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Israel: Law & Practice

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practiceguides.chambers.com

2021

ISRAEL

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 Admiralty Court in Israel applies the admiralty law and jurisdiction adopted by the English High Court of Admiralty in 1890, and consequently the Admiralty Courts Acts of 1840 and 1861 (legislation left over from the time of the British Mandate). However, this jurisdiction is naturally subject to subsequent local legislation.

The most important local law affecting the Admiralty Court's jurisdiction is the Shipping (Vessels) Law - 1960. This Law deals, inter alia, with:

- the registration of vessels;
- their transfer and devolution;
- liens;
- mortgages;
- loss of qualification;
- striking off the register;
- the effect of the registration of rights, nationality and flag;
- the name of the vessel.

The provisions that affect the jurisdiction of the Admiralty Court are laid out in Section 40, which provides for debts to be secured by a first lien (on the vessel, freight and accessories), and in Section 41, which lists the type of debts that can be secured and the order of priority of the liens.

The Shipping (Vessels) Law does not expressly refer to the position under the Admiralty Courts Acts, although it does retain existing legislation concerning the creation or transfer of a mortgage or charge upon a vessel.

It is accepted that the creation of these statutory liens also confers complementary jurisdiction in rem on the Admiralty Court.

1.2 Port State Control

The Israel Ministry of Transport has established the Shipping and Ports Administration (SPA) to regulate all activities relating to Israel's maritime activities.

The SPA is responsible for the safety of Israeli shipping, including:

- testing and registering large vessels and small craft;
- licensing foreign vessels;
- training, testing, and licensing maritime personnel and overseeing shipboard discipline;
- ensuring that vessels observe international standards for minimum crew strengths;
- supervision of the mechanical condition and safety of merchant marine vessels;
- developing and licensing harbours;
- the operation and maintenance of lighthouses along the coast;
- preventing marine pollution; and
- providing economic consultancy services to all bodies in the sector with a focus on establishing favourable conditions for the Israeli merchant marine.

Additionally, the SPA is responsible for maritime traffic, moorings and ports.

Port Regulations provide very detailed regulations relating to the conduct of vessels, safety, and order in the Israel ports. The State of Israel implemented the Port State Control (PSC) inspection system in 1997, in accordance with International Maritime Organization (IMO) and International Labour Organization (ILO) resolutions.

PSC inspections are conducted to ensure that foreign vessels calling at Israeli ports comply with international regulations and conventions. The SPA is responsible for all PSC activities, and aims to inspect each and every tanker and passenger ship arriving at Israeli ports, as well as 25% of the container ships and general cargo, with an emphasis on bulk carriers.

Specific documents must be filed in respect of each of the activities governed by the SPA, referred to above.

The SPA does not require periodic filings except in respect of certification following special surveys.

1.3 Domestic Legislation Applicable to Ship Registration

The principal law governing the registration of vessels in Israel is the Shipping (Vessels) Law – 1960. Other relevant legislation includes the Shipping (Registration & Marks) Law – 1962, the Shipping (Regulations of Building & Measurements) Law – 1961 and the Vessels (Mortgage & Transfer) Ordinance – 1948.

Under Israeli law, all Israeli vessels must be registered, using the same process without distinction as to the size or purpose of the vessel concerned. Nonetheless, in practice, small boats, namely, vessels less than seven metres in length, are exempted from registration in the registry and the details of the boat are maintained in a separate small boats' registry. Vessels under construction in Israel or abroad may also be registered in certain circumstances. Separate registries are kept for each port.

In accordance with the policy followed by the Registrar, the following types of vessels will not be approved for registration or change of use:

- boats of up to seven metres in length designed for private use, which are more than five years old;
- vessels of between seven metres and 24 metres in length, designed for private use, which are more than ten years old;
- boats of up to seven metres in length designed for commercial use and which are over three years old;
- vessels designed for commercial use that are over eight years old.

An exceptions committee is authorised to approve a vessel that does not meet the above criteria, provided that the vessel has been maintained in particularly good condition.

As noted, Israel limits registration under its flag based on the age of the vessel applying for registration. The goal of the regulations is to maintain the proper level of safety of vessels in Israel and prevent the importation of obsolete and unsafe vessels.

In addition, the Shipping (Foreign Vessel Under Control by Israeli Interests) Law – 2005, provides that any vessel that is not eligible for registration in the Register in accordance with the conditions specified above, but is controlled by Israeli interests (as these terms are defined in this Law) must be registered in Israel in a registry book, which is customarily referred to as the Secondary Register (or the Grey Register), regardless of its ownership registration in a foreign registry. A vessel so registered shall be subject to the technical supervision of the Israeli Ministry of Transport and to the manning regulations with respect to the employment of Israeli crew members. Nonetheless, various exemptions are available in respect of Israeli vessels, set out in Section 6 of the Shipping (Seamen) (Manning of Ships and Tugs with Israeli Crew) – 2016, for example, in circumstances relating to the area of trade of the ship or the security situation relating to the voyage of the vessel, circumstances concerning the chartering of the vessel or unusual circumstances concerning the technical operation of the vessel, or the owner's ability to control the vessel, and more.

Israeli law does not provide for bareboat-charter registration of foreign ships under the Israeli flag nor does it provide for the bareboat-charter registration of Israeli flag ships under a foreign flag.

1.4 Requirements for Ownership of Vessels

A vessel owned by the State of Israel, an Israeli citizen or a company registered in Israel or owned by a foreign company, where more than 50% of the shares in the vessel are owned by an Israeli citizen, must be registered in the Israeli vessel registry. Israeli law allows the registration in Israel of a vessel, less than 50% of which is Israeli-owned, upon a special application to the Minister of Transport. Similarly, where more than 50% of a vessel is Israeli-owned, the owner may apply to the Minister of Transport for permission not to register the vessel.

