act, 1982.

In Civil Appeal 7779/09, *HDI v Orl*, the Supreme Court held that the quantities stated in a bill of lading constitute *prima facie* evidence not only towards the owners (which have issued the bill of lading), but also towards the underwriter insuring the cargo in marine insurance policies.

5. 3. What limitation of liability regime applies to cargo claims and who may avail of it? What types of claims may be limited? What is the procedure for limiting liability?

Israel
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A cargo claim is subject to the owners' limitation of liability to the greater of either:

- 666.67 Special Drawing Rights (SDR) per package or unit; or
- SDR per kilogram of cargo lost or damaged (Article VI (5)(a) of the Hague-Visby Rules).

The claimed damage to the cargo should also have resulted from the owners' failure to exercise due diligence at the beginning of the voyage to make the vessel seaworthy and have it properly manned and equipped (Articles III (1)(a) to (c) and Article IV(1) of the Hague-Visby Rules).

In addition, neither the carrier nor the vessel will be liable for damage resulting from perils of the sea or any other cause which did not arise from the actual fault or privity of the carrier or without the fault or neglect of the agents or servants of the owners (Articles IV(2)(a) to (q) of the Hague-Visby Rules).

In *Trans KA v Vitol Energy* (Civil Appeal 7802/11), the Supreme Court held that the owners of a vessel which called at Haifa Port and was subsequently prohibited by the Libyan authorities from entering a Libyan port due to the Arab boycott on Israel was exempt, under Article IV(2)(5) of the Hague-Visby Rules ("Restraint of Princes"), from paying damages to the charterer of the vessel which chartered it for a carriage between Libya and Turkey.

5. 4. Under what circumstances is the limitation of liability unavailable?

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The limitation of liability is available whenever Article VI (5)(a) of the Hague-Visby Rules is applicable – that is, where the damaged or lost cargo is carried in packages rather than in bulk.

5. 5. What defences are available to (a) carriers and (b) shipowners in the event of a cargo claim?

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- The limitation of liability; and
- The requirement for the claimant to file its claim within one year of the date on which the cargo was discharged or the date on which it should have been discharged (Article III 6 of the Hague-Visby Rules).

In *Polska* (Folio 6260/97), the Supreme Court held that the wording “unless suit is brought within one year...” in Article III 6 of the Hague-Visby Rules is sufficiently wide to encompass a suit which was filed in a foreign jurisdiction. Accordingly, a claim filed in Israel 12 months after the delivery date of the goods will not be time barred if a claim was filed during this 12-month period in a foreign jurisdiction. Recently, in Folio 7195-18, the Supreme Court overturned two lower-instance judgments and held that the phrase ‘suit is brought’ applies only to an entity which has the right to sue. Therefore, if a suit is filed within the 12-month period by a claimant which has no right of standing, this will not interrupt the time-bar period; and a different entity which subsequently files a claim cannot rely on the previous claim which was filed without a title to sue. Thus, if the later claim is filed more than 12 months after the delivery date, it will be considered to be time barred.

6. Passenger claims

6. 1. What key domestic and international provisions apply to passenger claims in your jurisdiction?

Israel
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Israel is not a party to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974. Therefore, passengers’ claims are governed by general contract and tort law and the general law relating to law and jurisdiction clauses.

6. 2. What limitation of liability regime applies to passenger claims and who may avail of it? What types of claims may be limited? What is the procedure for limiting liability?

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See question 6.1.

6. 3. Under what circumstances is the limitation of liability unavailable?

Israel
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See question 6.1.

7. Ship arrest

7. 1. What key domestic and international provisions apply to ship arrest in your jurisdiction?

Israel
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The Israeli Maritime Court was established during the British mandate over Palestine-Israel, which took place formally between 1922 and 1948 and in practice from 1917 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 on which the Colonial Court Admiralty Act was enacted, the relevant acts of admiralty in force were the Admiralty Acts of 1840 and 1861 and the Naval Prize Act of 1864. These continue to apply to the jurisdiction of the Haifa Maritime Court, a division of the Haifa District Court, which was granted the maritime jurisdiction previously held by the Supreme Court.

In addition, when enacting the Shipping Law (Sea-going Vessels), 1960, the Israeli legislature chose to follow the Brussels International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages 1926 in relation to the maritime lien. 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.

