

Market
Intelligence

SHIPPING 2022

Global interview panel led by MFB Solicitors



LEXOLOGY

Getting the Deal Through

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Israel

The legal firm of Harris & Co. was established in 1977. The firm is dedicated to the practice of Maritime and Admiralty Law.

The firm receives instructions from the foremost shipping and maritime law departments of international law firms.

According to the latest Chambers & Partners ranking, the firm “has significant litigious capabilities”, “an internationally respected offering”, and is “also notably active in ship arrests”.

Harris & Co. provides legal advice relating to the various contracts of carriage and attends to matters relating to the chartering, sale and purchase, of ships and the financing of ship purchases.

The firm represents ship owners, charterers, agents, freight forwarders, P&L clubs, oil refineries and other entities in Shipping and Maritime Law matters.

The firm is ranked by Bdicode in Maritime Law and Litigation and consistently receives “top tier” ratings from: Chambers & Partners, Legal 500 and Duns100.

The firm is the editor of Chambers International Global Practice Guides and the Israeli chapter for “Shipping” in the reviews of: Chambers & Partners, Mondaq, ICLG, SHIP ARREST.COM, The Law Reviews, Legal 500 and Lexology.

Additional articles of Adv. Harris are published in shiparrested.com and in the Israeli monthly magazine “The Cargo”.

1 | What is the current state of the shipping industry in your country?

Located at a strategic meeting point between Europe, Asia and Africa, the Israeli ports of Haifa and Ashdod (on the east shore of the Mediterranean Sea) and Eilat (on the west Shore of Red Sea) fulfil a key role in domestic and other related trade, including trade that became available after the Abraham Accords (the joint statement between Israel, the United Arab Emirates and the United States, reached on 13 August 2020) and due to a slight thawing in the formal relations between Israel and Saudi Arabia.

In September 2021, the new Bay Port, located at Haifa Bay, began to operate. The port itself is owned by Israel (through the Israel Ports Development and Assets Company Ltd) and is operated by the Shanghai International Port Group. At the beginning of 2022, the new Sough Port, located next to Ashdod Port, also began to operate under private operation by Terminal Investment Limited SA of Switzerland. In July 2022, the tender for the sale of 100 per cent of the capital share of the government company Haifa Port Company Ltd, who operate Haifa Port, was completed, and the shares were sold to a joint group of Gadot Tankers and Adanil Group (of India), who offered US\$3.9 billion for the shares.

The interest shared by the above-mentioned international groups and companies in the Israeli ports and their willingness to invest and take over operations of those ports is a significant indication of the potential these ports have in playing a significant role in current and future international regional trade.

According to the statistics provided by the Israeli Administration of Shipping and Ports, the volume of cargo both loaded and discharged at all the Israeli ports during 2021 reached a total of 59.76 million tons. In February 2022, the number of vessels under Israeli ownership or control was 38 vessels, having a total deadweight tonnage of 1.895 million tons and the average age of 14.2 years.

2 | What are the prevailing shipping market trends affecting your country? What has been the impact of the covid-19 pandemic?

The Israeli shipping market is influenced by international trade factors such as gross domestic product, the prices of fuel and the availability of vessels. During 2021, the rate of the total import growth in Israel was 30 per cent. The leading shipping company Zim Integrated Shipping Service's second-quarter fiscal results revealed a total income of US\$3.4 billion at an average carriage price of US\$3,596 per TEU. Its total income for the first half of 2022 was US\$7.1 billion.

Although covid-19 shutdowns had a big impact on Israel's economy, operation of the ports and the shipping industry never stopped. Globally, after January 2021,



Yoav Harris



John Harris



Domiana Abboud

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there were no more covid-19 lockdowns, and Israel's economy presented a total annual growth rate of 8.1 per cent for the year 2021 and 5 per cent (in annual terms) in the second quarter 2022.

From a legal perspective, 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 constituted the recognised lien for 'payments claimed by the captain, crew, and others who serve on the vessel arising out of their employment on the vessel'.

3 | Are there any recent domestic or international political or legislative developments that may have an impact on your country's shipping market?