A non-Israeli may register an interest in an Israeli vessel, provided that this registration does not preclude the vessel from being registered as an Israeli vessel and, as noted, a foreign vessel controlled by Israeli interests must be registered in Israel.

Vessels under construction in Israel or abroad may also be registered in certain circumstances.

1.5 Temporary Registration of Vessels

Temporary registration of vessels is permissible in accordance with Section 16 of the Shipping (Vessels) Law – 1960 in respect of vessels located in foreign ports. The temporary registration is effective for six months but may be extended for up to one year. In all cases, the temporary registration lapses within seven days of the vessel first reaching an Israeli port.

Dual registration is not permitted, except in the case of foreign vessels controlled by Israeli interests. See **1.3 Domestic Legislation Applicable to Ship Registration**.

1.6 Registration of Mortgages

The process for registration of a mortgage before the Registrar of Vessels is a simple commercial financing procedure. The agreement, setting out the degree of the mortgage and conditions for repayment, must be drafted in writing and one copy thereof delivered to the Registrar, and entered into the vessel's file.

After co-ordinating an appropriate meeting, the mortgagor and mortgagee appear before the Registrar, with the original agreement or a "faithful copy" thereof, as attested to by the signature of a lawyer or an accountant on the copy of the agreement. Both parties must appear personally before the Registrar at the same time, complete a mortgage deed and sign it before the Registrar. This is after the Registrar has assigned a suitable mortgage number, which is subsequently recognised as the mortgage on the vessel (this number will appear on the mortgage deed and all other deeds relating to this mortgage). A party may appoint a representative to act on their behalf pursuant to a notarised power of attorney. If the vessel-owner is a company or corporation, the company or its representatives must also provide the Registrar with the minutes of the corporate management meeting, stating explicitly that a legal quorum of members has resolved to register the lien or mortgage in the Mortgage Register. The minutes must be duly attested to by a lawyer or accountant.

When both parties have signed the mortgage deed before the Registrar, the Registrar approves the deed and registers it in the Register on the page corresponding to the vessel in question.

The same procedure is followed when the owner of the vessel wishes to "increase the mortgage amount", "transfer the mortgage", "change the terms of the mortgage", or "delete the mortgage" from the Register of Vessels.

If a lien is imposed on a vessel by virtue of a competent court decision, and a written order is produced to the Registrar, the Registrar will record the court's order in the Register of Vessels, without being under an obligation to notify the vessel-owner that such an entry has been made.

Finally, it should be noted that, if the grantor of the mortgage (the mortgagor) is a company, the mortgage must also be registered as a charge with the Registrar of Companies.

All documents submitted to the Registrar may be drawn up in English or Hebrew.

1.7 Ship Ownership and Mortgages Registry

According to Section 109 of the Shipping (Vessels) Law – 1960, the Vessels Registry and all documents filed with the Registrar in connection with the registration, cancellation of registration or other transaction in connection with a vessel shall be open for inspection by any person. Additionally, under the Freedom of Information Law – 1999, every Israeli citizen or resident has the right to obtain information from a public authority in accordance with the provisions of the law. The public authority is not under any obligation to provide information that is a commercial or professional secret or which has economic value, information on commercial or professional matters connected with a person's business or information which may infringe a person's privacy.

In practice, the Registrar will provide access to all entries (registrations, mortgages, charges, pledges); however, access will not be provided to the underlying documents. The Registrar will respond by email with details of the information required.

The fee for an application to the SPA to inspect or verify any entry in the Registry of Vessels currently stands at ILS476.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

Israel is a party to the following International Conventions relating to pollution:

- the International Convention for the Prevention of Pollution from Ships, 1973 as modified by Protocol, 1978 (MARPOL 73/78);
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, (CLC PROT 1992);
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 92);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 as amended (OPRC 1990);
- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995.

Local legislation relating to pollution includes:

- Prevention of Sea-Water Pollution by Oil Ordinance [New Version] -1980;
- Regulations for the Prevention of Sea-Water Pollution by Oil (Guarantee for Fine Payments and Cleaning Expenses) – 1983;
- Regulations for the Prevention of Sea-Water Pollution by Oil (Marine Environment Protection Fee), 1983.

The Prevention of Sea-Water Pollution by Oil Ordinance applies to Israeli territorial waters and inland waters and its provisions may be applied to non-Israeli vessels outside Israeli territorial waters which threaten to pollute Israeli territorial waters. The Ordinance specifies actions to be taken in the case of oil discharges and creates a Fund for the Prevention of Sea-Water Pollution with the goal of creating financial resources for the fight against and prevention of pollution of sea water and the seashore and for their cleansing and inspection. In cases of discharge of oil into the sea, the Minister of Transport may, by notice, request the owner of the vessel to take specified measures aimed at preventing, stopping or reducing the discharge. A "marine environment protection fee" may be imposed on owners or operators of vessels, as well as on owners or operators of installations on land or at sea from which oil might be discharged or allowed to escape into the sea. The remainder of the Ordinance and regulations promulgated thereunder set out offences, fines and penalties as well as legal and procedural matters, and indeed in recent years there have been cases where the Ministry of the Environment has enforced the Prevention

of Sea-Water Pollution by Oil regulations by bringing criminal charges against infringing owners.

With regard to wrecks, the Ports Ordinance – 1971 provides that the Israel Ports Company may demand that owners remove a vessel which has been lost or abandoned in Israeli waters where that vessel poses a danger to navigation or docking.

