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# Shipping

**Cyprus: Law & Practice**

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## Law and Practice

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## 1. Maritime and Shipping Legislation and Regulation

### 1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Supreme Court of Cyprus has exclusive jurisdiction to act as an Admiralty Court sitting as a court of first instance (original jurisdiction) and as a court of appeal (appellant jurisdiction). By virtue of sections 19(a) and 29(2)(a) of the Courts of Justice Law of 1960 (Law No 14/1960), the Admiralty Court is vested with and exercises the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its admiralty jurisdiction (as they existed immediately before the independence of Cyprus in 1960). Consequently, the English Administration of Justice Act of 1956, defines the admiralty jurisdiction of the Admiralty Court. Further, the Cyprus Admiralty Jurisdiction Order 1893 regulates the procedure before the Court.

Also, the District Courts have limited jurisdiction on maritime claims, but only on referral by the Supreme Court under certain circumstances. Judgments issued by District courts can be appealed to the Supreme Court.

Pursuant to Section 1(1) of the English Administration of Justice Act 1956, the Supreme Court has jurisdiction to hear and determine any claim:

- to the possession or ownership of a ship or to the ownership of any share therein;
- arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- in respect of a mortgage of or charge on a ship or any share therein;
- for damage done by a ship;
- for damage received by a ship;
- for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the Master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- for loss of or damage to goods carried in a ship;
- arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- in the nature of salvage;
- in the nature of towage in respect of a ship;

- in the nature of pilotage in respect of a ship;
- in respect of goods or materials supplied to a ship for her operation or maintenance;
- in respect of the construction, repair or equipment of a ship or dock charges or dues;
- by a Master or member of the crew of a ship for wages;
- by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- arising out of an act which is or is claimed to be a general average act;
- arising out of bottomry;
- for the forfeiture or condemnation of a ship or goods which are being or have been carried or have been attempted to be carried in a ship or for the restoration of a ship or any such goods after seizure or for droits of Admiralty.

The jurisdiction may be invoked by:

- an action in rem against the vessel or property in question, if this is lying within the territorial jurisdiction of the court; such territorial jurisdiction extends to the territorial waters, but in practice the arrest of a vessel or the service upon her of a writ in rem is not possible unless the vessel calls at a Cyprus port; and
- an action in personam if the defendant has his or her residence or a place of business within Cyprus or if the cause of action arose in Cyprus or if an action arising out of the same incident or series of incidents is pending or has been determined in the Court.

### 1.2 Port State Control

In Cyprus, the system and powers of port state control are regulated by:

- the Merchant Shipping (Port State Control) Law of 2011 to 2015 (Law 95 (I)/2011) as amended for the purpose of harmonising the Law with the European Union directive titled “Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port state control” as amended;
- the Merchant Shipping (Port State Control) Notification 2015;
- the Merchant Shipping (Port State Control-Duration of Night) Order of 2011;
- the Merchant Shipping (Port State Control-Geographical Areas of Ports and Anchorages) Order of 2017;
- the Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Law of 2004 (Law No 131(I)/2004) as amended; and
- the Relevant Circulars of the Shipping Deputy Ministry of Cyprus, issued from time to time.

Cyprus is also a signatory to the Paris Memorandum of Understanding and the Mediterranean Memorandum of Understanding on Port State Control.

The Shipping Deputy Ministry to the President of Cyprus (SDM) is the competent port state control authority in Cyprus. It carries out all inspections of foreign ships in Cypriot ports, verifying that crew, ship and equipment comply with the requirements of international conventions on safety, pollution prevention, operation, management and security, qualifications, living conditions and terms of employment. The Port State Control officers and officials have the authority to board vessels and inspect them if necessary, investigate and copy materials, interject and/or detain ships with insufficiencies following inspection or have hazardous materials that may create safety, health or environmental issues. Also, authorities in some cases may not allow entry to ships into Cyprus' ports if the ship Masters and operators do not abide with the law and do not provide information as requested by the competent authorities and, furthermore, may impose administrative fines.

Also, the Marine Accidents Investigation Committee (MAIC) and the SDM are the authorities responsible for the investigation of marine casualties in Cyprus.

When an accident occurs involving a ship flying the Cyprus flag anywhere in the world, or a ship flying a foreign flag within Cyprus's territorial and internal waters, the Master or the owner/manager or the agent of the ship must notify the MAIC, by virtue of the Marine Accidents and Incidents Investigation Law of 2012 (Law No 94 (I)/2012) (which transposed the EU Directive 2009/18/EC into Cyprus' legislation). The MAIC is responsible for the investigation of all types of marine accidents (casualties and incidents) and any marine accident notifications should be addressed to the MAIC.

The Marine Accidents and Incidents Investigation Law of 2012, gives the MAIC extensive powers, including access to any relevant area or casualty site and to any evidence or witnesses. However, according to the SDM Circular 17/2014, the SDM will continue to be responsible for investigating marine accidents for certain types of ships, ie: (a) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts/crafts not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes, and (b) fishing vessels with a length of less than 15 metres.

### **1.3 Domestic Legislation Applicable to Ship Registration**

The laws and regulations which govern matters relating to the registration of ships and related transactions in the Register of Cyprus Ships or in the Special Book of Parallel Registration are

the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law of 1963 (the Law), as amended and the provisions of the Government Policy on the Registration of Ships under the Cyprus flag, which is established pursuant to the provisions of the Law.