Under Israeli law (the Income-Tax Regulations (Depreciation) 1941, and the Income-Tax Regulation (Depreciation Rate for Vessels) 2021), Israeli vessel owners enjoy a total of 20 per cent depreciation on their vessels, allowing for a reduction of income tax payments. The draft of an Israeli 'Occupation Tax Law' was published in 2018. Under this draft law, a ship owner can choose to pay income tax on the

vessel's earnings, rather than according to the amounts actually paid for the vessel's services. The owner will pay tax at a daily rate calculated according to the net carriage volume of the vessel. The purpose of this intended law is to encourage the Israeli shipping industry's growth by enlarging the fleet of vessels under Israeli ownership or control. However, due to political instability, this law has not yet been enacted and has not yet come into force.

According to the United States Geological Survey published in 2010, the potential exploitation of offshore natural gas east of the Mediterranean Sea is about 3,400 billion cubic metres, of which two-thirds is estimated to be in Israel's territory. On 17 December 2020, the governments of Israel and Cyprus have reached an agreement on the delimitation of the Exclusive Economic Zone between the two countries.

Currently, following mediation efforts of the US government, the government of Israel and of Lebanon are about to reach an agreement or arrangement to settle a dispute regarding 'exclusive economic zone' borders, of which the disputed area is 850 square kilometres.

To date, 10 production leases (allowing the production of natural gas and oil in the Israeli EEZ) have been issued by Israel. One (Karish) is next to the disputed area at the north border of the Israeli EEZ and it is expected that soon after an agreement between Israel and Lebanon is reached, this production lease will become active.

4 | What are the key regulatory and compliance issues for your country's shipping market? What's coming up in the near future?

We expect that the legislation of the Israeli Occupation Tax act will be completed. The same applies to the Ports Regulations (Preventing Air Pollution from Vessels), which will implement the 'IMO 2020' rule of limiting the contents of sulphur in fuel used in a vessel or used for its operation to no more than 0.5 per cent mass by mass. These regulations have been drafted by the Ministry of Transportation and are awaiting enactment.

We also expect an increase in the marine natural gas exposition activities, which will take place in the Israeli EEZ. These activities involve the occupation of drilling rigs, service boats and vessels, engineering equipment, etc, which will add more volume to shipping activities in Israel.

- 5 | What are the shipping industry's current sources of finance? How do you predict they will develop, and what are the advantages and challenges to financing a vessel in your country?

A ship owner can finance the purchase of a vessel through any relevant avenue of traditional banks in Israel. The advantages of financing a vessel in Israel include having a respected registration that will registrar the mortgage and an effective law, and going through the Maritime Court if required. In this register, it should be mentioned that, in *Vapi Kredi Banaski v M/V Hurriye Ana* (2020), the Haifa Maritime Court denied a bank's claim to enforce a mortgage that was registered in the vessel's registration. The Court held that the validity of the loan agreement was not proven and that no information was provided in relation to the payment schedule agreed with the debtor or concerning the exact amount of debt that remained, and that the mere fact that a mortgage is registered in the vessel's registration is not enough to have it enforced. Israeli banks will be willing to finance also the purchase of vessels, which will be registered in a foreign registration (provided that the appropriate securities will be provided by the owners).

- 6 | Have there been any recent significant domestic or foreign court decisions or arbitration awards that impact on your country's shipping market?

Yes, in recent years, the Haifa Maritime Court and the Supreme Court has provided some interesting and significant judgments relating to many aspects of shipping and maritime law. In *M/V Estelle*, *M/V Mariana* (2016), *M/V Zaytoma-Oliva* (2019), *M/V Freedom* and *M/V Kaarstein* (2021), following the applications filed by Israel or the Ministry of Defence, 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. This is one of the rare occasions where maritime courts acted as Prize Courts after the Second World War (one of which is the Egyptian Maritime Courts who ordered in 1954, the Confiscation of the Israeli vessel 'Bat-Galim' while navigating through the Suez Canal, following King's Farouk's decree dated 6 February 1950 ordering that vessels' cargo be inspected to make sure that no arms, ammunition or fuel, chemicals and vehicles intended for Israel were on board).

In the matter of *M/V Hariye Ana* (2017), the Haifa Maritime Court held that the Israeli law has not provided it with a direct authority to order on a sister-ship arrest, as no such authority exists either in the Admiralty Acts of 1840 and 1861 or the Israeli Shipping Act 1960 (which are the acts that constitute the Haifa Maritime Court's authorities). However, in *M/V OSOGOVO* (2021), the Haifa Maritime Court mentioned



that it does not deny the possibility of extending, under 'judicial legislation', the causes for 'sister-ship arrest'. Such a 'judicial legislation' could be, for example, by applying the principles of lifting the corporate veil.