Further, the Wrecks and Salvage Fees Ordinance – 1926 provides that where any services are rendered wholly or in part within the waters of Israel in saving life from any vessel, or in assisting any vessel that is wrecked, stranded or in distress, or saving the cargo or apparel of that vessel, or any part thereof, there shall be payable to the salvor, by the owner of the vessel, cargo, apparel or wreck, a reasonable amount of salvage, to be determined in the case of dispute.

The Ordinance provides for determination of salvage disputes by arbitration. Section 20(3) of the Ordinance provides that the decision of the arbitrators shall, for the purposes of execution, have the effect of a judgment of the Magistrate's Court.

At the same time, where salvage is performed outside the waters of Israel, the applicable legislation is Section 6 of the Admiralty Court Act 1840 which provides the Admiralty Court with jurisdiction to decide all claims and demands whatsoever "in the nature of salvage for services rendered to any ship… whether such ship may have been within the body of a country or upon the high seas at the time when the services were rendered… in respect of which the claim was made", as well as Section 6 of the Admiralty Court Act 1861 which grants the Admiralty Court similar jurisdiction in respect of life salvage.

It should be noted that Israeli law has still not resolved the question whether the Admiralty Court possesses jurisdiction in the event of the salvage of life without the accompanying salvage of property.

Finally, the order of priority of the maritime lien for salvage including life salvage is determined by Section 41 of the Shipping (Vessels) Law – 1960, although it has been argued that the Court has discretion to deviate from the order proscribed in the section on grounds of equity.

2.2 International Conventions: Collision and Salvage

With regard to matters of salvage, see **2.1 International Conventions: Pollution and Wreck Removal**.

In terms of collision, Israel has ratified the International Regulations for Preventing Collisions as Sea, 1972 (COLREG 72) and incorporated them into Israeli law via the Ports (Preventing Collisions at Sea) Regulations 1972.

Israel is not a party to the Salvage Convention 1989.

Section 41(7) of the Shipping (Vessels) Law – 1960 creates a statutory lien for damages resulting from collisions or damage caused by the vessel to port installations, buildings and dry docks, as well as loss or damage to cargo and to passengers' personal effects.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

The Israeli Shipping Law (Limitation on a Ship-Owner's Liability) – 1965 adopts the International Convention relating to the liability of Owners of Sea-Going Ships (Brussels, 10 October 1957).

As Israel has not ratified the LLMC 1976, no limitation is available for those claims introduced by the LLMC 1976 and not found in the 1957 Convention.

Accordingly, the types of claims subject to limitation of liability are those set out in Articles 1(a), 1(b) and 1(c) of the 1957 Convention.

- Loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship.
- Loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible. Provided, however, that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit their liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers.
- Any obligation or liability imposed by any law relating to the removal of a wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such a ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

The claims which are not subject to limitation of liability are as set out in Article 1(4) of the 1957 Convention, namely:

- claims for salvage or claims for contribution in general average; and
- claims by the Master, by members of the crew, by any servants of the owner on board the ship or by servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependants, if under the law governing the contract of service between the owner and such servants the owner is not entitled to limit their liability in respect of such claims.

The Israel Shipping (Limitation on a Ship-Owner's Liability) (Amendment) Law – 1987, amended the 1965 Law referred to above by adopting the 1979 Protocol and replacing Gold Francs with Special Drawing Rights (SDR). Pursuant to the 1979 Protocol, the limitations of liability applicable in Israel are SDR 66.67 per tonne for cargo claims and SDR 206.67 per tonne for personal claims.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Owners can apply to the Admiralty Court to establish a Limitation Fund, calculated as set out in **2.3 1976 Convention on Limitation of Liability for Maritime Claims**. The Court will give orders as to the ship-owner's deposit and the manner in which notices will be published to creditors.

It should be noted that the Israeli courts accept the deposit of funds in Israeli currency, in a sum determined by the court. However, parties will often agree on the provision of local bank guarantees and, in some cases, foreign bank guarantees. Further, as the Isra Admiralty Court has accepted letters of undertaking issued by P&I Clubs as security for the release of vessels from arrest (in essence, in a manner similar to the position taken in the English case Atlantik Confidence [2014] 1 Lloyd's Rep. 586), it seems likely that they would follow the same approach and accept letters of undertaking issued by P&I Clubs in lieu of limitation funds.

Once a fund is constituted, claims by local creditors must be filed within 30 days, whereas foreign creditors are given 60 days to file their claims.

According to Section 9(a) of the Law, constitution of a fund creates a bar to other actions.

Finally, Section 9(a) of the 1987 Law provides that: "where the applicant has constituted a limitation fund in accordance with an authorisation under Section 7, the Court shall, on his application, direct a stay of all operations for the execution of a judgment against him as to a claim subject to limitation of liability, and the Court may direct a stay of all hearings, of a claim as aforesaid on which judgment has not yet been given if it considers that such should be done in order to ensure the just distribution of the fund constituted as aforesaid. Where the Court has directed a stay of execution proceedings or a stay of hearings the claim shall be deemed to have been filed under Section 13."

Section 13 of the Law refers to the filing of a claim against the fund.

3. Cargo Claims

3.1 Bills of Lading

Israel has adopted the Hague-Visby Rules by virtue of the Carriage of Goods by Sea Ordinance – 1926 as amended in 1992.