Applications for the registration of ships and for the related transactions in the Register of Cyprus Ships or in the Special Book of Parallel Registration must be submitted to the Registrar of Cyprus Ships, who is stationed at the Head Office of the Shipping Deputy Ministry in Limassol (the Registrar). However, the provisional registration of ships and other transactions (other than the permanent and the bareboat-charter registration) may be effected abroad by a consular officer of the Republic of Cyprus upon instructions issued by the Registrar. In such cases, the transactions are recorded by the Registrar in the Register as from the date and time they have been effected by the consular officer.

### **1.4 Requirements for Ownership of Vessels**

A ship may be registered under the Cyprus flag if either:

- more than half (50%) of the shares of the ship are owned by Cypriot citizens; or
- by citizens of other Member States of the European Union or the European Economic Area (EEA) (who, in the instance of not being permanent residents of the Republic of Cyprus, will have to appoint an authorised representative in the Republic of Cyprus); or
- all (100%) shares of the ship are owned by one or more corporations established and operating in accordance with the laws of the Republic of Cyprus or any other EU or EEA Member State which has its registered office, central administration or principal place of business within the EEA, or by corporations registered outside the European Union or the EEA, but controlled by Cypriot citizens or citizens of a Member State.

If the corporation is not incorporated and located in Cyprus, either it must appoint an authorised representative in Cyprus or the management of the ship must be entrusted in full to a Cypriot or EU ship-management company located in Cyprus.

Applications for the registration of ships must be made through a Cypriot lawyer and the ship must be surveyed by an approved classification society at the time of registration.

The corporation is deemed to be controlled by Cypriots or citizens of any other Member States when more than 50% of its shares are owned by Cypriots or citizens of any other Member States or when the majority of the directors of the corporation are Cypriot citizens or citizens of any other Member State.

An authorised representative may be a Cypriot citizen, or a citizen of any other Member State, who is resident in Cyprus or a partnership/corporation/branch established in accordance with the laws of Cyprus which has its place of business in Cyprus.

Also, vessels under construction are registrable in Cyprus.

## 1.5 Temporary Registration of Vessels

In Cyprus, the following three types of registration are allowed:

- provisional;
- permanent; and
- bareboat-charter registration (parallel).

Provisional registration of a ship may remain in force for six months. Thereafter, it may be renewed once, for a further three-month period.

Dual registration and flagging out are permissible in Cyprus. The basis of such types of registration is the bareboat-chartering of a ship by the ship-owner to the charterer on the condition that the respective laws of the underlying registry and of the bareboat registry (i) explicitly permit dual registration and (ii) contain preventive covenants whereby matters relating to ownership and to mortgages over the ship shall be exclusively governed by the laws of the ship's underlying register. In addition, the bareboat charterer must undertake to maintain the same safety standards to the ship, even if the chosen bareboat register applies safety standards that are lower than those applied by the ship's underlying register.

## 1.6 Registration of Mortgages

The Register of Mortgages is entrusted by the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law of 1963 (the Law) to the Registrar of Cyprus Ships and that Register contains a description of the vessel, the owner of the vessel, the particulars of the mortgages registered on the vessel and the registered mortgagees.

A Cyprus mortgage consists of a statutory mortgage and collateral deed of covenants (the Mortgage). The documentary requirements for registration of a Mortgage on a Cyprus Ship are:

- a written application by a local lawyer;
- resolutions of directors, on behalf of the ship-owners;
- a duly executed Power of Attorney, on behalf of the ship-owners;
- a duly executed Power of Attorney, on behalf of the Mortgagee;
- the duly executed Mortgage;

- a Certificate of Directors and Secretary (if the ship-owner is a Cyprus-registered Company) or a duly executed Incumbency Certificate (if the ship-owner is a foreign entity).

## 1.7 Ship Ownership and Mortgages Registry

Although the Cyprus Ships' Registry is open to the public, accessibility is limited to physical searches at the Ships' Registry itself upon payment of a search fee.

Further, a transcript of registration of a registered vessel can be ordered by the public (upon payment of the prescribed fee) evidencing, inter alia, the particulars of the vessel, the name and address of the legal owner of the vessel and the details of any registered mortgage (ie, the date and time of its registration and the details of the mortgagee).

## 2. Marine Casualties and Owners' Liability

### 2.1 International Conventions: Pollution and Wreck Removal

In the event of pollution, the legal regime that the Republic of Cyprus will apply is the use of international conventions, EU Law and also national law. These, inter alia, are:

- the Merchant Shipping (Ship Source Pollution) Law of 2008 (Law 45(I)/2008), as amended;
- the International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC) and its Protocols of 1976 and 1992 and Amendments of 2000;
- the International Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) 1975 and its amendments;
- the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 and its Protocols of 1976 and 1992 and subsequent amendments;
- the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Convention) 1972, as amended;
- the International Convention for the Prevention of Pollution from Ships (MARPOL) 1973 as amended by Protocol 1978 and its Amendments;
- the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) 1989;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER) 2001; and
- the International Convention on Liability and Compensation for Damage in Connection with the Carriage of

Hazardous and Noxious substances by Sea (HNS) 1996 (Law No 21(III)/2004).

As regards wreck removal, the Nairobi International Convention on the Removal of Wrecks 2007 (Law No 12 (III)/2015) entered into force in Cyprus on 22 October 2015. Further, the Wrecks Law Cap 298 regulates wrecks in Cyprus.

