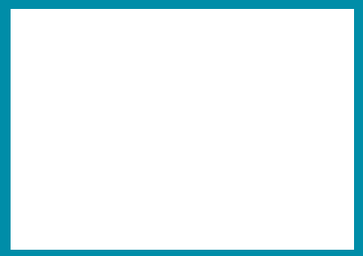
Shipping & International Trade Law

This second edition of *Shipping & International Law* aims to provide a first port of call for clients and lawyers to start to appreciate the issues in numerous maritime jurisdictions. Each chapter is set out in such a way that readers can make quick comparisons between the litigation terrain in each country, determining the differences between, for example, the rights of cargo interests to claim for cargo loss or damage in Italy and England.

A remarkable breadth of jurisdictions is covered, while the contributors are all leading lawyers in their countries and are ideally placed to provide practical, straightforward commentary on the inner workings of their respective legal systems.



SECOND EDITION 2015

Shipping & International Trade Law

General Editor: David Lucas, Hill Dickinson LLP

THE EUROPEAN LAWYER REFERENCE

Shipping & International Trade Law

Jurisdictional comparisons **Second edition 2015**

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Preface to the first edition

Cargill International SA Norman Hay

I am greatly honoured to be asked to write the preface to this timely worldwide review of shipping and trading law.

Over the last 30 years, the volume and variety of international trade in and shipping of commodities has grown dramatically. Liberalisation of global markets, and the need for commodity inputs as those markets have developed, have promoted this growth.

International shipping trade is central to the economy of the planet. Without it, there can be no increase in economic value which allows billions of people to raise themselves out of poverty.

However, as with all such rapid growth, there comes a parallel increase in risk associated with the commodities being transported and the vessels undertaking such transport.

The notion of risk in international trade goes back thousands of years and in each period of growth there has been the need for legal frameworks to handle disputes. The necessity for such legal systems is of utmost importance to the trade itself. Without such structures, an understanding of where risk occurs and how to mitigate it becomes clouded and there will be a drag on the growth of trade itself.

This book represents a milestone in providing an international comparative survey of legal risks, issues and indeed opportunities pertaining to shipping and trading activities. The volume takes a pragmatic approach by setting out a series of answers to questions that confront market participants to illustrate the variety and types of legal dispute that can arise, and to help managers and practitioners navigate through the risk areas.

The sheer size and complexity of the shipping and trading business would, on its own, lead to significant legal disputes. In addition, however, there has been a substantial increase in price volatility in the markets for the goods that these vessels carry. This volatility is increasing as the list of importing and exporting countries and the variety of the goods they trade also increases dramatically.

While the companies and businesses involved in international trade have adopted a wide variety of methods to limit their risk (eg, stringent counterparty credit control, surveillance technologies and sophisticated trading instruments), such methods are insufficient to reduce to zero default risk and the inevitable legal disputes.

This volume provides invaluable introductions to the diverse ways in

which the various legal systems address common forms of default and the legal remedies which are available to the parties to resolve their differences.

The majority of international trade and shipping contracts are governed by English Law. However, given the vast number of countries now engaged in trade, it is inevitable that other legal systems will impinge on the underlying contracts. This volume details and examines how such legal overlap can occur and presents new ideas on the implications and the methodologies that parties faced with legal disputes can adopt in such conflicting situations.

Without a doubt, this volume provides a unique set of insights into this complicated but incredibly important area of global trade and its authors and editors are to be commended on the quality of the analysis.

Norman Hay,
President, Cargill International SA
Geneva, 2011

Foreword to the first edition

Hill Dickinson LLP David Lucas

Until recently, shipping and commodities law was considered by the wider world to be a fairly esoteric specialism of restricted general relevance. Laymen hardly focused on vagaries of market movements (except during times of historic crisis such as the aftermath of the Yom Kippur War) let alone the transnational impact of those movements.

Now, all that has changed. Everyone in the world who has to buy food, fuel, garments or who has access to the media is only too well aware of the impact of fluctuations in commodity prices. They have seen the prices of, say, wheat and sugar soar (roughly doubling in the six months from June 2010), cotton rocket (almost quadrupling in the two years from early 2009), crude oil rise inexorably (almost tripling in the same period), back nearly to the dizzy heights reached before the collapse in mid-2008. Similar rises have been experienced with non-ferrous metals, iron ore, coal, fertilisers and numerous other commodities. The list is almost endless. All these price movements are, virtually without exception, overshadowed by the quite spectacular boom and bust of 2008.

Equally, freight rates have undergone even more spectacular convulsions with, for example, the Baltic Dry Index rising to well over 11,000 in mid-2008, before collapsing to less than a mere tenth of that figure within the space of a very few months.

The causes of this turmoil in the markets are too well known to merit repetition in this brief introductory Foreword. But what does merit consideration here is the stark way in which such turmoil illustrates the interconnectedness of the modern world. When China imports record quantities of crude oil, prices at the petrol pumps in Europe rise. When Russia suffers drought and bans wheat exports, the price of bread in Egypt soars.

This would not happen if the modern world economy were not so inextricably wedded to international trade on a vast scale. The world as it has fashioned itself could not exist without it. Although trade between nations and regions goes back to the ancient Phoenicians and perhaps beyond, the present level of global interdependence is unprecedented.

The rest of this volume will be devoid of statistics, so I hope I will be forgiven for offering just three sets of impressive figures which, I suggest, place in context the importance of the topics covered in this book:

- about 90 per cent of world trade is carried by the international shipping industry;

- according to the International Maritime Organisation, in 2008 (the last year for which figures are currently available) there were almost 53,000 cargo carrying ships with a total deadweight of almost 1.2 billion tonnes (almost double the figure for 1990). Cargo traffic exceeded 8 billion tonnes and almost 34 billion tonne miles were sailed; and
- seaborne trade in the main bulk cargoes (iron ore, grain, coal, bauxite/alumina and phosphate) grew from 448 million tonnes in 1970 to 1,997 million tonnes in 2007 and other dry cargoes grew from 676 million tonnes to 3,344 million tonnes in the same period.

The economic interdependence of the modern world economy is reflected in the interdependence of its diverse national legal systems. Legal practitioners in the field of international trade, whether in law firms or in-house, will be only too familiar with the need, often the very urgent need, to seek advice, assistance or local intervention, whether in the courts or with local authorities, in jurisdictions worldwide. Although English law remains the most common choice of governing law in trade-related contracts and the English court or arbitral jurisdiction remains the most popular contractual forum, other legal systems and fora are frequently chosen (particularly with the burgeoning growth of international arbitration) and, irrespective of contractual choice, often become relevant to the challenges facing a party in crisis. Examples are boundless but include: a ship owner whose vessel faces arrest; a cargo owner whose goods face the exercise of a lien by the ship owner; a buyer who is seeking to prevent a bank from paying under a letter of credit against fraudulent documents; unexpectedly, a transaction suddenly involves dealings with a state or entity subject to UN, EU or US sanctions; an underwriter of cargo on board a vessel which has suffered a collision. Advice may be needed as a matter of extreme urgency in one or more relevant jurisdictions where the crisis is occurring.

