

Shipping

Contributing editor
Kevin Cooper



2018

GETTING THE
DEAL THROUGH

GETTING THE
DEAL THROUGH 

Shipping 2018

Contributing editor

Kevin Cooper

Ince & Co LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2017
No photocopying without a CLA licence.
First published 2008
Tenth edition
ISSN 1759-0744

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2017. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Global overview	7	Indonesia	129
Kevin Cooper, Reema Shour, Monika Humphreys-Davies and Eleanor Dickens Ince & Co LLP		Sahat AM Siahaan, Ridzky Firmansyah Amin and Desi Rutvikasari* Ali Budiardjo, Nugroho, Reksodiputro	
Australia	11	Italy	135
Geoffrey Farnsworth and Dilip Ramaswamy Holding Redlich		Filippo Pellerano and Francesco Gasparini Studio Legale Mordiglia	
Brazil	18	Japan	142
Godofredo Mendes Vianna, Camila Mendes Vianna Cardoso and Lucas Leite Marques Kincaid Mendes Vianna Advogados		Shuji Yamaguchi Okabe & Yamaguchi	
Chile	26	Korea	148
Ricardo Rozas and Max Morgan Jorquiera & Rozas Abogados		Sung Keuk Cho and Hee-Joo Lee Cho & Lee	
China	35	Latvia	154
James Hu, Mervyn Chen, Lawrence Chen and Jasmine Liu Wintell & Co		Gints Vilgerts VILGERTS	
Croatia	48	Liberia	160
Gordan Stanković and Maja Dotlić Vukić & Partners		Lawrence Rutkowski Seward & Kissel LLP	
Cyprus	55	Malaysia	165
Michael McBride, Yiannis Christodoulou and Michael Papadopoulos Chrysses Demetriades & Co LLC		Siva Kumar Kanagasabai and Trishelea Ann Sandosam Skrine	
Denmark	61	Malta	172
Ulla Fabricius and Christian Benedictsens-Nislev NJORD Law Firm		Kevin F Dingli and Suzanne Shaw Dingli & Dingli Law Firm	
England & Wales	68	Netherlands	182
Kevin Cooper, Reema Shour, Monika Humphreys-Davies and Eleanor Dickens Ince & Co LLP		Arnold J van Steenderen and Charlotte J van Steenderen Van Steenderen MainportLawyers BV	
Estonia	82	New Zealand	195
Indra Kaunis Consolato del Mare OÜ		Simon Cartwright, Sarah Holderness, Richard Belcher and Robert McStay Hesketh Henry	
Finland	89	Nigeria	202
Nora Gahmberg-Hisinger and Matti Komonen HPP Attorneys Ltd		Funke Agbor and Chisa Uba Adepetun Caxton-Martins Agbor & Segun	
France	97	Norway	209
Christine Ezcutari Norton Rose Fulbright LLP		Christian Bjørtuft Ellingsen Advokatfirmaet Simonsen Vogt Wiig AS	
Germany	106	Panama	217
Christian Finnern Watson Farley & Williams		Gabriel R Sosa, Eduardo A Real and Alberto Lopez Tom De Castro & Robles	
Ghana	113	Peru	223
Kimathi Kuenyehia, Augustine Kidisil and Paa Larbi Asare Kimathi & Partners, Corporate Attorneys		Francisco Arca Patiño and Carla Paoli Consigliere Estudio Arca & Paoli Abogados SAC	
Hong Kong	121	Portugal	230
Andrew Rigden Green and Evangeline Quek Stephenson Harwood		Ana Cristina Pimentel Ana Cristina Pimentel & Associados, Sociedade de Advogados, SP, RL	

Russia	236	Taiwan	275
Alexey Karchiomov, Yulia Beliakova Egorov Puginsky Afanasiev & Partners		Daniel T H Tsai and James Chang Lee and Li, Attorneys-at-Law	
Singapore	242	Turkey	281
Ajaib Haridass, Thomas Tan, Augustine Liew and V Hariharan Haridass Ho & Partners		Burak Çavuş Çavuş & Coşkunsu Law Firm	
South Africa	252	Ukraine	289
Tony Norton, Mike Tucker and Kate Pitman* ENSafrica		Evgeniy Sukachev and Anastasia Sukacheva Black Sea Law Company	
Spain	261	United States	295
Marie Rogers, David Diez Ramos and Luis Alberto García Villar Rogers & Co Abogados		Bruce G Paulsen and Jeffrey M Dine Seward & Kissel LLP	
Switzerland	269	Quick Reference Tables	301
Alexander Blarer and Anton Vucurovic Bratschi Wiederkehr & Buob SA			