Also, as regards both wreck removal and pollution, Cyprus is a signatory and a state party to the United Nations Convention on the Law of the Sea (UNCLOS) 1982.

## 2.2 International Conventions: Collision and Salvage

With regard to collision cases, the International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels and Protocol of Signature, Brussels of 23 September 1910, was extended to Cyprus on 1 February 1913 when it was still a British colony and still continues in force until today. Also, the Maritime Convention Act of 1911, derived from the Law of the United Kingdom, applies to Cyprus by virtue of Articles 19(a) and 29(2)(a) of the Cyprus Courts of Justice Law of 1960, as amended.

Further, (i) the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision of 1952 (Law No 31(III)/1993), (ii) the International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation 1952 (Law No 32(III)/1993) and (iii) the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) (Law No 18/1980), as amended, have been ratified by Cyprus.

The legal regime in relation to salvage is (i) the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea and Protocol of Signature, Brussels, 23 September 1910 (extended to Cyprus on 1 February 1913) and (ii) Part III of the Wrecks Law, Chapter 298.

## 2.3 1976 Convention on Limitation of Liability for Maritime Claims

The LLMC Convention (1976 Convention and its 1996 Protocol) was ratified by the Republic of Cyprus by virtue of the Convention on Limitation of Liability for Maritime Claims of 1976 and of its Protocol of 1996 Amending the Said Convention (Ratification) and for Matters Connected Therewith Law of 2005 (Law 20(III)/2005).

## 2.4 Procedure and Requirements for Establishing a Limitation Fund

Pursuant to Article 11 of the LLMC Convention, any person alleged to be liable may constitute a fund with the court or other

competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 (which set the general limits and the limit for passenger claims, respectively) as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

The ratified Law 20(III)/2005 (see **2.3 1976 Convention on Limitation of Liability for Maritime Claims**), provides that a person wishing to set up a limitation fund, as provided for in Article 11 of the LLMC Convention, may set up such a fund in the Supreme Court of Cyprus, upon application made to the Supreme Court. In the case of a person wishing to set up a limitation fund by lodging a bank guarantee with the Supreme Court of Cyprus, the Supreme Court shall decide on the characteristics and conditions which such a guarantee must meet.

## 3. Cargo Claims

### 3.1 Bills of Lading

Cyprus has adopted, by way of succession, the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (extended to Cyprus on 2 June 1931).

Further, the UK Bills of Lading Act of 1855 applies in Cyprus by means of Articles 19 and 29 of the Courts of Justice Law of 1960 (Law No 14/1960). Additionally, the Hague Rules are applicable in Cyprus through the Carriage of Goods by Sea Law, Chapter 263.

However, the Hamburg Rules and the Rotterdam Rules have not yet been ratified in Cyprus.

### 3.2 Title to Sue on a Bill of Lading

Cyprus has adopted the UK Bills of Lading Act 1855 to regulate the transfer of rights under a contract of carriage. Any party to a contract of carriage can sue for damages against the carrier, as well as consignees of goods named in a bill of lading and endorsees of a bill of lading, having acquired full proprietary rights upon or by reason of such consignment or endorsement. Ownership of the cargo will also depend on the way the parties deal with each other, and such dealings may or may not include the transfer of the bill of lading. Such a transfer may extinguish the rights of the original shipper or any intermediary, but, in respect of matters for which the shipper still remained at risk, may entitle him or her to sue.

### 3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Pursuant to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC Convention), a ship-owner (as defined in the LLMC, a ship-owner shall mean the owner, charterer, manager and operator of a sea-going vessel) may limit his or her liability for the claims set out in Article 2 of the LLMC Convention, which includes claims for loss or damage to property.

The limitation amounts of each incidence are stated in Articles 6 and 7 of the LLMC Convention. However, a person liable shall not be entitled to limit his or her liability if it is proved that the loss resulted from his or her personal act or omission committed with the intent to cause such loss or recklessly and with the intent that such loss would probably result.

The Merchant Shipping (Ship-owners' Insurance for Maritime Claims) Law of 2012 which transposed Directive 2009/20/EC on insurance against maritime claims (the Law) provides that an operator of a vessel (being the owner of a sea-going ship or any other person, such as the manager or the bareboat charterer, who has assumed responsibility for operating the ship from the ship-owner and who, on assuming such responsibility, has agreed to undertake all the duties, responsibilities and commitments that are imposed by that Law) shall be required to have insurance:

- covering that ship for maritime claims subject to limitation under the LLMC Convention for an amount, for each incident, equal to the relevant maximum amount for the limitation of liability as laid down in the LLMC Convention;
- the existence of which is to be proved by a valid certificate carried on board the ship issued by the relevant insurance provider.

Further, section 502 of the UK Merchant Shipping Act 1894 (which applies in the legal system of Cyprus pursuant to the Courts of Justice Law of 1960 - the Act), provides that a ship-owner of a sea-going vessel shall not be liable to make good to any extent whatever any loss or damage happening without his or her actual fault or privity where any goods, merchandise, or other things whatsoever taken in or put on board his or her ship are lost or damaged by reason of fire on board the ship. Also, section 503 of the Act provides that the liability of the owner of any ship for (inter alia) damage to any goods caused without actual fault or privity is limited to certain extents.