7. 2. For which types of claims is ship arrest available? What requirements and restrictions apply in this regard?

Israel
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See question 7.3.

7. 3. Are maritime liens recognised in your jurisdiction? If so, what claims give rise to maritime liens? What is the difference (if any) between arrest of a ship for a maritime claim and a maritime lien?

Israel
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According to Clauses 40–41(1)–(8) of the Shipping Law (Sea-going Vessels), 1960, recognised maritime liens include the following, among others:

- the costs of the sale of an arrested vessel by court auction;
- port dues of all kinds and other payments for port services, insofar as these are due to the state, another state or authority, or have been paid to such bodies by a third party;
- the cost of the preservation of an arrested vessel (from the date of its entry to the port until its sale by the court);
- wages;
- salvage;
- compensation for death of, or injury to, passengers;
- compensation for damage caused as a result of a collision at sea or any other navigation accident, or for damage done by a vessel to port facilities, and indemnities for loss of or damage to cargo or to passengers' baggage; and
- payments due for the supply of necessaries.

Under Israeli law, a vessel can be arrested to enforce either recognised liens or a mortgage. The law does not allow for the arrest of a vessel to enforce a maritime claim; but on the other hand, Israeli law provides for a wide range of recognised maritime liens.

7. 4. Under what circumstances is the arrest of sister ships and associated ships available? What requirements and restrictions apply in this regard?

Israel
Harris & Co

Israel is not a party to either the Brussels International Convention Relating to Arrest at Sea 1952 or the Geneva International Convention on the Arrest of Ships 1999. In *M/V Huriye Ana* (2017), the Haifa Maritime Court held that it has no authority to order the arrest of a sister ship.

In *M/V Osogovo* (2021), in denying a supplier's arrest application for necessaries supplied to sister ships of the relevant vessel, the Haifa Maritime Court acknowledged the possibility that in certain cases it might be possible to extend, under judicial legislation, (meaning courts' case law which add and/or interpret the wording of the acts of legislation) the causes for arrest and to include the possibility of arresting a sister ship. However, the court did not engage in an in-depth discussion of the possibility of developing the maritime law in this way.

In our opinion, it might be possible to apply for the arrest of a sister ship under the principle of piercing the corporate veil. However, this would apply only in circumstances where the piercing of the corporate veil would be justified, and provided that the arrest application includes at least *prima facie* evidence in this regard.

7. 5. Under what circumstances can bareboat and time-chartered vessels be arrested?

Israel

Under Clause 53 of the Shipping Act (Vessels) 1960, the provisions of Part IV of the act on maritime liens “will apply, also on a vessel which is operated by a charterer or other person which is not is owner”. In practice, the Haifa Maritime Court requires personal liability of the owners as a condition for enforcing a maritime lien.

In *M/V Ellen Hudig* (2004), the Maritime Court denied a maritime lien for “indemnities for loss or damage to baggage”, holding that the alleged damages – additional expenses and freight payments relating to the discharge of the claimants’ cargo from an arrested vessel as a result of the vessel’s arrest by the crew claiming unpaid wages, and the owners’ subsequent appearance before a Belgian court under bankruptcy proceedings – did not fall under the owners’ personal liability.

Ever since, *Ellen Hudig* has been cited by the Haifa Maritime Court as authority establishing the need to show the owners’ liability in order to have the court recognise a maritime lien. In *M/V Emmanuel Tomasos* (2004), a bunker supplier’s claim was denied on the grounds that only the contractual supplier which contracts with the owners can be a creditor under the necessities lien. In *M/V Nissos Rodos* (2016), it was held that a local agent which was nominated by the operator of the vessel and which paid the port dues for 17 calls of the vessel at Haifa Port was not entitled to a maritime lien for “port dues of any kind... paid by a third party”, on the grounds that the agent had no agreement with the owners and there was no personal liability on behalf of the owners 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 *M/V Captain Hurry* (2016), while dismissing a supplier’s claim due to lack of the owners’ liability, the Haifa Maritime Court stated that the various types of maritime liens differ from each other; and that, for example, a maritime lien for salvage exists even if the owners are not liable for the circumstances which led the vessel to distress.