The purpose of this volume is to give those involved, or potentially involved, in such a crisis a brief and readily accessible guide as to how the relevant issues might be approached in the affected jurisdiction or jurisdictions. Needless to say, it cannot be a substitute for formal advice from a lawyer well versed in the relevant legal system after he has been fully briefed, but it is hoped that the short summaries of key legal issues will assist those seeking to manage a crisis by focusing expectations and enabling them to brief local lawyers with an awareness of the opportunities and pitfalls afforded by the relevant legal system. Within the constraints of the format of this volume it has only been possible to provide summaries of the law in a limited number of legal systems. To those states not represented, and to those who had hoped for guidance as to the law in any of those states, I extend my apologies.

I could not have carried out my functions in the preparation of this book without the tireless efforts of many to whom my profuse thanks are gladly offered. Also thanks to the eminent lawyers in the various jurisdictions who had so unstintingly given their time and expertise in providing their respective chapters. My colleagues at Hill Dickinson LLP, Jeff Isaacs, Andrew Meads, Andrew Buchmann and David Pitlarge, provided enormous help

both in formulating and refining the questionnaire for each chapter (which had to be thoughtfully composed to elicit the most helpful responses from our contributors) and in contributing the substantive content of the English chapter. Kay O'Brien worked selflessly to coordinate the project and to keep it on track. Not least, my warm thanks are owed to Michele O'Sullivan, the International Director, Emily Kyriacou, the Commissioning Editor, and the editorial team, for both inspiring me and my colleagues to undertake this project and tirelessly bringing it to fruition.

David Lucas, Hill Dickinson
General Editor
London, 2011

Foreword to the second edition

Hill Dickinson LLP David Lucas

When the publishers asked Hill Dickinson to work with them on a second edition of this volume, my immediate reaction was that it might be premature, given that the basic principles in the various legal systems covered in the first edition were perhaps unlikely to have changed that much, if at all; and this book never claimed to cover more than basic principles, given that in the first edition 25 jurisdictions were covered within the span of just 400 pages.

However, it was pointed out to me that this would be an opportunity to expand the scope of the book to cover a number of jurisdictions which, for very good practical reasons, we had been unable to cover first time round. This opportunity has been seized with enthusiasm and I am delighted that this second edition has been expanded to cover some 36 jurisdictions, including many of considerable significance to the international trade and shipping community.

In the Foreword to the first edition, I described the commercial and geopolitical trends and convulsions, natural catastrophes and conflicts which so often underlay and drove the issues which had confronted international trade and shipping lawyers every day in their work: Such events did not of course cease with the first edition: a mere list of names, acronyms and words suffices to make the point: Syria, Ukraine, sanctions, OFAC, Costa Concordia, Ebola… This list could be expanded indefinitely.

Market prices of commodities and freight rates have of course continued to fluctuate – not as wildly, perhaps, as in some previous times, but sufficiently to drive defaults and thus to generate disputes between market participants. Meanwhile, statistics have continued to balloon. In the Forward to the first edition, I noted that in 2008 the world fleet of cargo carrying vessels accounted for a total deadweight of almost 1.2 billion tonnes; by January 2013 that figure had risen to 1.63 billion tonnes. Although the rate of growth of world GDP has slowed, nonetheless between 2008 and 2012 total cargo traffic increased from 8 to 9.2 billion tonnes. Just as trade continues to expand, so does the need for legal advice in multiple jurisdictions.

As before, it is my pleasure to thank the numerous contributors to this book for their support and time-consuming work aimed at making it as useful as possible to its readers. My colleagues at Hill Dickinson LLP, Jeff Isaacs and David Pitlarge have greatly contributed to the review and

updating of the English chapter. Not least, grateful thanks are due to the team at Thomson Reuters who have brought this second edition about: Emily Kyriacou, Katie Burrington, Dawn McGovern, Nicola Pender and Callie Leamy.

David Lucas, Hill Dickinson
General Editor
London, 2014

Cyprus

Andreas Neocleous & Co LLC
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1. CONTRACTS OF CARRIAGE

1.1 Jurisdiction/proper law

1.1.1 In the absence of express provisions in a bill of lading (or charterparty), by what means will the proper law of the contract be determined?

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 the absence of an express provision, the proper law will be determined in accordance with Article 4 of Rome I. A contract for the sale of goods will be governed by the law of the country where the seller has his habitual residence. Where the contract falls under more than one category of paragraph 1 of Article 4, the governing law will be the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

For contracts of carriage, Article 5 of Rome I provides that in the absence of an express agreement in accordance with Article 3, the law of the country of habitual residence of the carrier will apply, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country, failing which the law of the country where the place of delivery as agreed by the parties is situated will apply.

In the absence of a choice of law, for both Articles 4 and 5, in the event that all circumstances lead to the conclusion that the contract is manifestly more closely connected with a country other than the one that results following the application of the rules under Articles 4 and 5, then the law of that country will apply.

1.1.2 Will a foreign jurisdiction or arbitration clause necessarily be recognised?

The courts will generally respect a foreign jurisdiction clause or an arbitration clause agreed by the parties, but may still consider whether there are sufficient grounds for displacing the *prima facie* presumption of insisting on the parties honouring their bargain. The presumption may be displaced on 'good and sufficient reasons'.

Proceedings that have commenced notwithstanding the foreign jurisdiction clause or arbitration clause may be challenged. Where an application for stay has been filed a Cyprus court 'is not bound to grant

a stay but has a discretion whether to do so or not'. In practice a stay will be granted unless a 'strong cause' for not doing so is shown. The burden of proving such strong cause falls on the party requesting the stay. When exercising its discretion the court should take into account all the circumstances of the case. The stay may not deprive the applicant of a legitimate personal or procedural advantage which would be available to him if he invoked the jurisdiction of the Cyprus courts.