### 3.4 Misdeclaration of Cargo

Pursuant to Carriage of Goods by Sea Law, Cap. 263 and provided the contract of carriage is governed by the Hague Rules, the shipper shall be deemed to have guaranteed to the carrier the

accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him or her. The shipper shall indemnify the carrier against all losses, damages and expenses arising or resulting from the inaccuracies in such particulars.

The shipper has also a common-law duty to notify the carrier of any dangerous cargo. If the shipper fails to declare dangerous cargo, then the carrier may also have a claim against the shipper for losses incurred as a direct consequent of the mis-declaration, eg, for damage to the vessel.

### 3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The Limitation of Actionable Rights Law No 66(I)/2012 (the "Limitation Law") is the general law prescribing time bars for all legal actions to be instigated in the Cyprus courts, including admiralty actions. Pursuant to the Limitation Law, the time bar period depends on the nature of the claim and indicatively the following time bars apply:

- in a claim of breach of contract, six years from the date on which the cause of action accrued;
- for civil wrongs (with certain exceptions including negligence, and breach of statutory duty), six years from the day of completion of the basis of the claim;
- in a claim in negligence, three years from the time the plaintiff sustained damage or where the negligence caused fresh damage continuing from day to day, from the time the damages cease to occur.

The period of limitation can be suspended, in (inter alia) the following circumstances:

- if, in the last six months of the applicable period of limitation, the claimant was prevented from commencing proceedings due to a moratorium or *force majeure*; and
- if, in the last six months of the applicable period of limitation, the defendant or any other person for whom the defendant is responsible prevented the claimant from instigating proceedings.

Further, the period of limitation can be reset in (inter alia) the following circumstances:

- if the obligor recognises in writing a right to an action against him or her;
- in the event of a monetary debt, if the obligor pays at least 50% of the aggregate owed sum, including any accrued interest;
- with the commencement of arbitration proceedings;
- if the court orders that the arbitration award is annulled or ceases to have effect.

As soon as the limitation period expires, the court no longer has jurisdiction unless a party with a legitimate interest submits an application and, as a result, the court may extend the prescribed limitation period up to two years on an equitable and reasonable basis.

## 4. Maritime Liens and Ship Arrests

### 4.1 Ship Arrests

Cyprus is not itself a party to the International Convention Relating to the Arrest of a Sea-Going Ship, 1952. However, the English Administration of Justice Act of 1956 ratifies this Convention and the Act applies to Cyprus by virtue of its Constitution and Articles 19 and 29 of the Courts of Justice Law of 1960 (Law No 14/60).

### 4.2 Maritime Liens

Cyprus law recognises the following maritime liens that give rise to an action in rem against and a right to arrest a vessel:

- lien for damage, which is a lien for the amount of a claim arising only in tort against a vessel as a result of her negligent navigation or operation (such as a collision);
- lien for salvage;
- bottomry;
- lien of the Master, officers and crew for wages and other emoluments; and
- reimbursement to the Master of disbursements made by him or her out of his or her own pocket on behalf of the owners.

The Supreme Court has jurisdiction to hear and determine all the claims of Section 1(1) of the English Administration of Justice Act 1956, which are all described as “maritime claims” (see **1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts**) and for which arrest of a vessel can be requested. Maritime liens enjoy certain advantages over certain other permitted actions in rem of Section 1(1) of this Act, in the time of creation of the lien, in priority and in the enforceability of the security.

### 4.3 Liability in Personam for Owners or Demise Charterers

A vessel may be arrested at any time, irrespective of who its owner is, in an action in rem in respect of a claim related to: her possession or ownership (section 1(1)(a) of the English Administration of Justice Act 1956 – the Act) or a claim by a co-owner as to possession, employment or earnings of that ship (section 1(1)(b) of the Act) or a claim under a registered mortgage (section 1(1)(c) of the Act) or a claim for her forfeiture or condemnation (section 1(1)(s) of the Act) or a claim by a maritime lien holder or chargee of that vessel.

In all other claims of section 1(1) of the Act, an arrest can be made in an action in rem, where (a) the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the vessel and (b) at the time when the action is brought, that the vessel is beneficially owned as respect all the shares therein by that person.

### 4.4 Unpaid Bunkers

A bunker supplier can arrest a vessel in an action in rem, provided that its claim falls within the permissible in rem action under the Administration of Justice Act 1956 (in particular section 1.1(m) – “any claim in respect of goods or materials supplied to a ship for her operation or maintenance”).

Although the supply of bunkers may give rise to a maritime claim, that claim is not a claim whereby a vessel may be arrested irrespective of who its owner is (see **4.3 Liability in Personam for Owners or Demise Charterers**). Therefore, an arrest for unpaid bunkers can only be made in an action in rem, where (a) the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the vessel and (b) at the time when the action is brought, that the vessel is beneficially owned as respect all the shares therein by that person.

Thus, in the case of bunkers supplied by a bunker as an intermediary whereby the ship-owner/demise charterer has no contractual link and therefore no in personam liability, that bunker supplier may have no right to arrest. While some physical suppliers have argued that the contractual relationship is established by the bunker receipt, this, on its own, is unlikely to give rise to a contractual relationship without clear wording, a course of dealing or other evidence to establish an intended contractual relationship.

### 4.5 Arresting a Vessel

A warrant for the arrest of a vessel can only be applied for at the time of, or at any time after, the commencement of proceedings in rem against that vessel. Such proceedings are commenced by the issue of a writ of summons. The name, the place of residence, occupation of every claimant and defendant, and a concise statement of the claim made or the relief or remedy sought, should be included in the structure of the writ of summons.