Thus, while diverse paths to fulfilment of the requirement of owners’ liability might exist in theory, in practice it would seem that arresting a chartered or bareboat chartered vessel would require the owners’ liability to the claimed debt itself – especially if the arrest is under a necessities lien. The mere fact that the vessel is chartered at the date of arrest will not prevent its arrest, as long as the recognised lien exists.

7. 6. What are the formal and documentary requirements for arresting a vessel? What is the procedure and how long does this take? Must a countersecurity be provided? What other costs are incurred?

The main documents required to arrest a vessel are documents establishing the existence of the maritime lien. For example, to arrest a vessel for unpaid bunkers, documents such as the following should be presented:

- the purchase order;
- the delivery note;
- the invoice; and
- interest calculations.

The claim *in rem* and arrest application are filed electronically with the court, and usually the arrest application is attended to by the maritime court within a few hours. If the application is filed during the weekend, a judge of the Haifa Maritime Court can be approached through the court clerk.

The Haifa Maritime Court has continuously held that there is usually no justification to impose procedural thresholds on creditors seeking enforcement of their maritime liens, and this will be done only in exceptional occasions. For example, where the validity of the documents establishing the lien is doubted or where the owners' liability in a claim to enforce a necessaries lien is questioned, the claimant will be required to deposit countersecurity for the arrest. Also, the nature and ranking of the lien will be considered.

In *MV Captain Hurry*, a deposit of \$12,500 was required as countersecurity for an arrest securing a claim of \$315,763 for bunker delivery, which was ultimately denied.

Court fees are 1.25% of the claimed amount and the costs of serving the claim and arrest documents are about \$500 to \$1,000, depending on whether a launch boat service is required. Court fees, attorneys' fees and service costs are all claimable under the claim *in rem* and arrest application.

7. 7. What is the procedure to release a ship from arrest and how long does this take? What security must be provided and how is this calculated?

Israel
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A vessel can be released by providing a security – either a respected protection and indemnity club's letter of undertaking or the deposit of the claimed amount or an Israeli bank guarantee – with the court treasury. The security amount will be the amount ordered in the arrest order. The owners can also challenge the arrest application itself and/or the arrest amount. Following the deposit of the security, the release of the vessel is almost immediate.

7. 8. What is the test for wrongful arrest in your jurisdiction?

Israel
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There is no leading authority on the matter of wrongful arrest. Under general civil law, a party seeking temporary relief (eg, a lien or a restraining order) might be liable in tort or further to a commitment under court order to compensate the other party for damages if the temporary relief is cancelled and the party seeking arrest acted unreasonably or maliciously (Civil Appeal 732/80, *Arens v Bait-El*). 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 *M/V Vasilij Golovnin* (2008).

7. 9. Are any alternatives to ship arrest available in your jurisdiction?

Israel

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According to Clause 54 of the Shipping Act (Vessels) 1960, the builder or repairer of a vessel is entitled to hold the vessel until the amounts due to it are paid (possessory lien).

Theoretically, a vessel can also be attached as immediate security relief under a regular civil claim (either filed before a civil court or in arbitration). However, ordering such an attachment would require the deposit of security on behalf of the claimant; and considering the daily costs of detaining a vessel, it seems that attaching a vessel to secure a regular civil claim (as opposed to arresting a vessel to enforce a recognised maritime lien) would not be practical.

8. Judicial sale of a vessel

8. 1. What key provisions apply to the judicial sale of vessels in your jurisdiction?

Israel

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See question 8.2.

8. 2. What is the procedure for judicial sale of an arrested vessel and how long does this take? What costs are incurred?

Israel

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If no notice of appearance is filed on behalf of the vessel within seven days of service of the maritime claim documents (including a writ of summons), the court may order the judicial sale of the vessel in order to save maintenance costs, port dues and crew costs. According to the Vice Admiralty Rules, 1883, the court is authorised to order that the vessel be sold either by public auction or by private contract.

8. 3. How are the proceeds of sale distributed?

Israel

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The priority in which the proceeds of sale are distributed is based on the ranking of liens, with the mortgage ranked before the supplier of necessities or services rendered to the ship, meaning, that the necessities' lien is ranked last:

- the costs of the sale of the arrested vessel by court auction;
- port dues of all kinds and other payments for port services, insofar as these are due to the state, another state or authority, or have been paid to such bodies by a third party;
- the cost of the preservation of an arrested vessel (from the date of its entry to the port until its sale by the court);
- wages;

- salvage;
- compensation for death of, or injury to, passengers;
- compensation for damage caused as a result of a collision at sea or any other navigation accident, or for damage done by a vessel to port facilities and indemnities for loss of or damage to cargo or to passengers' baggage; and
- payments due for the supply of necessaries.