In relation to jurisdiction clauses the Cyprus courts will consider the following factors, based on the decisions in *United Feeder Services Ltd v the ship 'Anna Elisabeth' flying the Austrian flag* (2010) 1C CLR 1946; *Cyprus Phassouri Plantations Co Ltd v Adriatica di Navigazione SPA* (1985) 1 CLR 290; *Economides v M/V 'Cometa–23'* (1986) 1 CLR 443:

- in which country the evidence on the matters in dispute is situated or is readily available;
- the relative benefits of each alternative jurisdiction in terms of facilitating a better trial at less expense;
- to what extent the foreign law applies to the matters in dispute and if so, to what extent it is materially different from Cyprus law;
- the country to which each of the parties is connected and how close this connection is;
- whether the defendant genuinely wishes the issue to be tried elsewhere or whether he is merely seeking a procedural advantage; and
- to what extent the plaintiffs will be prejudiced by filing proceedings abroad.

As regards arbitration clauses, the Cyprus courts will take the following factors into account, based on the decisions in *United Feeder Services Ltd v the ship 'Anna Elisabeth' flying the Austrian flag* (2010) 1C CLR 1946 and *Bulfracht v Third World Steel Company Ltd* (1993) 1 CLR 148:

- the existence of a valid arbitration agreement;
- the initiation of proceedings before the court;
- the person filing the proceedings, his capacity and his connection with the arbitration agreement;
- whether the application for a stay is filed by a party to the main proceedings;
- the filing of the application immediately after the notice of appearance has been filed and in any case before taking any further steps in the proceedings;
- the applicant's readiness to do all that is necessary to properly conduct an arbitration.

Regulation (EC) No. 44/2001 applies in Cyprus and provides that if the parties, one or more of whom is domiciled in a member state, have agreed that a court or the courts of a member state are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, then that court or those courts shall have jurisdiction.

1.1.3 In the event that an injunction or order preventing proceedings is obtained in the agreed jurisdiction (whether court or arbitration), will this be recognised in your court?

Anti-suit injunctions may be recognised by the Cyprus courts following an application for the recognition, registration and enforcement of such an injunction.

The court will grant a stay of proceedings simply on the basis of the foreign jurisdiction or arbitration clause unless the presumption that the parties should honour their bargain is rebutted. Thus, if a stay is granted then no issue of recognition of injunction or order preventing proceedings obtained in the agreed jurisdiction will arise. In light of Regulation (EC) No. 44/2001 where jurisdiction is already assumed, this is unlikely to be challenged.

Cyprus has also ratified the New York Convention and arbitration awards conferring jurisdiction on a contracting state can be enforced, provided that the criteria set out in the Convention are satisfied.

1.1.4 Arbitration clauses

1.1.4.1 Will an arbitration and/or a jurisdiction clause set out in an incorporated document (such as a charterparty referred to in a bill of lading) be recognised if its text is not set out in the contract in question?

Yes, in accordance with Article 7 of the International Commercial Arbitration Law, Law 101 of 1987, which applies to disputes that are 'international' in nature, and provides that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement, including an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract. These provisions mirror Article 7 of the UNCITRAL Model Law on International Commercial Arbitration.

However, general words in a bill of lading incorporating into it all the terms and conditions of another document, such as a charterparty, are not sufficient to incorporate an arbitration clause contained in that document into the bill of lading so as to make its provisions applicable to disputes arising under the bill of lading (*Elie Sadek v Efpalinos Shipping Company Ltd* (1983) 1 CLR 696).

1.1.4.2 Will the incorporation of an unsigned arbitration agreement into a contract be recognised?

An arbitration agreement need not be signed to be incorporated into a contract. The exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement in writing, or an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another may be sufficient

to incorporate the agreement into the contract provided that there is reference in the contract to the document containing the arbitration clause.

1.1.5 In any event, will all of the provisions of a charterparty incorporated into a bill of lading contract be recognised? Specifically, if a charterparty with an arbitration clause is incorporated into a bill of lading, is it necessary for the incorporating words to make express mention of the arbitration clause of the charter?
Unless there is specific reference to it, an arbitration clause will not be incorporated into a bill of lading merely by simple reference or incorporation of the charterparty.

1.1.6 If a bill of lading refers to the terms of a charterparty, but without identifying it (eg, by date):
1.1.6.1 Will incorporation be recognised without such detail?
The court will consider the matter and try to identify the charterparty in question. This is a matter to be considered on the facts of the case.

1.1.6.2 If so, which charterparty will be incorporated?
A general reference will normally be construed as relating to the head charter, since this is the contract to which the shipowner, who issues the bill of lading, is a party (*Oscar Shipping PTE LTD v the cargo on board the Ship ASPHODEL, of Liberian Flag now lying at Anchorage in Limassol Port*, Admiralty Action 22/2011, Judgment dated 12 April 2013). It will depend on the facts of each case how the general approach will be applied.

1.2 Parties to the bill of lading contract

1.2.1 How is the carrier identified? In particular, what is the relationship between statements on the face of the bill and/or the signature by or on behalf of the Master and demise clauses/identity of carrier clauses?
The court will consider all the facts and where appropriate in the circumstances will treat a person as being a carrier even where the carriage was not performed by such party (*Andreas Orthodoxou Ltd v Dimitriou Tilliri Ltd* (2007) 1B CLR 1247).

As there is no Cyprus case law on demise clauses or identity of carrier clauses, the courts will follow English law (although not binding, English courts' decisions are persuasive). Furthermore, given the decision in *Andreas Orthodoxou Ltd*, a demise clause or identity of carrier clause is likely to be recognised as binding and, in view of the decision of the House of Lords in *'The Starsin'* [2003] 1 Lloyd's Rep. 571, the objective approach in the construction of a bill of lading is likely to be followed.

1.2.2 Who is entitled to sue for loss or damage arising out of the carrier's alleged default? In particular, by what means, if at all, are rights under the contract of carriage transferred?
The English Bills of Lading Act 1855, which applies in Cyprus by virtue of Articles 19 and 29 of The Courts of Justice Law, Law 14 of 1960, (*Stavros*

Georgiou & Son (Scrap Metals) Ltd v The Ship LIPA (2001) 1B CLR 1220) regulates 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 (*Andreas Orthodoxou Ltd v Dimitriou Tilliri Ltd* (2007) 1B CLR 1247; *Standard Fruit Company (Bermuda) Ltd v Gold Seal Shipping Company Ltd* (1997) 1 CLR 464).

Such transfer extinguishes 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 to sue.

The courts have not been called upon to consider whether the original shipper remains liable once title has passed.

1.3 Liability regimes

1.3.1 Which cargo convention applies – Hague Rules/Hague Visby Rules/ Hamburg Rules? If such convention does not apply, what, in summary, is the legal regime?

Cyprus has ratified the Hague Rules by the Carriage of Goods by Sea Law, Cap 263.