Portugal

Ana Cristina Pimentel

Ana Cristina Pimentel & Associados, Sociedade de Advogados, SP, RL

Newbuilding contracts

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

Shipbuilding contracts are ruled by Decree-Law No. 201/98, dated 10 July 1998. However, the parties are free to establish on the shipbuilding contract they sign the clauses they consider most suitable; Decree-Law No. 201/98 will only apply if the parties have not established different rules between them.

When the parties have not agreed otherwise, transfer of ownership will pass from the shipbuilder to the shipowner on delivery of the ship.

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

No particular rules have been established on Decree-Law No. 201/98 referring to refund guarantees.

It will be up to the parties to establish the rules they consider most suitable, namely in view of the relationship between the shipbuilder and the shipowner.

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

The shipowner may apply for a delivery order from the competent court after depositing, at the court's order, the full amount under dispute.

Proceedings would then have to be engaged before the competent court, under the terms of the shipbuilding contract, to establish the final amount to be paid and by whom.

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?

A claim against the shipbuilder at the suit of the shipowner would lie in the shipbuilding contract; product liability rules are generally not applicable for goods and services provided for professional use.

A purchaser from the original shipowner would benefit from the guarantees of the shipbuilder against defects as established in the law or in the shipbuilding contract.

A third party that has sustained damage may benefit from the non-contractual liability rules and act against the person liable for the damage for a period of three years after the event occurred.

Ship registration and mortgages

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?

All types of vessels are eligible for registration under the flag of Portugal.

Trading vessels, fishing vessels and tugs sailing under the flag of Portugal are obliged to have a double registration at the harbour master's office chosen by the shipowner and at the commercial register.

It is also possible to register a vessel under construction.

6 Who may apply to register a ship in your jurisdiction?

Individuals or companies may apply to register a ship. To become a Portuguese shipowner operating trading vessels, the individual or company needs to apply for registration and have a domicile or head office in Portugal.

To register a ship at the International Shipping Register of Madeira (MAR), shipowners must have a local representative on the island.

7 What are the documentary requirements for registration?

Depending on whether it is a new building or an existing vessel, the owner will have to provide all the necessary documents evidencing title, all the technical characteristics of the vessel and any registered liens.

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

Temporary registration is possible under Decree-Law No. 287/83, dated 22 June 1983, for vessels under charter contracts with a purchase option. Permission for the temporary registration will have to be given by the authorities for a maximum period of five years, although this time limit may be renewed. The temporary registration will correspond to the charter contract period.

Flagging out is possible, at the request of the owner. Evidence of the new flag registration will have to be provided for the withdrawal of the vessel from the register.

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

The register of mortgages is kept by the commercial register. The information provided includes the type of mortgage, the amount covered and the identification of parties involved, mortgagee and mortgagor, as well as any additional information relevant for the mortgage, for instance, if it covers several assets.

Limitation of liability

10 What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Portugal has been a party to the 1957 Brussels International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships as amended by the Brussels Protocol of 21 December 1979, but very recently, the government approved for accession the 1976 LLMC Convention and the 1996 Protocol, therefore updating the applicable rules and limits.

The persons entitled, and the claims subject to limitation, are referred to in articles 1 to 3 of the LLMC Convention.

11 What is the procedure for establishing limitation?

Within the 1957 Brussels Convention on limitation of liability of shipowners, the party wanting to establish limitation has to present a request to the court explaining the reasons for the request for limitation, the calculation of the amount to be deposited, how the amount will be deposited and the list of claimants already known to the applicant. The fund may be established by way of a cash deposit, bank guarantee or other equivalent guarantee the judge considers suitable. As soon as

the request for limitation is accepted the applicant has to put up security as determined by the court.

These rules will certainly soon be updated to meet the recent government decision to approve for accession the LLMC Convention and Protocol.

The request for establishing a limitation fund may be submitted before legal proceedings are initiated, but the applicant has to produce evidence on the existence of potential claims to justify the need for the limitation fund to be constituted.