In order to arrest a vessel, the plaintiff must file an ex parte application which must be supported by an affidavit. The affidavit must state the nature of the claim and the aid of the court is required, since the claim remains unsatisfied.



Practice has now been established that the plaintiff is required to make full and frank disclosure of all the material facts of the case which may influence the judgment of the court.

The claimant is best advised to engage the services of and be represented by a local lawyer. A power of attorney or other form of written authority is not required, either by the court or the local lawyer, in the case of a foreign litigant. A retainer in writing in the form provided by the Cyprus Civil Procedure Rules is required in the case of a local plaintiff.

The documents supporting the claim may not be notarised or apostilled; however, they must be in a language that is understood by the court, otherwise they have to be officially translated into Greek. Where possible, original documentation should be provided, although the court may order an arrest even though some original documentation is not available.

The court is following the practice of requiring the arresting party to put up security for the issue of warrant of arrest. The amount of security ordered varies and it usually depends on the particular judge dealing with the case, the nature of the claim made in the action in which the arrest is ordered and the extent of that claim.

## 4.6 Arresting Bunkers and Freight

It is not possible to arrest bunkers themselves in Cyprus and, where the bunker supplier asserts its claim on the basis of a retention of title, this does not give rise to arrest as it is not a maritime claim under section 1(1) of the English Administration of Justice Act 1956. However, retention of title clauses in contracts may be difficult to enforce and are unlikely to be enforced where the bunkers have already been used or have been mixed with others. Even if such a claim could be effective, it would require an injunction to detain the vessel until the bunkers were returned.

Also, it is not possible to arrest freight itself, except perhaps in the case of freight at risk, by arresting the cargo in respect of which the freight is due.

## 4.7 Sister-Ship Arrest

Cyprus law permits the arrest of a ship other than the one in respect of which the claim arose in certain circumstances.

Specifically, section 3(4) of the English Administration of Justice Act of 1956 applicable to Cyprus allows a claimant to invoke the admiralty jurisdiction of the Supreme Court by an action in rem and to obtain a warrant of arrest in respect of certain claims either:

- against the vessel in connection with which the claim arose, provided that the beneficial owner of that vessel at the time when the action is brought is the person who is personally liable to the claimant in respect of the claim, as owner or charterer of the vessel; or
- any other ship which is beneficially owned by that owner or charterer.

## 4.8 Other Ways of Obtaining Attachment Orders

Apart from a formal arrest, when it is not possible to file an admiralty action in rem against a vessel, Article 32 of the Courts of Justice Law, Law 14 of 1960, empowers the courts to make interim orders to protect assets that may be at risk or alienation or in order to preserve a particular status quo pending the final determination of an action, provided that the following conditions are all satisfied:

- a serious question arises to be tried at the hearing;
- there appears to be a “probability” that the plaintiff is entitled to relief; and
- unless an order is made it would be difficult or impossible to carry out complete justice at a later stage.

Interim measures include freezing orders with domestic or worldwide effect and “Chabra” type orders. Thus, a vessel may be effectually detained by the issue of a freezing order in the context of the main action in the civil courts instituted against the owner.

Further, Section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law (Law 45/63), provides that the Supreme Court may, on the application of any interested person and if the Court thinks fit, make an order prohibiting for a time specified any dealing with the ship or any shares therein.

A vessel may also be detained by Cyprus competent authorities for breaches under various international maritime conventions or local laws (for ex. The Merchant Shipping (Port State Control) Laws of 2011 and 2015).

## 4.9 Releasing an Arrested Vessel

Pursuant to the Cyprus Admiralty Jurisdiction Order of 1893, the court may, by order and upon a written application, direct the release of the arrested vessel upon such terms as to security as to the court shall deem fit.

Therefore, the owner or interested party has to apply to the court for the release of the arrested vessel. The form of security which is usually requested by the court is a bank guarantee issued by a licensed financial institution in Cyprus. Unless the arresting party consents, it is unlikely that the court will accept a club Letter of Indemnity (LOI) or a foreign bank's bank guarantee.

## 4.10 Procedure for the Judicial Sale of Arrested Ships

Pursuant to Rule 74 of the Cyprus Admiralty Jurisdiction Order of 1893, the Supreme Court, either before judgment (*pendente lite*) or after final judgment, on the application of any party, by its order can appoint the Admiralty Marshal of the Court or any other person to appraise the arrested vessel or to sell that vessel, either with or without appraisal. The sale may be ordered to be either by public auction (the sale procedure adopted in most cases) or private treaty.

The sale is advertised in the local press and in appropriate shipping publications. The proceeds from the sale of a ship are paid into the court and, upon an application by any judgment creditor, will be distributed to all judgment creditors who claimed a share of the proceeds, in order of priority.

Whenever an arrest order is issued by the Supreme Court, the arrested vessel is placed under the safe custody and supervision of the Admiralty Marshal and/or the Deputy Admiralty Marshal(s) who are appointed pursuant to rule 5 of the Cyprus Admiralty Jurisdiction Order (1893) (in practice, the Court appoints the Admiralty Marshal in almost all cases). The Admiralty Marshal acts as the custodian/bailee of the arrested vessel, having the duty to ensure that the property and crew of the vessel are safe and in good condition or health at all times (and to comply with the relevant orders issued by the Court in the course of the legal proceedings from which the arrest order originates).

The ordinary order of priority of claims is as follows.