8. 4. What is the legal effect of the judicial sale of a vessel?

Israel
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The legal effect is that the maritime lien is transferred to the proceeds of sale and the buyer of the vessel receives the title (ownership) of the vessel free of any lien, attachment or any other right or claim in the vessel.

9.Environmental issues

9. 1. What key domestic and international provisions apply to shipping emissions in your jurisdiction?

Israel
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Israel is a signatory to the Convention for the Protection of the Mediterranean Sea against Pollution, 1978, updated as the Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean 1995. In addition, Israel acceded to the International Convention for the Prevention of Pollution from Ships, 1973 in 1983 and has reaffirmed Annexes 1, 2, 3 and 5.

9. 2. What key domestic and international provisions apply with regard to the sulphur content of marine fuel in your jurisdiction?

Israel
Harris & Co

The Authority for Shipping and Ports issued draft Port Regulations (Preventing Air Pollution from Vessels) in 2016 and issued another updated draft in 2020. However, the regulations – which would implement the decision of the International Maritime Organization's Marine Environment Protection Committee of 26 October 2018 (also known as the 'IMO 2020' Rule') – have not yet come into force – probably due to the political instability which has prevailed in Israel for the past two years.

As a result, as yet there is no domestic legislation which limits the sulphur content of fuel oil to not more than 0.50% mass by mass (m/m); and vessels that carry and use fuel oil with a sulphur concentration of 3.5% can call at Israeli ports. It has been argued by Dr Eliakim Ben Hakun, a consultant to the World Health Organization, that most of the vessels that call at Israeli ports are old vessels with polluting engines; only a minority are new vessels with environmentally friendly engines. This is causing significant air pollution in the areas surrounding the ports (Ari Libsker, “Black Sail”, <https://newmedia.calalist.co.il>.)

However, since the establishment of a new government in June 2021, it now appears that the Ministry of Transportation will soon sign the draft regulations so that they can enter into force. Under the draft regulations, the owners and master of a vessels must ensure that the sulphur content in fuel oil does not exceed:

- 0.50% m/m; or
- 0.10% m/m if the vessel:
 - is operating in any emission control areas (eg, the Baltic Sea area, the North Sea area, the North America area or the US Caribbean Sea area); or
 - is at a pier for the purpose of loading or discharging, or awaiting the same.

According to Clause 123(a) of the draft regulations, at the request of an authorised authority of a foreign state, a manager nominated by the Authority for Shipping and Ports can conduct an examination of a foreign vessel which has called at a port or terminal in Israel if the manager is convinced from the evidence attached to the application that the vessel has emitted, anywhere whatsoever, any materials listed in Part B of the regulations (including sulphur oxides) in breach of the regulations.

9. 3. What key domestic and international provisions apply with regard to ship recycling in your jurisdiction?

Israel
Harris & Co

There is no specific domestic legislation on ship recycling in Israel. Relevant provisions of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (2009) may apply as customary law or guiding principles.

9. 4. What other environmental issues and concerns should shipowners and operators be aware of in your jurisdiction? What best practices should they follow?

Israel
Harris & Co

According to Clause 123(a) of the draft regulations, at the request of an authorised authority of a foreign state, a manager nominated by the Authority for Shipping and Ports can conduct an examination of a foreign vessel which has called at a port or terminal in Israel if the manager is convinced from the evidence attached to the application that the vessel has emitted, anywhere whatsoever, any materials listed in Part B of the regulations (including sulphur oxides) in breach of the regulations.

Accordingly, shipowners and operators should be aware that a vessel and its records can be examined by the local authorities – even if the vessel is a foreign vessel and if the examination is in consideration of acts which took place outside Israeli territorial waters.

10. Employment issues

10. 1. What key domestic and international provisions apply to the health and safety of maritime workers in your jurisdiction?