12 In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

Considering the low amounts obtained under the 1957 Brussels Convention, controversy arose within some court decisions on the applicable limit; this situation will now be overcome with the recent government approval for accession of the LLMC Convention and Protocol.

13 What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

The Athens Convention relating to the Carriage of Passenger and their Luggage by Sea, as amended by the 2002 Protocol, has been ratified by Portugal and came into force on 1 December 2015.

The limitation regime provided on the Convention is therefore applicable in respect of passenger and luggage claims.

Port state control

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

The port state control agency is DGRM, an autonomous department within the ministry with jurisdiction over the sea (DINE).

15 What sanctions may the port state control inspector impose?

The vessel may be detained and prevented from leaving the port until the deficiencies found are corrected. The vessel may also be prevented from entering a Portuguese port, in line with EU-applicable rules.

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

In case of undue delay or detention of the vessel the owner may claim damages. The representative of the owner may challenge the detention order and eventually appeal from the decision before the first instance court.

Classification societies

17 Which are the approved classification societies?

EU Regulation 391/2009 of the Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations, applies to the recognition of classification societies.

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

Classification societies may be held liable under common civil and criminal law as well as for the non-compliance with applicable rules on the issuance of certificates as established on Decree-Law No. 13/2012, dated 28 January 2012.

Collision, salvage, wreck removal and pollution

19 Can the state or local authority order wreck removal?

Wreck removal is ruled by Decree Law No. 64/2005, dated 15 March 2005.

The shipowner will be obliged, within the time limit established by the harbour master of the nearby port, to present a plan for approval, for the removal of the wreck.

If the plan is not approved or if the shipowner does not comply with the order for the removal of the wreck the harbour master will take the necessary steps for the removal of the wreck considering the dangers attached to the situation of the wreck, namely in case of a risk of pollution.

20 Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

Collision

- 1910 Brussels Convention for the unification of certain rules of law relating to collision between vessels;
- 1952 Brussels Convention for the unification of certain rules relating to penal jurisdiction in matters of collision or other incidents of navigation; and
- 1952 Brussels Convention on certain rules concerning civil jurisdiction in matters of collision.

Salvage

1910 Brussels Convention for the unification of certain rules of law relating to assistance and salvage at sea as well as national Decree-Law No. 203/98, dated 10 July 1998, in line with the new 1989 Salvage Convention.

Wreck removal

Internal Decree-Law No. 64/2005, dated 15 March 2005.

Pollution

- International Convention for the Prevention of Pollution from Ships (MARPOL) as amended by the 1978 Protocol; and
- CLC 1992, Convention on Civil Liability for Oil Pollution Damages, as well as the 1992 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage and the subsequent 2003 Protocol.

In 2006 Portugal ratified the OPCR 1990 and the 2000 OPCR-HNS.

In June 2015 Portugal ratified the 2001 Bunkers Convention.

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 mandatory local form of salvage agreement; the parties are free to establish the agreement they consider suitable. The Lloyd's standard form of salvage is thus acceptable.

Any suitable duly registered ship may carry out salvage operations.

Ship arrest

22 Which international convention regarding the arrest of ships is in force in your jurisdiction?

Portugal is a party to the 1952 Brussels Convention relating to the Arrest of Seagoing Ships.

23 In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?

According to the 1952 Brussels Convention a vessel sailing under the flag of a contracting state may only be arrested for a maritime credit as listed on article 1 of the Convention; vessels sailing under the flag of a non-contracting state may be arrested for a maritime credit as well as for any other credit justifying the arrest under national law.

In principle, the ship that gave rise to the credit may always be arrested; other assets registered in the name of the debtor may also be arrested.

Unless there is a lien on the vessel, only the assets registered in the name of the debtor may be arrested.

24 What is the test for wrongful arrest?

Civil law will apply to the evaluation of a wrongful arrest situation.

The arrest may be considered wrongful in case the claimant did not act as a normally prudent person when applying for the arrest or did not engage the main proceedings subsequent to the arrest within the established time limit.

25 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?

The interpretation of Portuguese courts has generally been that the vessel that gave rise to the claim may always be arrested, therefore

maritime court judges normally order the arrest of the vessel even if the bunker supplier did not have a direct commercial relationship with the owner.

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

The arresting party will not have to provide security. Our code of civil procedure foresees the possibility for the arrestor to be requested to provide security but to our knowledge the maritime court judges never requested the arrestor to provide such security.

27 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?