- Marshal expenses in connection with the arrest, custody and sale.
- Recoverable legal costs of:
  - (a) the arresting party up to and including the arrest; and
  - (b) the party who obtained the order for the appraisal and judicial sale.
- Possessory liens.
- Maritime liens.
- Claims of the Republic of Cyprus for fees, dues and tonnage taxes, in the case of a Cyprus-flag vessel.
- Claims under registered mortgages.
- Claims under foreign or unregistered mortgages.
- Administrative fines imposed by the Competent Authorities of Cyprus.
- Other maritime claims.

## 4.11 Insolvency Laws Applied by Maritime Courts

The Companies Law, Cap. 113 as amended (the Law), contains proactive self-help provisions afforded to companies, similar to the US Chapter 11 protection. It is a process whereby the

protection of the court is obtained to assist the survival of the company and essentially allows a company to restructure with the approval of the court.

Specifically, in cases where the court considers that:

- a company is, or is likely to be, unable to pay its debts; and
- any resolution regarding the liquidation of the company has not been approved and published in the Official Gazette of the Republic; and
- no decree has been issued for the liquidation of the company,

may, upon a request submitted to it, appoint an examiner to the company for the purpose of examining the state of affairs of the company and the performance of such duties in relation to the company as may be imposed by or in accordance with the provisions of the Law.

The court shall issue an order only if it is satisfied that there is a reasonable prospect of survival of the company and of all or any part of that undertaking as an active entity (going concern). The court granting an order for the appointment of an examiner places the company under court protection for a certain period of time. The examiner formulates a scheme of arrangement, which requires the approval of at least one class of creditors before it can be brought before the court for approval.

The question as to whether an order on the arrest and judicial sale of a vessel owned by owners that are under the proceedings mentioned above can be granted has not yet been decided before the Supreme Court. However, the Law provides that for as long as a company is under the protection of the Court, the following (*inter alia*) provisions apply:

- no liquidation proceedings may be instituted against the company, nor may a resolution for liquidation be adopted in relation to that company, and any resolution thus adopted shall have no effect;
- no seizure in the hands of a third party, suretyship, seizure or execution shall take place in respect of the property or objects of the company, except with the consent of the examiner;
- in the event that any claim against the company is secured by a mortgage, lien, lien or other lien or pledge on or affecting all or any part of the company's property, objects or income, no action may be taken for the liquidation of all or any part of this security, except with the consent of the examiner;
- no measures may be taken to recover goods held by the company in accordance with any lease agreement, except with the consent of the examiner.

## 4.12 Damages in the Event of Wrongful Arrest of a Vessel

Damages for “wrongful arrest” may be awarded in favour of the owner of the arrested vessel, if the arresting party has acted in bad faith or through gross negligence (relevant English law principles are followed).

## 5. Passenger Claims

### 5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The international conventions and domestic laws applicable to Cyprus for maritime passenger claims are mainly:

- the Limitation on Liability for Maritime Claims Convention 1976 as amended by its Protocol (LLMC Convention). Pursuant to Article 2.1(b) (and subject to certain exceptions mentioned in Articles 3 and 4 of the LLMC Convention), claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage, shall be subject to limitation of liability;
- the Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway;
- the Merchant Shipping (Liability of Carriers of Passengers by Sea in the Event of Accidents) Law No 5(I)/2014 (which transposed Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents into national law; although Cyprus is not a contracting member of the Athens Convention, Law No 5(I)/2014 incorporates provisions of that Convention). It sets out limitation of liability for death, personal injury for loss and damage to luggage and vehicles;
- the Shipwrecked Passengers Law, Chapter 297. It sets out limitation to the amount recovered for expenses related to the harbouring and forwarding of shipwrecked passengers.

See 3.5 Time Bar for Filing Claims for Damaged or Lost Cargo for the time bar for filing court claims in Cyprus for bringing a claim in breach of contract and in negligence.

In addition, pursuant to Article 16 of the Athens Convention, any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

## 6. Enforcement of Law and Jurisdiction and Arbitration Clauses

### 6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Cyprus Courts will generally recognise and enforce a jurisdiction clause stated in bills of lading. However, they may still consider whether there are adequate grounds for displacing the prima facie presumption of insisting on the parties honouring their bargain. This presumption may be rebutted on “good and sufficient reasons”.

In relation to the jurisdiction clauses, the Cyprus Courts will take into consideration the following factors:

- in which country is the evidence on the matters in dispute situated or is readily available;
- the relevant benefits of each alternative jurisdiction in terms of facilitating a better trial at less cost;
- to what extent the foreign law applies to the matters in dispute and, if this is the case, to what extent it is substantially different from Cyprus law;
- the country to which each of the parties is linked and how close this connection is;
- whether the defendant sincerely wishes the issue in question to be tried somewhere else or whether he or she is just seeking a procedural advantage; and
- to what extent the plaintiffs will be prejudiced in the case of filing proceedings abroad.

As a general rule, an express choice of law by the contracting parties will be recognised and upheld by the Cyprus courts. On 20 April 2006, Cyprus ratified the Rome Convention by Law 15(III) of 2006 and, since 17 December 2009, Regulation (EC) No 593/2008 (“Rome I”) has applied. In accordance with Article 5 of Rome I, in the absence of an express or implied choice of law, the proper law shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

### 6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading

General words in a bill of lading incorporating into it all the terms and conditions of another document, such as a charterparty, may not be sufficient to incorporate an arbitration clause contained in that document into the bill of lading in order to make its provisions applicable to disputes arising under the bill of lading. However, in the instance that a bill of lading contains specific words which attempt to incorporate an arbitration

clause of a charterparty, the Cyprus Courts may recognise and enforce the arbitration clause on the condition that the provisions in the charterparty are worded in such a manner which makes sense in the context of the bill of lading and they do not conflict with any express term contained in the bill of lading.