Cyprus has adopted by way of succession – The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading and Protocol of Signature, Brussels 25 August 1924 (extended to Cyprus on 2 June 1931).

Cyprus has not ratified the Hamburg Rules.

1.3.2 Have the Rotterdam Rules been ratified?

Cyprus has not ratified the Rotterdam Rules.

1.3.3 Do the Hague/Hague Visby Rules apply to straight bills of lading?

The matter has not been tested in the courts of Cyprus (but consider the comments of the application of a general paramount clause in 1.3.4 below). As decisions of English courts are persuasive in Cyprus, it is likely that the Cyprus courts would follow the reasoning of the House of Lords in *The Rafaela S* [2005] 1 Lloyd's Rep. 347.

1.3.4 Are any such rules compulsorily applicable to shipments either from your jurisdiction or to it (or both)?

The Hague Rules are applicable to charterparties only if they are expressly incorporated and if there is an express statement to this effect in the bill of lading (Article 4 of the Carriage of Goods by Sea Law, Cap 263; *The Ship Dama v TH. D. Georghiades SA* (1980) 1 CLR 386; *Kounnas and Sons Ltd v Zim* (1966) 1 CLR 181; *Said Hamade v Anthimos Demetriou Ltd* (1994) 1 Α.Α.Δ. 443). Subject to this, they only apply for shipments from a port of Cyprus abroad or to another port of Cyprus (Article 2 of Cap 263). However, if a

general paramount clause is incorporated in the bill of lading, the Hague Rules apply notwithstanding Article 2 of Cap 263 (*Company Loizos Louca & Sons Ltd v The Company Batsi Shipping Ltd* (1992) 1B CLR 979).

1.4 Lien rights

1.4.1 To what extent will a lien on cargo be recognised? Specifically:

1.4.1.1 Will liens arising out of obligations under the bill of lading contract be enforceable as against the receiver for, eg, freight, deadfreight, demurrage, general average and any shipper's liabilities in respect of the cargo?

Common law principles apply (*Grade One Shipping Ltd, Owners of the Cyprus Ship 'CRIOS II' v The Cargo on Board the Ship 'CRIOS II' (No. 2)* (1979) 1 CLR 350). A shipowner's right to exercise a lien on cargo at common law is available only (a) for the recovery of a general average contribution due from the cargo; (b) for expenses incurred by the shipowner in protecting the cargo; and (c) to recover freight due on delivery of the cargo under the bill of lading or the charter. No common law lien arises for deadfreight, demurrages or shipper's liabilities in respect of the cargo.

1.4.1.2 Can the owner lien cargo for time charter hire? If so, is this limited to hire payable by the cargo owners?

Where the time-charterer is the cargo owner, the owner has the right to lien the cargo, if the charterparty provides for this. However, such lien cannot be extended as against third parties, holders of the bill of lading, unless expressly provided in the bill of lading. A bill of lading stamped 'freight prepaid' will defeat any owner's lien on the cargo, either at common law or ex contractu (*Grade One Shipping Ltd, Owners of the Cyprus Ship 'CRIOS II' v The Cargo on Board the Ship 'CRIOS II' (No. 2)* (1979) 1 CLR 350).

1.4.1.3 Is it necessary for the owners to register its right to lien sub-freights as a charge against a charterer incorporated in your jurisdiction for that lien to be recognised in the event of the charterer's insolvency?

Where a contractual lien on sub-freights is given to the owners by a charterer incorporated in Cyprus, owners must register the lien as a charge against the charterer. Failure to do so will result in such charge being void against the liquidator and any creditor of the company.

2. COLLISIONS

2.1 Is the 1910 Collision Convention in force?

Cyprus has adopted, by way of succession, The International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels and Protocol of Signature, Brussels 23 September 1910. The UK law ratifying the Convention, the Maritime Conventions Act 1911, will also apply (*Danish Kingdom v Mystic Isle Navigation Company Ltd* (1990) 1 CLR 850).

2.2 To what extent are the Collision Regulations used to determine liability?

The International Regulations for Preventing Collisions at Sea of 1972 apply

in Cyprus by virtue of Law 18 of 1980 ratifying the relevant Convention of 1972 (for their application see *The Ship NAWAL v The Ship BAYONNE* (1994) 1 CLR 54 and *Constantinos Sklavos v the Ship NATALEMAR* (1999) 1B CLR 1079). These apply to all Cyprus registered ships and to all other ships within the territorial waters of Cyprus.

2.3 On what grounds will jurisdiction be founded – what essentially is the geographical reach?

The Cyprus courts have jurisdiction to hear any claim for damage done to a ship and damage received by a ship *in rem*. To invoke the *in rem* jurisdiction, physical presence of the res is required within the territorial jurisdiction of the Cyprus courts to enable service of the writ of summons. Service out of jurisdiction is not available for *in rem* proceedings.

Alternatively, proceedings may be filed against the owners of the vessel having their residence or place of business in Cyprus. Where the owners are not residents of Cyprus, *in personam* proceedings are subject to the rules of court relating to service out of jurisdiction. Leave of the court is granted where the cause of action arose within the jurisdiction or a related action is before the Cyprus courts or where the defendant/owners have submitted to the jurisdiction.

2.4 Can a party claim for pure economic loss in the event of a collision?

As a general rule, pure economic loss is not recoverable under Cyprus law. Collision gives right to an action in tort for damages as a result of the physical damage or interference with the claimant's property.

3. SALVAGE

3.1 Has your country enacted any salvage conventions? If so, which one?

Cyprus has adopted by way of succession 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).

3.2 In any event, what are the principal rules for obtaining non-contractual salvage? In the event that a salvage contract is signed, will this clearly displace any general law on salvage liabilities?

Where a salvage contract exists, the Cyprus courts will enforce it (*L&M Seamasters Ltd v 1. The Tug Boat ZOHARA, Israeli Flag, 2. The Fishing Trawler Black Tiger* (2007) 1A CLR 303). Where the salvage contract is silent as to an aspect of the salvage operations or where there is no salvage contract in place, the Wrecks Law, Cap 298, Part III Salvage, and the Brussels Convention will apply. Article 34 of the Wrecks Law provides for the method of defining the salvage remuneration (which is a codification of Article 8 of the Brussels Convention). In assessing a salvage operation the court will have regard to the common law principles on salvage (*Yusra Shipping Co Ltd v The Ship*

'Yamama' and her Cargo and Freight (1985) 1 CLR 328; *Branco Salvage Ltd v The ship 'DIMITRIOS' and her Cargo and Freight* (1968) 1 CLR 252; *Cyprus Ports Authority v the Ship 'Zinovia' and her cargo* (1990) 1 Α.Α.Δ. 655).