The amount of security the arrested party will have to provide will depend on the amount of the claim accepted by the judge. Such amount will be determined on the final arrest decision and will not be reviewed subsequently.

Security will be provided by way of a cash deposit or bank guarantee. The wording of the bank guarantee will be accepted by the judge, after the arresting party has been allowed to comment on such wording.

Any other form of guarantee will depend on the approval of the arresting party.

There is no relationship between the amount of the security and the value of the ship.

28 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?

The arrest application is submitted to court electronically, via the court databases.

The arrest application will have to include, besides the identification of all the relevant facts of the case, all the supporting documents, such as invoices and relevant correspondence exchanged between the parties, a power of attorney and a list of witnesses to be heard if the judge considers necessary; simply, the witnesses appointed will have to confirm the facts of the case before the court.

The power of attorney does not necessarily need to be legalised by apostille; it will be up to the lawyer to choose the most suitable way to obtain evidence that the person signing the power of attorney is duly empowered to represent the company. In any case, Portugal is a party to the Apostille Convention.

A scanned copy of the documents attached to the arrest application will be sufficient; nevertheless, if so requested the party may have to present the original documents to the court.

All documents should be translated into Portuguese, as the language of the proceedings is Portuguese. However, if it is not possible to have all the documents translated, at least the most relevant documents should be attached to the arrest application translated into Portuguese in order to allow the judge to analyse the claim, as the first detention order will be given within 24 hours after the submission of the arrest application solely on the basis of the arguments and documents attached to the arrest application.

The judge may order the party to attach the translation of any document of the arrest application considered relevant by the court. The party may also request for some additional time to translate the documents.

Translations do not need to be sworn by a public translator; lawyers may prepare certified translations of documents or obtain a written affidavit declaration from the translator.

The time necessary to prepare the arrest application will depend on the difficulty of the claim and on the availability of the supporting documents.

The arrest application will need to be sent to court by the end of the previous day, to be ready for presentation to the judge on the following morning, so that the first detention order may be given at the earliest during the afternoon of such day.

The submission of the arrest application should take place after the vessel has entered a Portuguese port.

Considering this timescale, all documents should be sent to the lawyer at least on the morning of the day the submission of the arrest

application to court will take place, to allow for the drafting of the arrest application and the preparation of the supporting documents and translations.

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

After the arrest has been granted the court will appoint a trustee for the vessel. Ship documents will be delivered to the harbour master office to prevent the vessel from leaving the port.

The trustee may be the master of the vessel, or eventually the ship agent.

The trustee appointed by the court will be responsible for the safety of the vessel. As long as the vessel has not been abandoned by the shipping agent, the crew or the owner, they will be in charge of the maintenance of the vessel. If the vessel is abandoned, the role of the trustee will be more active as the trustee will actually have to take the necessary measures for the safety of the vessel, such as appointing a watch keeper.

30 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 proceedings on the merits should be pursued before the competent court on the basis of the relationship between the parties giving rise to the arrest; the arrest is therefore possible only to obtain security.

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

The creditor will have to start arrest proceedings to obtain security. One vessel may therefore have various arrest proceedings pending, one for each creditor.

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

No special rules apply.

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

It will be possible to arrest bunkers providing the arrestor is able to provide evidence on ownership of the bunkers. In principle, only the assets of the debtor may be arrested, therefore the arrestor will have to produce evidence of ownership of the bunkers, for instance, presenting a copy of the respective invoice or delivery note.

Judicial sale of vessels

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

The arrestor or any interested party may apply for the judicial sale of the arrested vessel.

35 What 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 procedure for the judicial sale of the vessel is initiated with the request from an arrestor, or any other interested party, presenting the reasons for the judicial sale to take place (such as vessel abandoned by the crew or the owner or with no shipping agent; vessel in a dangerous situation or quickly losing her value).

Before giving any decision on such request the judge will notify the owner or the other arrestors or both.

The judge will decide how the judicial sale will take place, that is, through public auction with submission of written sealed bids or through private negotiation.

The judge will also appoint a person (or an auctioneer company) in charge of the judicial sale. Such person or company will have to announce the sale, provide for visits to the vessel, collect the various bids and submit them to the court for the judge's final approval.

The sale price will be established at 70 per cent of the evaluation of the ship made at the request of the court. If the highest bid falls below

such limit, permission for the sale will have to be given by the judge, after hearing the interested parties.