### **6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Cyprus has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Law No 84/1979) (the “New York Convention”).

Upon accession of Cyprus to the New York Convention on 29/12/1980, Cyprus as a signatory has made a specific reservation of reciprocity: “The Republic of Cyprus will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another Contracting State; furthermore it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law.”

Domestic arbitration proceedings in Cyprus are governed by the Arbitration Law of 1944, Chapter 4 and international arbitration proceedings are governed by The International Arbitration in Commercial Matters Law 101/1987, which is almost identical to the UNCITRAL Model Law.

### **6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction**

Although a foreign jurisdiction clause does not deprive the Cypriot courts of their jurisdiction, strong reasons must be presented as to why such a clause should be disregarded. The existence of an arbitration or a foreign jurisdiction clause must in any case be expressly disclosed when applying *ex parte* for the arrest; such information is considered as relevant for establishing the *in rem* jurisdiction of the Admiralty Court, hence necessary for the Court to reach the right conclusion regarding the arrest. Non-disclosure of such a clause may result in the discharge of the order and the release of the vessel.

### **6.5 Domestic Arbitration Institutes**

There is no domestic arbitration institute in Cyprus specialising in maritime claims.

The most prominent arbitral institutions in Cyprus are:

- the Cyprus Arbitration and Mediation Centre;
- the Cyprus Branch of the Chartered Institute of Arbitrators; and
- the Cyprus Eurasia Dispute Resolution and Arbitration Centre.

### **6.6 Remedies Where Proceedings Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses**

Proceedings that have commenced, notwithstanding the foreign jurisdiction clause or arbitration clause, can be challenged by the defendant by an application for stay.

Where the application for stay has been filed, a Cyprus court is not bound to grant a stay but rather it has a discretion whether to do so or not. In practice, however, a stay of proceedings will be granted by the court unless a strong cause for not doing so is shown and the burden of proving such a cause lies with the party requesting the stay. When exercising its discretion, the court should take into account all the circumstances of the case.

## **7. Ship-Owner’s Income Tax Relief**

### **7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner’s Companies**

On 29 April 2010, the Cyprus Parliament enacted the Merchant Shipping (Fees and Taxing Provisions) law of 2010 (which applied retroactively from 1 January 2010 for ten years). By a decision of the European Commission, this tonnage tax law has been extended for another ten years. On 15 April 2020, the Cyprus Parliament enacted the Merchant Shipping (Fees and Taxing Provisions) (as amended) Law of 2020, which applies from 1 January 2020 to 31 December 2029 (the Law). The tonnage tax law is fully compatible with the requirements of the EU *acquis* on State Aid to Maritime Transport.

The tonnage tax system (TTS) is based on the payment by the qualified persons of tonnage tax on the basis of the net tonnage of ships and provides full exemption from all income taxes that would normally be imposed under the Cyprus income and defence tax laws.

Pursuant to the Law, the TTS is available to qualifying ship-owners, charterers (bareboat, demise, time and voyage) and ship managers (providing technical and/or crewing services) who respectively own, charter or manage a qualifying ship engaged in a qualifying shipping activity and in ancillary activities to maritime transport.

The tax exemption for qualifying ship-owners covers:

- profits from the use of a qualifying vessel;
- profits from the disposal of a qualifying vessel and/or share and/or interest in it.

Profits from the disposal of shares in a ship-owning company;

- dividends paid out of the above profits at all levels of distribution;
- interest income relating to the financing/maintenance/use of a qualifying vessel and the working capital, excluding interest on capital used for investments.

Also, in the event that a qualifying owner earns income from a qualifying shipping activity and at the same time earns income from a non-qualifying activity, that income, that is not subject to TT, is subject to corporation tax at the normal rate of 12.5%. If mixed income is earned (TT and corporation tax), separate books must be kept.

## 8. Implications of the Coronavirus Pandemic

### 8.1 COVID-19-Related Restrictions on Maritime Activities

Cyprus Government was, and still is, actively supporting the recommendations from the IMO, the European Union, the International Labour Organization and the International Chamber of Shipping by adopting measures early enough to facilitate crew changes in Cyprus ports, loading and discharging operations, whilst ensuring the safety of public health.

Initially, the crew restrictions constituted of a complete ban of entry into Cyprus of all persons, with certain exceptions. Subsequently, the complete ban of entry was relaxed and pursuant to the Decree issued by the Ministry of Health of Cyprus titled “the Infectious Diseases (Determination of Measures against the Spread of COVID-19 Coronavirus Decree (No 30)) of 2020”, crew changes are possible at Cyprus ports subject to certain conditions being satisfied and procedures followed. The ease in restrictions included the facilitation of crew changes of seafarers of any nationality who served on cargo vessels, crew members of oil platforms as well members of cruise ships in lay-up or leisure crafts. This facilitation of crew changes continues today.

The relevant decrees issued by the Ministry of Health of Cyprus permit the long-term stay in anchorage of vessels, including cruise ships (warm lay-up).