Under Folio No. 59972-07-19 (2019), the Haifa Maritime Court held that it was authorised to order on attachments (on defendants assets in Israel) to secure a foreign (London) arbitration in relation to unpaid hire, following the Israeli Arbitration Act 1968, and with no need to enquire whether the English Arbitration Law does or does not allow attaching the defendant assets to secure an arbitration award.

In *M/V Diana*, the Haifa district court held that the foreign cargo interests have the right under the Israeli Freedom of Information Act to receive part of the documents collected by the Israeli Administration of Shipping and Ports while investigating the marine accident of the grounding of the vessels at Haifa Bay, and ordered that the administration will provide the cargo interests with RCC communications that took place between the vessel and the administration prior to the grounding.

In *M/V BADR (2022)*, the Haifa Maritime Court ordered the cancellation of the Israeli registration of a vessel, which was registered as 'Miriam B', as it was found that, since 2009 when the vessel was purchased by its Maltese owners, the vessel

had been registered in a Libyan register, and this was not cancelled or challenged by those who attempted to bring the vessel under Israeli registration. Following the orders of Clause 6 of the Convention on the High Seas 1958, under which ships shall sail under the flag of one state only, and the relevant Israeli Shipping Act (1960) and its Regulation ordering that a registration of a vessel that has been registered in a foreign registry require the presentation of a deletion certificate from the foreign registration, the Haifa Maritime Court held that the registration of the vessel in an Israeli register while its Libyan registration remains is contrary to international and Israeli law. This matter is under an appeal before the Supreme Court.

7 | What is the outlook for your country's shipping market? Which sectors are likely to grow, and which not?

As mentioned above, the treaty of Peace, Diplomatic Relations and Full Normalisation between the United Arab Emirates and Israel, followed by the normalisation agreement with Bahrain and also formal commercial relations with Saudi Arabia, together with the development of the additional new ports in Israel and the transferring of their operations to private hands, provide the right ingredients to an increase in all aspects of Israeli shipping, either in terms of a vessel's ownership and the operation or of volumes of cargos to be transferred from and to Israeli ports.

In addition, considering both the global demand for energy sources and the potential of additional natural gas exploitation from the Israeli EEZ and also the expected geopolitical stability, which is expected to be reached between Israel and Lebanon, we also expect growth in the shipping sector related to marine gas drilling and related activities and services.

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The Inside Track

What are the particular skills that clients are looking for in an effective shipping lawyer?

We believe that deep knowledge of both local and international law and foreign precedents, the ability to balance the legal with the commercial, and sharpness and responsiveness, are the main skills required by clients of an effective shipping lawyer.

What are the key considerations for clients and their lawyers when arranging finance for a shipping transaction?

The most important thing is to ensure the accuracy of the documentation, whether that's the memorandum of understanding, the company's resolutions, the loan agreement and the forms allowing the finance, or the payment and registration of ownership and securities. Understanding the whole procedure and each player's role in the transaction – at the vessel itself or at the closing table – is of significance to have the transaction completed fluently, and with all the rights and entitlements secured and protected.

What are the most interesting and challenging cases you have dealt with in the past year?

We represented the Maltese owners of the vessel *BADR* (registered in Libya) in the *M/V BADR* case. The matter started with the arrest of the vessel through a mortgage deed on its first call to Bulgaria ports, which was followed by an unlawful auction and sale of the vessel (later cancelled), a takeover of the vessel and its crew, and numerous proceedings before the Bulgarian courts. After several failed attempts by the vessel's alleged new owners to register the vessel around the world, an Israeli company successfully registered in Israeli registration. We have now filed, on behalf of the Maltese owners of the vessel, a claim before the Haifa Maritime Court and asked for the cancellation of the Israeli registration, which was accepted on 28 June 2020. We find the case interesting due to the complexity of the events, the documents that had to be presented to the court through affidavits of witnesses located in foreign jurisdictions, and the precedent of the matter – specifically that the Haifa Maritime Court provided the relief sought by the Maltese owners of the vessel, being fully aware that they are being held by a Libyan government company, and that the registration that was asked for and that received the court's protection, is the vessel's Libyan registration.

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by Kevin Cooper of MFB Solicitors, this *Shipping* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most significant cases and deals.

Regulatory & compliance trends
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