The highest bid will be accepted providing a down payment is made, normally 10 per cent of the sale price offered. The final sale documents will be signed between the buyer and the person in charge of the sale as representative of the court and against payment of the remaining sale price.

The vessel is sold 'as is where is', free of all charges and encumbrances that will be transferred to the proceeds of the sale.

The person in charge of the sale will be allowed a percentage of the sale price, around 5 per cent, as payment of services provided; this amount will be paid by the buyer.

One should count at least four to six months for the sale to be concluded following an application for sale. This period may be longer if the owner is domiciled abroad and the vessel has no master on board, as service of documents on the owner may take a long time.

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

The order of priority of claims against the proceeds of sale will depend on the law of the flag of the vessel.

The Portuguese judge will apply the law of the flag of the vessel to the ranking of credits.

37 What are the legal effects or consequences of judicial sale of a vessel?

The vessel sold through a judicial sale will be free of all charges and encumbrances.

All the rights of the creditors will pass to the proceeds of the sale.

All prior liens and encumbrances will be considered extinguished with the judicial sale of the vessel. The judge will give an order for all charges and encumbrances to be cancelled from the vessel's register.

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

In principle, yes. Within the European Union and on the basis of EU Regulation 1215/2012, of the Parliament and of the Council of 1 December 2012, on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, decisions from an EU court will be valid in another EU member state. For decisions from courts outside the European Union it will be necessary to start the procedure for the recognition of foreign decisions.

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

No. Portugal was a signatory to the 1926 International Convention on Maritime Liens and Mortgages but this convention was denounced and it has not been in force in Portugal since 13 May 2012.

Article 578 of the Portuguese Commercial Code will determine the ranking of maritime liens and mortgages.

Carriage of goods by sea and bills of lading

40 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? When does carriage at sea begin and end for the purpose of application of such rules?

The Hague Rules are in force in Portugal, but the subsequent protocols have never been ratified.

Nevertheless, Decree-Law No. 352/86, dated 21 October 1986, was established with the aim of updating the text of the Hague Rules, also including a definition of carriage as covering maritime transport from port to port and enlarging the time limit to act against the carrier to two years.

The Hague Rules will therefore apply from the moment the cargo is carried on board the vessel at the port of origin, until the moment the cargo is discharged at the port of destination. Decree-Law No. 352/86 will only apply to those situations that are not covered by the Hague Rules. The Rotterdam Rules have neither been ratified nor accepted.

Update and trends

The publication on 16 June 2017 of the government decision to approve the accession of the 1976 LLMC Convention and 1996 Protocol will certainly constitute a relevant update on Portuguese shipping law and is an important step forward in the national strategy for the sea.

41 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?

Portugal is a signatory to the Geneva CMR Convention as far as international road transport is concerned. Decree Law 239/2003, dated 4 October 2003, will apply to national road transport, very much in line with the CMR Convention.

Portugal is also a signatory to the 1999 Montreal Convention on carriage by air.

42 Who has title to sue on a bill of lading?

In principle, the parties identified on the bill of lading.

43 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?

Between the owner and the charterer, the terms of the charter party are fully binding.

As far as third parties are concerned, the terms of the charter party need to be incorporated in the bill of lading or at least the holder of the bill of lading needs to have been expressly informed of the contents of the charter party.

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

The carrier needs to be identifiable through the wording of the bill of lading; otherwise the vessel may be sued. An identity of carrier clause may be binding providing the terms of the bill of lading have been made known to the shipper.

45 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?

The content of the bill of lading is relevant as evidence of the established carriage contract.

However, the carrier needs to be identifiable through the wording of the bill of lading; if not, the vessel may be sued directly, in a kind of *actio in rem*. If the bill of lading is considered null and void, the vessel may also be sued directly.

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

The deviation should be considered reasonable and justified to avoid breach of contract.

47 What liens can be exercised?

According to articles 578, 580 and 582 of the Commercial Code:

- liens on the vessel: court costs, salvage award, mortgage on the ship, pilotage and tugging, port dues, crew wages, supplies and repairs to the vessel, insurance premiums, shipbuilding debts, cargo claims;
- liens on the cargo: court costs, salvage award, tax dues at the discharging port, transport and discharging expenses, warehousing expenses, general average contribution, insurance premiums; and
- liens on freight: court costs, crew wages, general average contribution, insurance premiums and cargo claims.