Israel
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The qualification requirements, supervision, duties and requirements of Israeli seafarers are the subject of the Shipping Act (Seamans), 1973. This law does not directly regulate the health and safety of maritime workers. Israel has not adopted the Maritime Labour Convention. However, the amount due to a seafarer as wages is a recognised maritime lien and Israeli law also considers labour relations as contractual relations. Therefore, any entitlement of a seafarer under either an international convention or a collective agreement which can be viewed as governing the labour contract, including as an implied term, can be enforced by the maritime court when deciding on the amount due to the seafarer as wages.

In *M/V Moraz* (2021) the Haifa Maritime Court accepted that the costs of medical treatment provided by a local hospital to a crew member who became sick with COVID-19 after he came on board constituted a recognised maritime lien on the vessel according to Clause 40–41(4) of the Shipping Act (Vessels) 1960: “Payments claimed by the master, crew, and others who served on the vessel, as a result of their employment in the vessels...either according to agreement or for compensation for civil damages, or in any other manner...”

The Haifa Maritime Court held that, according to the crewman’s employment agreement, hospitalisation and medical treatment were to be covered by the shipowners; and therefore, by the crewman assigning his rights to the hospital, the hospital was entitled to arrest the vessel for the costs of his hospitalisation and medical treatment, which went unpaid.

10. 2. What other employment issues should shipowners and operators be aware of with regard to maritime workers in your jurisdiction?

Israel
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The arrest of a vessel due to a claim *in rem* and the filing of an arrest application by the crew when the vessel arrives at an Israeli port are common practices for arresting vessels in Israel.

11. Disputes

11. 1. In which forums are shipping disputes typically heard in your jurisdiction?

Israel

All Israeli ports (Haifa, Ashdod and Eilat) and any other terminals are governed by the Haifa Maritime Court, located in the Haifa District Court, which has jurisdiction to:

- rule on *in rem* claims and ship arrest, ownership and registration disputes; and
- order the confiscation of vessels according to the Naval Prize Act of 1864.

Other shipping and maritime law disputes – such as cargo claims and charterparty disputes – are considered commercial civil claims and are brought before either a magistrates court or a district court, depending on the amount claimed and the relevant local jurisdiction. Claims for up to NIS 2,500,500 (at the equivalent of US\$ 786,320) are filed before the magistrates court; while claims that exceed this amount are filed before the district court.

Israel is a signatory to the New York Convention on the Recognition and Enforcement of Arbitral Awards. Under the Regulations for the Performance of the New York Convention (Foreign Arbitration), 1978, the district courts are authorised to enforce a foreign arbitral award, provided that the applicant presents the court with a verified copy of the award and the arbitration agreement. In addition, under Articles 5 and 6 of the Arbitration Act, 1968, the district court will order a stay of proceedings where the matter in dispute is subject to an arbitration agreement (or an arbitration clause in the contract); and if the arbitration is subject to any international convention to which Israel is a signatory, the proceedings will be stayed according to the rules relating to the stay of proceedings set out in the relevant convention.

Further to Clauses 16(a) and 39A of the Arbitration Act, a district court is authorised to order supportive remedies such as liens and restraining orders in order to secure the arbitration proceedings, including proceedings taking place in foreign jurisdictions. The Haifa Maritime Court exercises this authority and will order the arrest of a vessel even if the claim itself should be determined in arbitration or in a foreign jurisdiction.

In *M/V Aquis Perla* (Folio 59972-07-19) (2019), the Haifa Maritime Court held that it was authorised to order attachments of the assets of a local defendant to secure a London arbitration in relation to unpaid hire, further to the abovementioned provisions of the Arbitration Act, and with no need to enquire whether English arbitration law allows for the attachment of a defendant's assets.

11. 2. What issues do such disputes typically involve? How are they typically resolved?

Israel
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Claims typically involve the enforcement of maritime liens or cargo claims. They are typically resolved either by proceeding with the case and reaching judgment or through a settlement – either following direct discussions or mediation.

11. 3. Have there been any recent cases of note?

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In *M/V Estelle* (2014), basing its decision on the Colonial Courts Act of 1980 and the Naval Prize Act of 1864, the Haifa Maritime Court held that it was authorised to act as a prize court and to order the confiscation of vessels attempting to breach the naval blockade imposed on Gaza. The *M/V Estelle* was released because the Israeli Navy did not bring the matter to adjudication promptly. Later, in *M/V Marianne* (2016) and *M/V Zaytouna-Oliva* (2019), the Haifa Maritime Court ordered the confiscation and judicial auction sale of the vessels and ordered that the amount received from the sales be transferred to the state of Israel.