By virtue of the above Ordinance as amended in 1992, the Hague-Visby Rules apply to any bill of lading in respect of carriage of goods by sea in any vessel:

- from a port in Israel to another port, whether in Israel or outside of Israel;
- from a port in a country which is party to the Hague Rules or the Hague-Visby Rules, or when the bill of lading was issued in a country that is party to the Rules;
- when they apply to the contract of carriage included in the bill of lading or the bill serves as proof of its existence, according to a term stipulated in a contract or under the laws of the country the laws of which apply to that contract; and
- to a port in Israel, when the laws of Israel apply to such carriage whether according to the contract of carriage, according to another agreement between the parties, or according to the determination of the Court.

3.2 Title to Sue on a Bill of Lading

As a rule, the lawful holder of the bill of lading may bring suit under the bill of lading. There may be cases, however, where a party who is a named consignee under a non-negotiable bill of lading may have a cause of action against the maritime carrier, for example, the buyer of the cargo under a sale contract, who has not received by way of transfer or endorsement a right to assert a claim under the bill of lading.

It should be noted that, according to Article 8 of the Ordinance (and without derogating from Article I(b) and Article III part 4 of the Hague-Visby Rules and any other provisions of law), the party to whom the cargo was consigned (the consignee) and the party to whom the bill of lading was duly endorsed (the endorsee) are considered, as applicable, as a party to the bill of

lading, and as such are entitled to all the rights arising from the transaction pursuant to which the bill was made, and subject to the obligations referring to that transaction in exercising their aforementioned rights.

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

The limitation of liability regime available to carriers is as set out in the Hague-Visby Rules, as amended by the 1979 Protocol, and where appropriate the provisions of the Israeli Shipping (Limitation on a Ship-owner's Liability) Law – 1965, as amended in 1987. See also **2.3 1976 Convention on Limitation of Liability for Maritime Claims** and **9.1 Other Jurisdiction-Specific Shipping and Maritime Issues**.

3.4 Misdeclaration of Cargo

In accordance with the Hague-Visby Rules, Article III(5), the shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by them, and the shipper is required to indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to this indemnity in no way limits the latter's responsibility and liability under the contract of carriage to any person other than the shipper.

It should be noted that, as part of the effort to deal with safety problems at sea and on shore arising from incorrect declarations of weight of containers, Israel has taken steps through its Port Regulations to ensure the reliability of weights of containers by scrutinising SOLAS VGM (Verified Gross Mass) declarations issued by shippers, as well as the weighing of all trucks entering the port.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Israel has adopted the Hague-Visby Rules by virtue of the Carriage of Goods by Sea Ordinance 1926 as amended in 1992. In accordance with these Rules, the limitation period for filing a claim against a maritime carrier for damage/shortage of cargo is one year from the date of arrival of the cargo at its destination or from the date the cargo was due to reach its destination. This limitation period also applies to subrogation claims brought by insurance companies.

As noted, Israel has incorporated the Hague-Visby Rules into its law. In accordance with Article III 6 of the Rules, subject to paragraph 6 bis, the carrier and the vessel shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. According to Israeli case law, the time bar is not merely a procedural matter but a substantive right and therefore the limitation period may only be extended if the parties agree to this voluntarily.

It will be recalled that Article 6 bis. provides that an action for indemnity against a third person may be brought even after the expiry of a year if brought within the time allowed by the law of the court seized of the case; however, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against themselves.

In the Supreme Court case ALA 9444/00 Bellina Maritime S.A. Monrovia v Menorah Insurance Co Ltd, the Court held that a subrogated insurer cannot benefit from the provisions of Article III 6A of the Rules (namely, the provision which forms an exception to the short prescription period of one year set out in Article III6).

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

Israel is not a party to either the 1952 or the 1999 Arrest Conventions.

For historical reasons, the jurisdiction of the Israeli Admiralty Court is equivalent to that applied by the English High Court of Admiralty in 1890. Similarly, the admiralty practice is that set out in the Vice-Admiralty Rules of 1883. In Israel, the District Court of Haifa sits as the Admiralty Court in in rem cases, although other competent civil courts have jurisdiction over in personam or commercial or civil disputes in accordance with the amount claimed and rules regarding place of domicile. Currently, claims below ILS2.5 million fall within the purview of the Magistrate's Courts, and higher claims are heard by the District Court. In the event that the Admiralty Court considers that it does not have jurisdiction to hear a case, it may decide to transfer the matter to another competent (civil) court. Appeal from the District Courts and the Admiralty Court lies to the Supreme Court of Israel.

4.2 Maritime Liens

The Shipping (Vessels) Law – 1960, Section 40 deals inter alia with debts to be secured by a first lien (on the vessel, freight and accessories). Section 41 lists the type of debts which are capable of being secured as a maritime lien and the order of priority amongst the liens.

The Law does not expressly refer to the position under the Admiralty Courts Acts, although it does retain existing legislation concerning the creation or transfer of a mortgage or charge upon a vessel. It is accepted that the creation of these statutory

liens also confers complementary jurisdiction in rem on the Admiralty Court, but the Court has not yet dealt with the issue of the ranking of priorities in the event of a conflict between the provisions of Section 41 of the Shipping (Vessels) Law and accepted principles of general admiralty law. In any event, Section 41 sets out the debts in the following order of priorities: expenses of judicial sale, pilotage and port fees, expenses of guarding and maintaining the vessel, Master and crew wages, salvage, personal injury, collision, necessaries.

It should be noted that, according to Section 53 of the Shipping (Vessels) Law – 1960, debts accumulated by a charterer are dealt with in the same way as those accumulated by an owner. More precisely, the section states: "The provisions of this chapter shall apply also to a vessel operated by a charterer or some other person who is not the owner thereof, unless he obtained the vessel unlawfully and the fact was known to the creditor". Consequently, it is arguable, pursuant to Section 53, that debts created by a charterer during the period of a charterparty will vest a maritime lien, or at minimum a statutory action in rem, against the vessel. However, this matter has not yet been decided by the highest instance in Israel.