3.3 What is the limitation period for enforcing salvage claims in your jurisdiction?

A salvage action is barred after an interval of two years from the day on which the operations of assistance or salvage terminate (Article 10 of the Brussels Convention).

3.4 To what extent can the salvor enforce its lien prior to the redelivery of ship/cargo?

Salvage operations give rise to a maritime lien (in addition to any contract-based lien or retention of property provision) and the salvor may enforce its rights by instituting proceedings in the Admiralty Court. Article 30 of the Wrecks Law provides that the Receiver (as defined therein) shall retain possession of the salved property until payment is made, or an arrest warrant is issued by a competent court, or if security is lodged with him prior to the issuance of a warrant.

4. GENERAL AVERAGE ('GA')

4.1 Will any general average claim (whether under the contract, generally or GA securities) necessarily follow the contractual provisions in relation to general average, in particular, the chosen version of the York Antwerp Rules ('YAR')?

Any contractual provisions dealing with general average will be followed and the courts will respect the choice of the contracting parties. The York Antwerp Rules have no statutory force in Cyprus and the set of rules to apply is a matter of agreement between the parties.

4.2 Time bars

4.2.1 Will general average claims under the contract of carriage be governed by any contractual time bar – in particular, any which might be set out in the YAR (eg, YAR 2004)?

Under Article 28(1) of the Contracts Law, Cap 149 any contractual time bar limiting the time for enforcing a party's right of action is void. The Law for the Limitation of Actions, Law 66(I) of 2012 provides that actions for breach of contract are time-barred if not filed within six years from the date the cause of action arose and actions based on torts are time-barred if not filed within six years (three years for negligence, nuisance and breach of statutory duty).

4.2.2 In the event that claims should be pursued under general average securities in your jurisdiction, what is the applicable time bar for such claims? Will this be affected by the provision of YAR 2004 Rule XXIII if 2004 YAR is specified in the relevant contract?

The general six years' time bar for contractual claims applies. See further our comments in 4.2.1 above.

4.2.3 To what extent is any general average adjustment binding?

A general average adjustment is not binding on the parties unless they expressly agree to it. A court may, however, take it into consideration.

5. LIMITATION

5.1 What is the tonnage limitation regime in respect of claims against the vessel?

The Convention on Limitation of Liability for Maritime Claims of 1976 and its Protocol of 1996 Amending the Convention have been ratified by Law 20(III) of 2005.

5.2 Which parties can seek to limit?

Article 1 of the Convention provides that shipowners, including charterers, managers, operators, salvors (the definition extending to any person rendering services in direct connexion with salvage operations) and insurers of particular liabilities have the right to limit liability.

5.3 What is the test for breaking the limitation?

Article 4 of the Convention lays the test for breaking the limitation. It provides that: 'A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result'.

5.4 To what degree do any limitation provisions found jurisdiction for the substantive claim?

Limitation provisions under the Convention and the establishment of a limitation fund may be raised as a defence to an action, in which case it would mean that the defendant has already submitted to the jurisdiction.

5.5 Which package limitation figure applies?

The package limitation figure is the one provided for under the contract of carriage. Article 6 of the Convention, as amended by the 1996 Protocol, sets out the parameters for calculating the limits.

Where the Hague Rules apply, then the limit set out in Article IV, Rule 5 will apply.

6. POLLUTION AND THE ENVIRONMENT

6.1 Which Civil Liability Convention ('CLC') regime applies?

The following CLC regime applies:

- the International Convention on Civil Liability for Oil Pollution Damage of 1969 and its Protocols of 1976 and 1992 and Amendments of 2000; and
- 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.

7. SECURITY AND ARREST

7.1 Is your jurisdiction a party to any particular arrest convention? If so, which one?

Cyprus is not itself a party to the International Convention Relating to the Arrest of Sea-Going Ships 1952 (the '1952 Arrest Convention'). However, by virtue of Articles 19 and 29 of The Courts of Justice Law, Law 14 of 1960, the English Administration of Justice Act 1956, which ratifies the 1952 Arrest Convention, applies to Cyprus and the Cyprus courts will consider it (*Montegrillo Di Navigazione SNC v RO/RO 'IVA' of the Port of Rigeka, Yugoslavia now Lying at the Port of Limassol* (1989) 1 CLR 473).

7.2 Which claims afford a maritime lien in your jurisdiction?

The main categories of claims in respect of which Cyprus law recognises and upholds maritime liens are bottomry, salvage, crew wages, master's wages, master's disbursements and liabilities and damage done by a ship.

7.3 In any event, to what extent does a mortgagee have priority over claims for loss and damage which are not maritime liens?

Maritime liens enjoy priority. Next in line will rank claims relating to mortgages over the vessel (with priority determined according to the order of registration), followed by claims that give rise to a statutory lien (such as necessaries). Statutory liens have no priority over mortgages because they do not attach to the vessel until the institution of an action *in rem*. Last in line will rank all other claims, including any cargo claims (*Nordic Bank Plc of Nordic Bank House v The Ship 'Seagull' Now Lying at Limassol Port* (1989) 1 CLR 420).

7.4 Is there any suggestion that an arrest claim might lead to the founding of substantive jurisdiction?

The issuance of an arrest warrant (and the requirement for the filing of a writ of summons for the initiation of the arrest proceedings) is deemed to be a substantial step and once arrest is effected the jurisdiction of the Cyprus courts is established. This is subject to challenge on the basis of an arbitration clause or where the *forum conveniens* is successfully pleaded, in which case the Cyprus courts may order a stay of the proceedings. If, however, the ship is arrested or bailed out in one of the contracting states to the 1952 Arrest Convention, then it cannot be arrested for the second time for the same maritime lien in another contracting state (this does not apply if the first arrest was effected in a non-contracting state (*Montegrillo Di Navigazione SNC v RO/RO 'IVA' of the Port of Rigeka, Yugoslavia now Lying at the Port of Limassol* (1989) 1 CLR 473).