In *M/V Badar* (2020), the Haifa Maritime Court held that a vessel registered in a foreign register cannot be registered in Israel unless it has been properly deleted from the former register, even if the new ownership arises from a writ of ownership issued by an authority. At this stage, as immediate relief, the court ordered the attachment of the Israeli registration of the vessel and thereafter scheduled the matter for pleading and hearings.

In *Vapi Kredi Banaksi v M/V Huyiye Ana* (2017), after deciding that a sister ship arrest is not possible under the Israeli maritime law, the Haifa Maritime Court denied a bank's claim to enforce a mortgage which was registered in the vessel's registration. The court held that the foreign bank had proved the validity of the loan agreement and mortgage according to Turkish law, which governed the documents; but it did not enforce the Turkish execution decision in favour of the bank according to the requirements of the Enforcement of Foreign Judgments Act, as no information was provided in relation to the payment schedule agreed with the debtor (which was not the owner) and the exact amount of debt that remained. In other words, the court held that the mere fact that a mortgage is included in the vessel's registration is not enough to have it enforced.

In *M/V Moraz* (2021) the Haifa Maritime Court accepted that the costs of medical treatment provided by a local hospital to a crew member who became ill with COVID-19 after he came on board constituted a recognised maritime lien on the vessel according to Clause 40-41(4) of the Shipping Act (Vessels) 1960 – "Payments claimed".

12. Trends and predictions

12. 1. How would you describe the current shipping landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

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Strategically located at the confluence of Europe, Asia and Africa, the Israeli ports of Haifa and Ashdod (located on the eastern shore of the Mediterranean Sea) and Eilat (located on the west shore of the Red Sea) play a key role in Israeli and other related and connected trade. This role could become even more significant given recent developments such as:

- the new Bay Port located in Haifa Bay, which commenced operations in September 2021;
- the transfer of the operations of the Haifa and Ashdod Ports into private hands; and
- the opportunities available following the conclusion of the Abraham Accords.

Currently, according to statistics provided by the Israeli Authority for Shipping and Ports, the volume of cargo both loaded and discharged at all Israeli ports during 2020 reached a total of 57.453 million tonnes.

According to the records available, as at January 2020 33 vessels were under Israeli ownership or control, with a total dead weight tonnage of 1.833 million tonnes and an average age of 12.4 years.

Now that political stability has been achieved in the area, it is expected that the Port Regulations (Preventing Air Pollution from Vessels), 2016 (updated on 2020) will come into force once they have progressed through the legislative process. The regulations will bring the International Maritime Organization Marine Environment Protection Committee's decision of 26 October 2018 (also known as the 'IMO 2020 Rule') into force in Israel.

Another act which should soon be finalised concerns the Israeli occupancy tax, which will allow companies that deal with the marine carriage of cargos to have their income payment calculated according to the weight of the carrying vessels (measured in tons), and not according to actual payment. This will allow shipowners and operators to enjoy both lower income tax payments and stability of income tax payments, and to choose the optimal tax regime to govern their shipping activities – either the regular regime or the occupancy tax regime – according to their discretion and their calculations.

Through incentives such as increased 20% depreciation on vessels for reducing income tax payments and subsidised employment of Israeli crew and officers, the government of Israel supports local shipowners in order to promote the Israeli shipping industry and Israeli vessel ownership.

13. Tips and traps

13. 1. What are your top tips for shipowners and operators in your jurisdiction and what potential sticking points would you highlight?

Israel
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The Treaty of Peace, Diplomatic Relations and Full Normalisation between the United Arab Emirates and the State of Israel, followed by normalisation agreements with Bahrain, has strengthened the strategic location of Israel and Israeli ports, and increased trade and transport between Israel and the Gulf States is now expected.

The Haifa Maritime Court has found in favour of a bunker supplier located in Dubai (arresting the MV Huseyn Javid for unpaid bunkers) and a Libyan owner (in attaching the registration of the MV Badr); and once the Abraham Accords have been concluded, Persian Gulf and other Middle Eastern claimants and interests will find the Haifa Maritime Court and other Israeli courts to be favourable jurisdictions.



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