With regard to foreign maritime liens, it should be noted that the Israeli Admiralty Court will look at the proper law of the claim in order to determine the validity of a lien.

4.3 Liability in Personam for Owners or Demise Charterers

The Admiralty Court has concurrent jurisdiction in rem and in personam. While there is no statutory requirement that owners be personally liable in order for a right in rem to arise, recent case law suggests that the Admiralty Court will not enforce a maritime lien in the absence of personal liability on the part of the owner (ALA 851/99 M/V Ellen Hudig (2004)). Similarly, in C.F. 45897-02-12 M/V Emmanuel Tomasos (2014) the actual bunker supplier's claim was denied on the ground that only the contractual supplier who had contracted with the owners could be a creditor under the necessaries lien. Likewise, in AF 24399-05-15 M/V Nissos Rodos (2016) it was held that the local agent who had been nominated by the operator of the vessel, and paid the port dues for the numerous calls of the vessel at Haifa Port, was not entitled to enforce a maritime lien for "port dues of any kind… paid by a third party" on the ground that the agent had no agreement with the owners and that therefore the owner was not personally liable to pay the agent.

Equally, in AF 22358-02-14 M/V Captain Harry (2016), a supplier's claim was dismissed due to a lack of owner's liability; nonetheless, the Admiralty Court noted that there were different types of maritime liens and that, for example, the maritime lien for salvage existed even if the owners were not liable for the circumstances leading to the salvage event. On appeal, the Supreme Court held that the claim for unpaid bunkers could not be heard on the merits due to the principle of res judicata (C.A. 7138/16 M/V Captain Harry (2018)).

4.4 Unpaid Bunkers

It should be noted that bunker supplies are regarded as necessaries both under Section 41(8) of the Shipping (Vessels) Law – 1961 and under Section 5 of the Admiralty Court Act 1861, and accordingly a bunker supplier may arrest the vessel in the event of breach of contract to pay for the bunkers. Nonetheless, according to the judgment handed down in C.F. 45897-02-12 O.W. Bunker Malta Ltd. v M/V Emmanuel Tomasos (referred to in **4.3 Liability in Personam for Owners or Demise Charterers**), the lien, and consequently the right of arrest, is limited to the party which directly entered into the supply agreement with the vessel and does not follow into the hands of sub-contractors who supplied the fuel.

The rationale behind the distinction between the supplier of the goods and sub-contractors is that the supplier has collateral to secure the payment for the goods, namely the vessel itself. Under this construction, the vessel may proceed with its regular voyage, while the supplier need not wait for other collateral, thereby delaying and interfering with the operation of the vessel. By comparison, the sub-contractor (namely, the physical supplier) does not have a direct arrangement with the vessel, and will receive their payment from the party ordering the goods and not the vessel, its owners or crew. The grant of security over the vessel to a sub-contractor is not required in order to secure the mobility of the vessel. The court also noted that the recognition of the right of each one in the chain of sub-contractor suppliers to realise a maritime lien would probably lead to the situation whereby the vessel would be required to pay a number of entities for the same supplies, contrary to the vessel's expectation that it would have to pay one supplier the agreed consideration for these supplies.

4.5 Arresting a Vessel

A claimant seeking to arrest a vessel will usually file an ex parte application supported by an affidavit and supplement it with a claim in rem before the court, asking for the arrest of the vessel as security for their claim. The grounds for arrest must satisfy the provisions of the Admiralty Courts Acts. Once the court is persuaded that there is a cause of action and that the damage caused to the applicant by not granting the warrant of arrest would be greater than the damage caused to the defendant by the grant of the order, it will issue a warrant of arrest, which will be valid for six months. To become effective, the warrant of arrest is served on the Master, the Port Authority and the Border Police. Usually, service is effected by electronic means.

A ship-owner anticipating this process may file a caveat against arrest undertaking to provide security in lieu of arrest.

There is a court fee, equal to 2.5% of the amount being sought, for filing the claim. Of this, 1.25% is payable upon filing the claim in rem or the application for arrest, whichever is earlier, and 1.25% is payable seven days before the first evidentiary hearing.

Hearings in the Admiralty Court are conducted in accordance with the rules of procedure set out in the Vice-Admiralty Rules 1883 which relate inter alia to service, appearances, filing preliminary acts in collision cases, preliminary proceedings, caveats, the trial and execution of judgments and the duties of the Marshal; nonetheless, insofar as these Rules fail to deal with an issue, it is dealt with in accordance with the Israeli Rules of Civil Procedure. Parties exchange pleadings, discovery of documents and engage in evidentiary hearings in the usual way.

In accordance with rules of procedure and Supreme Court precedent, particularly C.A. 168/93 and ALA 201/93 Fullwood Marinated Inc v Lofobunker Co S.A. (The "Arctic Hunter") and, except in exceptional cases, claimants in admiralty proceedings seeking the arrest of a vessel will not be required to put up any security for the arrest. According to the aforementioned case, an exceptional circumstance might be if the application for a warrant of arrest is based on documents the veracity of which is doubtful. Nonetheless, the court will take into account the property rights of the ship-owner, if appropriate, in accordance with Section 3 of Basic Law: Human Dignity and Liberty and the need to balance these fundamental rights against the claimant's right to an ex parte order of arrest, and where necessary do so by ordering counter-security in favour of the ship-owner.