7.5 To what extent can sister/associated ships be arrested?

The arrest of a sister/associated ship is possible by virtue of section 3(4) of the English Administration of Justice Act 1956, applicable in Cyprus by virtue of articles 19 and 29 of The Courts of Justice Law, Law 14 of 1960, allowing the filing of an action *in rem* against any other ship which, at the time when the action is brought, is beneficially owned by that person who

would otherwise be liable in an action in personam. The burden of proof that the beneficial ownership of the vessel was the same both at the time when the actionable right arose and at the time when the action is filed is on the claimant (*Cyprus Telecommunication Authority v The Ship 'MARIA' now lying in Limassol Harbour* (1988) 1 CLR 163; *IMPREGILO SPA v The Ship MARWA M* (2004) 1C CLR 1569). In such case a holder of a maritime lien in respect of the other ship has no higher right or priority than that enjoyed in the circumstances by the holder of a statutory lien. A claimant is not entitled to arrest more than one vessel belonging to the defendant, although he may issue, as soon as the cause of action arises, a writ *in rem* not only against the offending vessel but also against all other vessels which at the time are in the ownership of the person who would be liable in an action in personam. A writ naming more than one vessel must be amended, when one vessel has been selected for service of the proceedings, by deleting the names of the other vessels.

7.6 Is it possible to arrest ships for claims arising out of (a) MOAs; (b) ship repair; and (c) ship construction contracts?

Arrest is not available on the basis of a claim under a Memorandum of Agreement. Claims *in rem* for ship repair and ship construction contracts may fall under article 1(1)(m) of The Administration of Justice Act 1956 as a claim in respect of the construction, repair or equipment of a ship.

7.7 To what degree can an arrest be anticipated/prevented by the lodging of security?

Under the Cyprus Admiralty Jurisdiction Order 1893, Rule 65, a person desiring to prevent the arrest of any property may file a caveat against the issue of an arrest warrant. It will usually require the lodging of sufficient security under such terms and conditions as the court decides.

7.8 If a vessel can be arrested, by what means can the claim be secured?

7.8.1 Can an arresting party insist on a cash deposit or a bail bond?

An arresting party may apply for a specific form of security or bail but it is at the court's discretion to determine its nature.

7.8.2 Will the court accept a letter of guarantee from a protection and indemnity club?

The court may accept such a letter of guarantee provided that it is satisfied that the claim is sufficiently secured. However the usual practice is by way of a guarantee issued by a local bank.

7.8.3 Does any guarantee have to be provided by a domestic bank or other acceptable guarantor?

The Admiralty Registrar usually requires a bank guarantee issued by a domestic bank and the court will rarely deviate from this practice.

7.9 Briefly summarise the further security options: eg, freezing orders, attachment of debts due to the defendant, etc.

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 of 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, namely:

- 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 do complete justice at a later stage.

Interim measures include freezing orders (formerly known as 'Mareva' injunctions) with domestic or worldwide effect, 'Chabra' type orders against co-defendants who are in possession or control of assets of the principal defendant and attachment orders (both at an interim stage pending trial or for execution of a judgment).

Injunctive relief is discretionary in nature and each application is examined on its merits. Cyprus courts have jurisdiction to issue injunctive relief with worldwide effect as well as injunctive relief in support of international arbitration proceedings and foreign legal proceedings.

Article 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law (which is identical to the English Merchant Shipping Act 1894) provides for a special type of prohibition order prohibiting for a specified time any dealing with a ship, provided that the applicant for the order is an 'interested person'. An interested person will not include mere creditors or persons claiming damages against the owners of the ship, but only persons having an interest in the ship itself such as legatees, shareholders, heirs or creditors (*Compania Portuguesa De Transportes Maritime of Lisbon v Sponsalia Shipping Company Ltd* (1987) 1 CLR 11; *Pastella Marine Co Ltd v National Iranian Tanker Co Ltd* (1987) 1 CLR 583; *Constantinos Athanasiou Gerasakis v Waft Shipping Company Ltd* (1989) 1E CLR 10). It requires a specific and inherent interest in the vessel or share therein.

8. CONTRACTS OF SALE OF GOODS

8.1 Jurisdiction/proper law

8.1.1 In the absence of express provision in a contract of sale, by what means will the proper law of the contract be determined?

In general, Cyprus courts will have regard to contractual and proprietary issues when determining claims arising out of a sale contract.

Proprietary issues are generally referred to the law of the country where the goods are situated at the relevant time, namely the *lex situs*.

The contractual issues refer to the 'proper law of the contract'. In the absence of an express provision of the parties this will be ascertained in accordance with the national law and the conventions to which Cyprus is a party.

Cyprus has ratified the Vienna Convention and the Rome Convention. The Rome I Regulation applies for contracts concluded after 17 December 2009.

On a national level the Sale of Goods Law of 1994, as amended, Law 10(I) of 1994, consolidates the law relating to the sale of goods.

The Vienna Convention applies to contracts of sale of goods between parties that have their place of business in different contracting states or in the cases where the private international law rules lead to the application of the law of the contracting state (Article 1 of the Vienna Convention).

If the Vienna Convention does not apply then for contracts concluded after 20 April 2006 the Rome Convention rules will be used to determine the proper law of the contract. Rome I will be used to determine the proper law for contracts concluded after 17 December 2009. According to Article 4(a) of Rome I, a contract for the sale of goods will be governed by the law of the country where the seller has his habitual residence unless it is clear from all the circumstances that the contract is 'manifestly more closely connected' with a country other than the one specified by the abovementioned rule, in which event the law of that other country applies.

8.1.2 Will a foreign jurisdiction or arbitration clause necessarily be recognised? In the event that proceedings can be commenced before your court notwithstanding such provisions, can such proceedings be challenged?

See also 1.1.2.

Foreign jurisdiction clause

A court will honour and uphold a foreign jurisdiction clause agreed by the parties but will nevertheless consider whether there are sufficient grounds for displacing the *prima facie* presumption of insisting on the parties honouring their bargain if the parties may take advantage of the jurisdiction of the court. The presumption may be displaced on 'good and sufficient reasons' (*Jadranska Slodobna Plovidba v Photos Photiades & Co* (1965) 1 CLR 58).

Proceedings that have commenced notwithstanding a foreign jurisdiction clause may be challenged. The principles set out in the English case of *The Eleftheria* [1969] 2 ALL ER 641 were adopted by Cyprus courts in that they are not bound to grant a stay but have a discretion whether to do so or not. This discretion is exercised by granting a stay unless a strong cause for not doing so is shown.