Also, the Minister of Transport, Communications and Works of Cyprus announced several restrictive measures for both the Cyprus Ports Authority and Contractors, Operators, and licensed agents for port services and port installations to implement. These relate to the disembarkation of passengers and crew, the crew of commercial vessels performing international voyages – who must return to Cyprus and strictly comply

with the instructions of the Medical and Health Services – and the movement of members of the UNIFIL Command based onshore.

### 8.2 Force Majeure and Frustration in Relation to COVID-19

Cyprus law recognises the defence of *force majeure*. This is a contractual defence and in order for it to apply, it must be expressly provided for in the relevant contract which governs the relationship between the parties.

Further, the circumstances giving rise to the *force majeure* must be clearly mentioned in the contract and the relevant facts must fit into those circumstances. In order that a party may be able to invoke *force majeure* in respect of COVID-19, the relevant contract must clearly set out that the performance of that party's obligations thereunder may be postponed or excused in circumstances where the party is prevented from such a performance as a result of the COVID-19 pandemic or any other pandemic (even if COVID-19 is not specifically mentioned).

Further, the circumstances that are said to give rise to *force majeure* must not be induced by that party's own actions or omissions, ie, those circumstances must be beyond that party's control. If an appropriate *force majeure* clause has not been inserted in a contract, a party would be unable to rely on an event of *force majeure*, save where such an event leads to a frustration of the contract. The doctrine of frustration is a common-law principle which has been transplanted and codified into Cyprus Law under section 56 of the Cyprus Contract Law (Cap. 149) and states that a contract will be deemed automatically discharged where it becomes illegal or otherwise impossible to perform (by an event unforeseeable at the time of the contract). However, if performing the contract would be merely financially undesirable, a party will not be able to argue that the contract is frustrated and therefore terminated immediately.

## 9. Additional Maritime or Shipping Issues

### 9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

On 6 May 2019, the Council of Ministers announced the approval of a draft bill providing for the establishment of Admiralty and Commercial Courts of Cyprus. This new bill constitutes the fundamental basis of reforming the judicial system of Cyprus by providing fast and effective remedies for Commercial and Admiralty disputes. In particular, the new bill provides that (a) the Commercial Court will adjudicate specific commercial affairs disputes, namely those where the value of the claim exceeds EUR2 million, and these cases shall be subject to adju-

dication via fast-track procedures and (b) the Admiralty Court will adjudicate shipping and maritime matters which will also be subject to the fast-track procedure, regardless of the value of the claim.

On 16 December 2019, Cyprus successfully prolonged its Tonnage Tax and Seafarer Scheme for the next ten years (until 31 December 2029). The Scheme provides competitive advantages, including a wider list of eligible vessels and ancillary activities and discount rates for environmentally friendly vessels.

On 27 September 2019, the Merchant Shipping (Fees and Dues with respect to Ocean-Going Commercial Cyprus Ships) Regulations of 2019 (P.I. 322/2019), were entered into force whereby the Ocean-Going Commercial Ships' initial registration fees were abolished. Also, there is no cost for the issuance of the initial certificates of Ocean-Going Commercial Ships.

The Cyprus Shipping Deputy Ministry (SDM) has announced a new range of green incentives to reward vessels that demonstrate effective emissions reductions. From fiscal year 2021, annual tonnage tax will be reduced by up to 30% for each vessel that demonstrates proactive measures to reduce its environmental impact, ensuring ship-owners are rewarded for sustainable shipping efforts.

The Cyprus flag will provide a "discount" on its Tonnage Tax System by comparing what emissions reductions are required of a vessel, with what it actually achieves. For example:

EEDI - vessels that have achieved further reduction of their attained EEDI compared to the required Energy Efficiency Design Index (EEDI) (Regulation 20/MARPOL ANNEX VI) will obtain the respective annual tonnage tax rebate of between 5% to 25%.

IMO DCS - the environmental incentive relating to the IMO Data Collection System (DCS) applies to ships of 5,000 GT and above that comply with Regulation 22A of MARPOL ANNEX VI. Ships which demonstrate a reduction of the total fuel oil consumption in relation to the distance travelled, compared to the immediately previous reporting period, will obtain an annual tonnage tax rebate of between 10% to 20%.

Alternative fuels - vessels using an alternative fuel and achieving CO<sub>2</sub> emissions reductions of at least 20% in comparison with traditional fuels will receive a rebate on annual tonnage tax of between 15% to 30%. This will be reviewed on a case-by-case basis, following review of documents submitted from a classification society.

# CYPRUS LAW AND PRACTICE

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*Contributed by: Kyriacos Scordis and Sofi Mylona, Scordis Papapetrou & Co LLC*

**Scordis Papapetrou & Co LLC** is a leading and dynamic Cyprus law firm whose roots date from 1922. The firm and its associated entities comprise over 35 qualified lawyers and over 70 other professionals of various disciplines, working out of offices in Nicosia, Limassol, Athens, Moscow and Valletta. The firm offers, together with its affiliates and subsidiaries, in addition to other traditional services of a law firm, a wide range of services, such as international litigation, arbitration and

dispute resolution, corporate and commercial, mergers and acquisitions, shipping, estate and tax planning and trusts, company/fund formation and administration, fiduciary and trustee services, accounting and tax advisory, and financial services. To date, the firm and its affiliated entities have acted in and advised on a multitude of multimillion corporate, shipping and commercial matters as well as major landmark court and arbitration cases.

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