4.6 Arresting Bunkers and Freight

According to Section 10 of the Vice Admiralty Rules 1883, a writ in rem may be served upon cargo, freight or other property if the cargo or other property is on board a ship. Conceivably, an issue of title would arise in the event of an attempt to arrest unpaid bunkers.

4.7 Sister-Ship Arrest

Israel does not recognise the right of a plaintiff to arrest a vessel which is not directly connected with the cause of action, ie, claims against sister-ships or associated vessels (although any such vessels may be attached within the framework of in personam proceedings in the civil courts) as previously described.

This was confirmed in the AF 6731-02-17 M/V Huriye Ana (2017), where the Admiralty Court held that it had no jurisdiction to order a "sister-ship arrest".

Nonetheless, within the context of a civil suit against the ship-owner as opposed to admiralty proceedings, and subject to strong evidence, the court could order the "corporate veil" to be lifted and consequently the attachment of sister ships or vessels owned by affiliated companies; it should be noted that attachment orders in civil proceedings are comparable to arrest orders, except in so far as concerns collateral security.

4.8 Other Ways of Obtaining Attachment Orders

In contrast to the in rem proceedings described in **4.5 Arresting a Vessel**, a vessel or other asset may be attached in ordinary civil proceedings. In such cases, claimants are required to provide a Letter of Undertaking on their own behalf, as well as a Third-Party LOU to reimburse the defendant should the temporary application be set aside and/or the claim be dismissed on the merits, causing the defendant to incur a loss. The court may exempt the claimant from providing a Third-Party LOU if it deems it just and proper to do so.

4.9 Releasing an Arrested Vessel

An owner or interested party may produce a P&I Club LOU as acceptable security in lieu of arrest. Similarly, an Israeli bank guarantee is acceptable security, as is the deposit of the claimed amount in the court treasury.

4.10 Procedure for the Judicial Sale of Arrested Ships

Once a vessel has been arrested in accordance with the rules and judgment has been entered in rem against the vessel and/or ship-owner, the court, usually at the request of the claimant, will examine whether the ship-owner is able to pay the sum awarded. In the event that it concludes that they are incapable of paying this sum, the court will order the sale of the vessel.

It should be noted that there have been cases, particularly where the vessel is deteriorating in value, guarantees have not been produced in lieu of arrest, or crew and suppliers have not been paid, where the court at the request of a claimant will order the appointment of a receiver in order to preserve the vessel, her crew and cargo. Normally, this process will shortly afterwards be followed by an order of sale with or without judgment in favour of the claimant. In rare cases, the court has ordered that a vessel be sold by private contract. In all these cases, the sale proceeds will serve as substitute security for the claim, pending judgment on the claim in rem and subsequently subject to an order as to priorities in accordance with Section 41 of the Shipping (Vessels) Law – 1960.

All of the maritime liens set out in Section 41 (except "necessaries") rank higher in terms of priority than the statutory right in rem granted by a mortgage.

4.11 Insolvency Laws Applied by Maritime Courts

As a matter of Israeli practice, a ship-owning or other company must settle its business, file suits, etc, while it retains its legal personality. Usually, all business is taken care of prior to or during the process of dissolution of the company and not after it has ceased to exist.

In Israel, the principal law governing the rehabilitation of companies is the Insolvency and Rehabilitation Law – 2018. This law creates a mechanism known as "protective negotiations", allowing a company to initiate out-of-court protective negotiations with its creditors while allowing it to remain active and avoid the appointment of a trustee. During this period of protective negotiations, a complete stay does not apply, but at the same time creditors may not initiate insolvency proceedings nor may they call for the complete repayment of the debt.

The Admiralty Court in Israel has not yet had occasion to deal with the issue of arrest and judicial sale under the new law, which came into effect in September 2019; however, it is likely that if a stay of proceedings is ordered in liquidation proceedings the Admiralty Court will not order the sale of a vessel which forms part of the assets of an insolvent party.

The Law prescribes a designated track for the recognition of foreign insolvency proceedings, and presumably this will also apply to the Admiralty Court. Yet, despite the insolvency proceedings, the position may be different in respect of arrests initiated for the purpose of obtaining good security in connection with cargo damage claims while the ship is entered in a P&I Club.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

There is no decisive authority in the Admiralty Court regarding damages for wrongful arrest. A party seeking an interim remedy (such as an attachment) may potentially be liable in tort if they have acted unreasonably or maliciously (C.A. 732/80 Arens v Bait-El, where the Supreme Court discussed the applicant's duty to present the Court with the full factual basis).

Alternatively, if the Admiralty Court has required a guarantee to be put up at the time of arrest, that could be forfeit in the appropriate circumstances.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Israel is not a party to the Athens Convention relating to Carriage of Passengers and their Luggage by Sea. Accordingly, it seems likely that in passenger claims brought in Israel the courts would apply Section 5 of the Prescription Law – 1958, which sets a limitation period of seven years for non-land disputes. It is possible to stipulate a limitation period in a contract, albeit such a stipulation would be open to scrutiny as a potentially unfair restrictive clause.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

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

The Israeli courts give full effect to choice of law clauses contained in any contract, including contracts of carriage and bills of lading. Where the case is conducted in Israel, foreign law is considered a matter of fact, which must be proved in the usual way, generally through expert testimony.