Arbitration clauses

Cyprus courts tend to favour arbitration and will usually give effect to an arbitration agreement or clause by staying any proceedings before them. As a general principle, the courts will insist on the parties honouring their bargain, but in appropriate cases will consider whether strong and convincing reasons have been put forward for displacing this *prima facie* presumption so as to entitle the parties to take advantage of the jurisdiction of the Cyprus court (*Cyprus Phassouri Plantations Co Ltd v Adriatica di Navigazione* (1983) 1 CLR 949; *Balkancarimpex FTO v Leasco Ltd* (1994) 1 1 CLR 815). The factors to be considered are as follows (*Cyprus Trading Corporation Ltd v Zim Israel Navigation Co Ltd* (1999) 1 CLR 1168; *Guendjian v*

Societe Tunisienne De Banque SA (1983) 1 CLR 588):

- the defendant must satisfy the court that there is another forum to whose jurisdiction he is amenable and in which justice can be done between the parties at substantially less inconvenience and expense; and
- the stay may not deprive the plaintiff of a legitimate personal or juridical advantage which would be available to him if he invoked the jurisdiction of the Cyprus court.

If the court is satisfied that the dispute falls under the provisions of an arbitration agreement it will stay the proceedings and refer the dispute to arbitration.

8.1.3 In the event that an injunction or order preventing proceedings is obtained in the agreed jurisdiction (whether court or arbitration), will this be recognised by your court?

See 1.1.3 above.

8.2 Arbitration clauses

8.2.1 What are the essential elements for the recognition of an arbitration agreement?

See 1.1.4 above.

8.3 Passing of title/property/risk

8.3.1 What terms if any are implied by your rules as to the passing of:

8.3.1.1 title (property) to the goods?

The Sale of Goods Law of 1994, as amended, Law 10(I) of 1994, (SGL) is the main source of the law governing the passing of title. It provides that where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. To discover the intention of the parties, the courts look at the terms of the contract, the parties' conduct and the circumstances of the case. SGL contains a number of rules for ascertaining the intention of the parties as to the time at which the property is to pass to the buyer.

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

8.3.1.2 risk?

Article 26 of the Sale of Goods Law provides that unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. However, where the seller is authorised to send the goods, the Law provides

special rules for the risks of transit. Additionally, even where risk is *prima facie* on one party, it may be shifted, either wholly or partly, as the result of a fault by the other.

Where the Vienna Convention applies, Chapter IV of the Vienna Convention lays the rules for the passing of the risk.

8.3.2 In relation to the passing of title and risk, do your rules apply even if the underlying contract applies another law?

The rules outlined above apply only in the case where the governing law of the contract is Cyprus law. In principle, Cyprus courts determine the governing law of the contract through the application of established Cyprus conflict of law principles. When the governing law of the contract is ascertained then the courts proceed with applying the rules of the passing of title and risk of that governing law.

8.4 Description and quality

8.4.1 Do your rules imply terms on (a) the description of the goods and/or (b) their quality?

Under Cyprus law, where in a contract goods are sold on the basis of their description, there is an implied condition that the goods will correspond with that description. Statements made in relation to the description of the goods could be either conditions, the breach of which could terminate the contract, or warranties, the breach of which could give rise to a claim of damages.

Where there is a sale of goods in the course of the seller's business, there is an implied term that the goods will be of merchantable quality. Merchantable quality as defined by Article 16(3) of the Sale of Goods Law requires that the goods are fit for the purposes they are to be used for and that a reasonable person would consider them to be so, taking into account their description, price and other relevant circumstances.

Where the Vienna Convention applies, Article 35 stipulates that the seller must deliver goods which are of the quantity, quality and description required by the contract and sets out the rules of non-conformity of the goods with the contract.

8.5 Performance

8.5.1 Delivery: What provisions does your law make as to delivery of the goods (eg, on timing and method of delivery)?

Under Cyprus law, the seller is required to deliver the goods to the buyer according to the terms of their contract. Delivery of the goods does not necessarily require physical transfer of the goods; it may involve the transfer of documents of title to goods, or a bailee of the goods may hold them on behalf of the buyer. Delivery and payment need not be made at the same time.

Delivery of the goods involves the seller making the goods available to the buyer in a deliverable state at the place and time provided under the contract to enable the buyer to obtain custody of or control over the goods. If no time is specified then such a stipulation would be ascertained by

reference to the terms of the contract.

Where the Vienna Convention applies, Article 31 provides for the seller's obligation of delivery (where a seller is not contractually bound to deliver the goods at a particular place) and Article 33 provides for the time of delivery.

8.5.2 Acceptance: When is the buyer deemed to have accepted the goods?

According to the provisions of Article 42 of SGL, acceptance of the goods takes place when the buyer does an act in relation to the goods which recognises an existing contract of sale, whether there is an acceptance in performance of the contract or not. It further provides for the buyer's right of inspection.

If the buyer does an act in relation to the goods that in any way interferes with the seller's right of ownership, or holds the goods for a reasonable time without stating to the seller that they are being rejected, then the goods are deemed to be accepted.

Where the Vienna Convention applies Articles 38 and 39 of the Vienna Convention provide for the buyer's right of examination and the right to rely on a lack of conformity of the goods in denying acceptance.

8.5.3 Payment: In the absence of express provision, by when must a buyer pay for the goods?

Under Cyprus law, the buyer has a general duty to pay for the goods in accordance with the terms of the contract. Article 32 of SGL provides that, unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions so delivery of the goods would require, in exchange, payment of the price.

Under Article 58 of the Vienna Convention, if the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract.

8.6 Other terms

8.6.1 Classification of terms

8.6.1.1 Do your rules differentiate between warranties (breach of which only entitles the innocent party to damages) and conditions (breach of which also entitles him to terminate the contract), and if so what is the effect?

Cyprus law recognises three main classes of contractual terms, namely conditions, warranties and intermediate or innominate terms. Conditions are terms of major importance which form the main basis of the contract. Breach of a condition entitles the aggrieved party to terminate the contract and claim damages. Warranties are terms that do not touch upon the substance of the contract and breach of a warranty gives a right only to damages. Breach of an intermediate or innominate term may give rise to a right of termination, or merely a right to damages, depending on the severity of the breach and how this affects the contract.

8.6.1.2 In English law, we also have the concept of intermediate (or innominate) terms. Breach of such terms may have differing effects depending on the gravity of the consequences of the breach. Do you have a similar concept under your system?
Yes, the concept is identical.

8.6.2 Exemption clauses

8.6.2.1 Do your courts recognise exemption (ie, exclusion) clauses, such as *force majeure*?
Exemption clauses are recognised but the courts interpret them rigorously, especially in the case where there is an inequality in bargaining power between the parties.

Cyprus law will give effect to *force majeure* clauses where the parties have agreed such terms in their contract. Essentially these clauses have the effect, depending on their wording, of preventing a contract from being frustrated, in situations where a party is seeking to be excused from performance where a supervening event out of the control of the party prevents performance.