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

The carrier will be liable for cargo claims from the holder of the original bill of lading. Cargo claim limits will apply.

49 What are the responsibilities and liabilities of the shipper?

The shipper will be liable for all the damages resulting from the inaccuracy or omission of any relevant element on the bill of lading. The shipper is also liable for damages caused by the cargo.

Shipping emissions**50 Is there an emission control area (ECA) in force in your domestic territorial waters?**

Vessels in national waters, whether operating or not, will have to comply with the maximum sulphur content rules, as determined by Decree Law No. 170B/2014, dated 7 November, in force since November 2014, in line with Directive 2012/33/EU, dated 21 April 2012.

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

The cap on sulphur of fuel oil when the vessel is in port is 0.1 per cent; within the territorial waters of the Portuguese exclusive economic zone and emission control area, the maximum sulphur content has been 3.5 per cent since November 2014 but will become 0.5 per cent from 1 January 2020 onwards.

DSAM, a service of DGRM, is in charge of the verification through inspecting the vessel's books' registers.

The inspecting authorities will open a contravention file and apply the corresponding fine for vessels that do not comply with the established rules.

Jurisdiction and dispute resolution**52 Which courts exercise jurisdiction over maritime disputes?**

There is one maritime court established in Lisbon with competence for the whole continental Portuguese territory. On the islands of Madeira and the Azores, maritime disputes are decided by the local competent civil courts.

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

Service of court proceedings on a defendant is normally made through the court by way of a registered letter with acknowledgement receipt sent by the court secretariat to the defendant.

The defendant will have an additional time limit of five days to reply to the court if domiciled outside the district of the court; this time limit is increased to 15 days if the defendant is domiciled on the islands

of Madeira or the Azores. For defendants with a domicile outside Portugal, this additional time limit is increased to 30 days.

For defendants with domicile in the European Union, Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters will be used for service of documents.

The applicant will then have to translate the necessary service documents into the language of the defendant.

54 Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

No.

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

Portugal is a signatory country to the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards.

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

No special remedies are available; the defence will have to be made within the proceedings engaged elsewhere.

57 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?

Such a defence argument will have to be presented to a Portuguese judge. If the argument is accepted by the Portuguese judge, the proceedings in Portugal will be stopped.

Limitation periods for liability**58 What time limits apply to claims? Is it possible to extend the time limit by agreement?**

The normal time limit applicable in Portugal for breach of contract is 20 years; for some particular matters this time limit may be reduced depending on the nature of the claim. For example, on matters involving forwarding agents the time limit to start legal proceedings is 10 months.

The time limit applicable to liability in tort claims is three years starting from the date the claimant was aware of the right to claim, basically the date of the incident giving rise to the claim. This time limit may be increased to six years in cases involving criminal liability.

In principle, it will not be possible to extend the time limit; it will be necessary to start legal proceedings or at least to request the court for a judicial service of documents on the defendant to interrupt the time limit.

Extensions of the time limit to start proceedings are only acceptable within maritime carriage under a bill of lading providing the carrier agrees to such extension.

Ana Cristina Pimentel & Associados, Sociedade de Advogados, SP, RL

Ana Cristina Pimentel

acp-113051@adv.oo.pt

Av. Elias Garcia, 176 - 2º Esq.
1050-103 Lisbon
Portugal

Tel: +35 1 217 819 990
Fax: +35 1 217 930 615

59 May courts or arbitral tribunals extend the time limits?

No.

Miscellaneous

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

The MLC 2006 has been ratified by Portugal as of 12 January 2015. On 1 November 2015 Law No. 146/2015 entered into force, implementing the necessary rules for compliance with the International Labour Organization Convention and EU Directives.

Port state control rules were updated to include inspections in compliance with MLC 2006 rules.

61 Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

In principle, yes. The applicant will have to justify to the court that the situation giving rise to the new economic conditions is not simply due to the normal risk of the business and was unexpected and unforeseeable. It will be easier if such possibility is already included in the initial contract.

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

It is worth mentioning the limitation of liability under the bill of lading which, according to national law, is €498,80 per unit or package mentioned in the bill of lading.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Banking Regulation
Cartel Regulation
Class Actions
Commercial Contracts
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation

Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans

Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally



Online

www.gettingthedealthrough.com



Shipping
ISSN 1759-0744



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law