With regard to jurisdiction clauses, the Israeli Courts will give effect to exclusive jurisdiction clauses, even where the action sought to be stayed is in rem. In the case of C.A. 8205/16 M/V "Thor Horizon", the Supreme Court held that a foreign jurisdiction clause contained in a bill of lading issued by a sub-charterer could apply to a claim in rem against the vessel for damage to goods. The Supreme Court emphasised that seizure of the vessel in Israel alone, without further links to the country, would not be sufficient to determine that Israel is the convenient forum in the face of a foreign jurisdiction clause. Further, the fact that the damage to the goods was discovered upon the arrival of the vessel in Israel was not, on its own, sufficient to weigh against a stay of proceedings in Israel. Nonetheless, in that case, prescription in the foreign forum meant that in the particular circumstances, the convenient forum for hearing the case was in fact Israel.

In another case, ALA 1785/15 Cosco Container Lines Co Ltd v Alison Transport Inc, the Supreme Court upheld the District Court decision that a consideration against an argument that Israel was not a forum non conveniens was that suit was being brought against the carrier, shipper and other parties, and it was important for all the disputes to be heard in a single forum. In that case, the dispute would in any event have been heard in Israel against three of the parties, and it would not be appropriate for policy reasons to stay the action in respect of the fourth party. Other links between the suit and Israel included the facts that the damage was caused to an Israeli company, the destination of the cargo was Haifa port, and the contract signed in Israel was a principal element in the chain of events leading to the flawed carriage of goods. Moreover, the defendant international forwarder seeking a stay could or should have anticipated that it would be subject to a suit in the country of destination of the cargo which it had handled.

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

In the event of a foreign arbitration clause, Section 6 of the Israeli Arbitration Law – 1968 provides that when an action is brought before a court in a dispute in which it had been agreed to refer to arbitration, and if an international convention to which Israel is a party applies to the arbitration and that convention lays down provisions for a stay of proceedings, the court will exercise its power under Section 5 in accordance with and subject to those provisions.

This is also true where the arbitration clause is in a charterparty incorporated into the relevant bill of lading, subject always to the true construction of the relevant arbitration clause (ALA 1917/19 M/V Chem Antares (2019)).

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

Israel is a party to the 1958 New York Convention on the Enforcement and Ratification of Foreign Arbitral Awards which provides for the stay of judicial proceedings in the case of a foreign arbitration agreement, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Section 29 of the Israeli Arbitration Law – 1968 provides that matters regarding enforcement or cancellation of an arbitration award governed by an international convention to which Israel is a party will be dealt with according to the provisions of that convention. As a result, a court considering the ratification of a foreign arbitral award would give consideration to such matters as whether the subject-matter is capable of arbitration according to the laws of Israel and whether recognition and enforcement of the award is consistent with Israeli public policy.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The Admiralty Court has jurisdiction to order the attachment of a vessel as security for foreign judicial or arbitral proceedings, upon provision of prima facie evidence that the ship-owner will not be in a position to satisfy a judgment or arbitral award. Moreover, interim relief in the form of ship arrest or temporary attachment may be obtained before the foreign arbitration proceedings have been initiated (C.A. 102/88 Silver Goose Delicatessen Ltd v Cent or S.A.R.L).

6.5 Domestic Arbitration Institutes

There are a number of expert maritime lawyers and retired judges who specialise in handling maritime arbitrations.

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

A defendant facing proceedings in breach of an exclusive foreign jurisdiction or arbitration clause may ask for a stay of the proceedings until judgment is rendered by a competent foreign tribunal.

7. Ship-Owner's Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

Israeli shipping companies are subject to the same corporate tax regimes as other companies in Israel, and are not subject to any special regulation or legislation. Incentives are, however, provided to shipping companies in terms of amortisation, and seafarers are provided with incentives in terms of income tax deductions.

Likewise, the accounting procedure used by Israeli shipping companies is the same as that used by companies engaged in all other business in Israel. Moreover, the Israeli Companies Law – 1999, which governs matters related to bearer and nominative shares, draws no distinction between shipping companies and any other company registered or operating in Israel.

In terms of reform, it should be noted that in 2018, the Income Tax (Taxation of Income from Vessel Activity by Tonnage) – 2018 was published.

This Government Bill proposed to establish provisions regarding the calculation of the taxable income of Israeli shipping companies engaged in the international carriage of goods, in accordance with the "tonnage tax" method, namely, the calculation of the company's taxable income according to the tonnage of the vessel being operated. The explanatory notes of the bill explain that this reform is vital to safeguard and encourage Israeli shipping companies and their international competitiveness. The tonnage tax benefit is designed to be applied to companies where at least 80% of their revenues are derived from eligible activity. Eligible activity is defined as either operating an eligible vessel or chartering an eligible vessel otherwise than under a bareboat charterparty. The eligible activity refers to carriage of goods port to port outside Israel, in view of the fact that the benefit is intended to encourage international shipping, and the desire not to create a preference for coastal shipping in Israel over transport of goods by land.

This Bill has not yet been enacted.

8. Implications of the Coronavirus Pandemic

8.1 COVID-19-Related Restrictions on Maritime Activities

From time to time, the Israeli Ministry of Health issues guidelines for crew members on cargo vessels visiting Israeli ports, in order to prevent the spread of the coronavirus. These regulations inter alia prevent crew from leaving the vessel; various medical data regarding crew must be provided by the captain of the vessel to the Marine Traffic Control Room and contact persons are assigned to liaise between the port and the vessel.

8.2 Force Majeure and Frustration in Relation to COVID-19

Both domestic and international contracts often include *force majeure* clauses, which in the current climate often specifically refer to the COVID-19 pandemic. Such clauses will be recognised by the Israeli courts and provide a good defence/exclusion to any breach of contract.

Nonetheless, contracts entered into after the breakout of the COVID-19 pandemic are unlikely to be viewed as frustrating events, unless the loss is the result of events which were not foreseen.

In the absence of an express *force majeure* clause, the courts will consider the application of Section 18 of the Israeli Contracts (Remedies for Breach of Contracts) Law – 1970, which provides that the performance of a contract is frustrated due to events which the breaching party did not foresee and could not have foreseen when entering into the contract, the circumstances could not have been prevented by the breaching party and performance is impossible or fundamentally different from that intended by the parties. In the event of frustration as aforesaid, the contract may be terminated by the non-breaching party; the contract will not be enforced but neither will damages be awarded to the non-breaching party. The Israeli court may order restitution as well as payment of reasonable expenses.

The Israeli courts have recognised events occurring abroad, for example flight restrictions following the events of 9/11, as capable of frustrating performance of an Israeli contract.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

In Israel, cabotage is regulated by the Coastal Shipping (Permit to Foreign Vessel) Law – 2005, and the regulations promulgated thereunder in 2012 regarding applications for permits.

Section 1 of the Law defines coastal shipping broadly and includes carriage of goods and passengers originating from and destined for a port, vessel, facility or structure located in coastal or internal waters of Israel, without calling on a foreign port, excluding the carriage of empty containers or empty tows used by the ship-owner to carry goods.

The law provides for permits to engage in cabotage, including the requirement for a permit to perform any other operation in such waters, excluding fishing, oil and natural gas drilling and production, placing of pipes for conducting oil or natural gas on or under the sea bed. In so far as concerns the contiguous zone, the placing of cables or pipes on or under the sea bed is also excluded.

The policy considerations guiding the grant of a permit are:

- promoting coastal shipping by Israeli vessels;
- maintaining proper levels of ship and crew safety and preventing marine pollution;
- ensuring Israel's compliance with international maritime treaties;
- ensuring payment of compensation by ship-owners for damage caused by coastal shipping, including third-party damage, environmental damage and damage as a result of sinking;
- preserving state security and ensuring public order.

The Coastal Shipping Regulations 2012 provide for the process of applying for a permit, technical preconditions, the number of crew members, crew qualifications and terms of the permit. According to Section 13 of the Regulations, where a foreign coastal vessel has received a cabotage permit, it must employ as a minimum two Israeli crew members and, where officers are employed on board the vessel, at least one must be an Israeli national.

It should be noted that, in practice, foreign vessels are permitted to operate in Israeli coastal waters under a 30-day temporary permit. The vessel will be subject to testing by the Chief Marine Engineer of the SPA prior to being given a full permit.

Finally, in order to resolve problems concerning the carriage of containers between Israeli ports, in December 2014 the Minister of Transportation and Infrastructure published the Coastal Shipping (Permit to Foreign Vessel) (Exemption from the Provisions of the Law) Regulations – 2014. The new Regulations provide that most of the provisions and requirements contained in the original 2012 Regulations shall be excluded and will not apply to a foreign container vessel carrying containers between Israeli ports on an exceptional basis (ie, where the vessel is not employed in a regular published liner service between Israeli ports).

While the Coastal Shipping Law does not expressly define the relevant coastal area, it seems likely that the regulations would apply to Israel's territorial waters (12 nautical miles), contiguous zone (24 nautical miles) and, arguably, the exclusive economic zone (200 nautical miles).

The fee currently due for a foreign vessel cabotage permit is ILS578 upon submitting the application and ILS3,384 for a ship or ILS2,075 for a vessel which is not a ship, payable upon submission of the technical documents to the Chief Marine Engineer of the SPA.

Finally, a recent important development in Israel concerns marine insurance. Thus, in ALA 8588/19 Haifa Port Co Ltd v Certasig Insurance and Reinsurance Co Ltd. (2020) the Supreme Court of Israel decided that Section 62 of the Insurance Contract Law – 1981 applies to marine insurers, whether foreign or Israeli (as opposed to foreign insurers in non-marine insurance cases) and accordingly they have the right of subrogation under that section. The Court further held that classification of a matter as a "peril of the sea", including within the framework of the aforementioned law, would be performed in accordance with the type of risks to be covered by the policy, without reference to local or international characteristics. In the case at hand, relating to collision between vessels, a marine risk was clearly involved and therefore the insurer, which was a foreign insurer, would be regarded as a "marine insurer" subject to the provisions of Section 62 of the Law and therefore entitled to bring a subrogation action in Israel. It should be noted that, prior to this judgment, it was thought that an "insurer" under the Law meant an insurer who was licensed under the Supervision of Financial Services (Insurance) Law – 1981, and therefore excluded a foreign insurer C.A. (8044/15 VIG v The Sharon Drainage Authority).

J.SPRINZAK Maritime Law Firm was founded in 2003 and is located in the centre of Tel Aviv, with offices in one of the most prestigious buildings in the city. The firm enjoys strong contacts throughout the shipping sector and has gained a strong international reputation in the specialised fields of shipping and maritime law, international transport, insurance, international trade and related matters. In particular, the firm deals with and has broad experience in the following areas: admiralty/in rem actions, cargo claims (recovery and defence), charterparty contracts and disputes, coastal shipping, contracts of affreightment, dangerous-goods transportation, general average, marine insurance and policy drafting, maritime liens, necessaries, pilotage, pollution, port operations, property damages and personal injury arising from commercial or small vessel operations, protection and indemnity risks, receivership, sale and purchase of vessels, salvage, ship arrest and detention, ship collisions, ship equipment and supplies, ship finance including mortgages, ship registration in Israel and abroad, ship repairs, ship-building, towage contracts and liabilities, notarial services in relation to all the above.

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