8.6.2.2 What are the key requirements for relying on an exemption clause?
The party relying on the exemption clause must show that the exemption clause has been communicated to the other party and that it became part of the contract, and that the breach and the loss are covered by the clause or otherwise fall within its scope. An exemption clause will not be held effective unless the court is satisfied that the other party agreed to it before the contract was concluded. The party who agrees to the exclusion clause must have reasonable notice of its existence.

8.7 Remedies

8.7.1 What are the seller's remedies where the buyer is in breach of contract?

Article 47 of SGL gives an unpaid seller of goods the following remedies against the goods: a lien on the goods for their price while they are in his possession; if the buyer is insolvent, a right of stoppage of the goods in transit after they ceased to be in his possession; and a right to resell the goods in accordance with the provisions of the Law. Where the property in the goods has not passed to the buyer, the unpaid seller also has the right to withhold delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

The above remedies are available to the seller in addition to his right to sue the buyer for the price and for damages for non-acceptance as a form of security for payment of the price and as a form of preference of the seller over the general creditors of a bankrupt buyer.

Where the Vienna Convention applies, the seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement (Article 62), declare the contract avoided (Article 64) and claim damages for breach of contract (Article 74).

8.7.2 What are the buyer's remedies where the seller is in breach of contract?

Under Article 58 of SGL, where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

The measure of the buyer's damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract. The buyer has a duty to take reasonable steps to mitigate his losses.

As noted in 8.6.1.1 the remedies available to the buyer will vary according to whether statements made in relation to the quality, condition, quantity and description of the goods constitute conditions or warranties.

Article 60 of SGL provides that where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may:

- set up against the seller the breach of warranty in diminution or extinction of the price; or
- sue the seller for damages for breach of warranty.

In cases of delivery of the wrong quantity of goods, Article 37 of SGL provides that in the event that the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them or accept them. If the buyer accepts the goods he must pay for them at the contract rate. Where the seller delivers more than the contracted quantity, the buyer may accept the contracted quantity and reject the excess or he may reject the whole delivery. If the buyer accepts all the goods delivered, he must pay for them at the contract rate. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

In addition to the above remedies, the buyer has the right to recover interest or special damages in any case whereby the law allows this, or to recover the money paid where the consideration for the payment of it has not been received (Article 62 of SGL).

Where the Vienna Convention applies, Articles 46, 49, 50 and 74 provide for the buyer's remedies.

8.7.3 Are there any general limitations on the remedies available?

Article 74 the Vienna Convention stipulates that the damages that a party can receive for breach of contract by the other party consist of a sum equal to the loss, including loss of profit, suffered as a consequence of the breach. Damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which knew or ought to have known at the time.

The position is similar under Cyprus law, which limits damages to the amount reasonably foreseeable by the parties at the time they made the contract.

8.8 Time limit

8.8.1 What is the statutory limitation period?

As Cyprus has not signed the Convention on the Limitation Period in the International Sale of Goods, the limitation period is determined by Cyprus law, namely the Law for the Limitation of Actions, Law 66(I) of 2012.

Actions based on torts are time-barred if not filed within six years (three years for negligence, nuisance and breach of statutory duty) from the date the cause of action arose. Actions for breach of contract are time-barred if not filed within six years from the date the cause of action arose.

Article 14 provides that the limitation time may be extended in cases of fraud, concealment or mistake.

8.8.2 Do your courts uphold shorter contractual limitation periods?

The Contracts Law, Cap 149, provides that any agreement that purports to restrict a party's ability to enforce his rights by taking court proceedings or that limits the time within which he may enforce his rights is void.

8.9 Finance

8.9.1 In what circumstances is it possible for your courts to prevent payment out under:

8.9.1.1 a letter of credit?

The Cyprus courts are extremely reluctant to grant injunctions against such instruments of credit. In *Pakistan Cables Ltd v NSB General Trading (Overseas) Co Ltd* (Civil Appeal No. 194/2009) the Supreme Court of Cyprus (quoting from the English case of *RD Harbottle (Mercantile) Ltd v National Westminster Bank Ltd* (1977) 2 All ER 862), underlined the fact that international credit instruments (such as letters of credit and performance bonds) '…are the life-blood of international commerce'.

On this basis the Cyprus courts will not interfere with such instruments in disputes that are concerned with the contractual relationship of the seller with the buyer unless fraud is clearly evident and the bank had knowledge or was involved, upholding the 'autonomy principle'.

In case of fraud the courts have the discretionary power to issue injunctive relief.

8.9.1.2 performance bonds?

See by analogy our comments in 8.9.1.1. Courts in Cyprus do not normally intervene in commercial transactions in the absence of fraud. The power of the courts to issue injunctive relief is discretionary and each case is considered on its own facts.

8.9.2 What does one have to show to prevent payment out?

The party seeking to prevent the payment under either a letter of credit or a performance bond would need to file an application for an injunction against the relevant parties, and prove its allegations of fraud. It must also satisfy the requirements for obtaining injunctive remedies as set out in

Article 32(1) of the Courts of Justice Law, Law 14 of 1960, (see 7.9 above). The burden of proof would be on the balance of probabilities.

8.10 Security

8.10.1 What remedies are available to obtain security for the claim:

8.10.1.1 where the substantive claim is being litigated?

See 7.9 above regarding interim orders.

8.10.1.2 where the substantive claim is not being litigated in your jurisdiction?

Article 31 of Regulation (EC) No. 44/2001 empowers Cyprus courts to grant domestic orders in aid of substantive proceedings in EU member states other than Denmark without the need to initiate substantive claims in Cyprus.

While there is no explicit legal basis upon which interim orders in aid of legal actions in countries outside the European Union may be requested, the wide scope of Article 32 of the Courts of Justice Law and previous experience suggest that the courts will do their utmost to devise a way to exercise their discretionary powers to issue such interim orders when justice requires it. Nevertheless this has not been affirmed so far by the Supreme Court of Cyprus.

8.10.2 Must the applicant have already commenced substantive proceedings (whether by litigation or arbitration) to be able to obtain security?

Under Cyprus law, a right to obtain an interim injunction is not a cause of action and it cannot stand on its own. Therefore, as regards litigation proceedings, a party must have commenced substantive proceedings to apply for the security remedies discussed above.

The position is different regarding international arbitration proceedings where according to Article 9 of the International Commercial Arbitration Law, Law 101 of 1987, a party may apply for interim remedies prior to the commencement of the arbitration proceedings.

In the case of substantive litigation and arbitration proceedings initiated outside Cyprus, the courts have the power to grant orders in aid of substantive proceedings without it being necessary to commence substantive claims within Cyprus subject to the considerations set out above in 8.10.1.

8.10.3 Is there a distinction between the remedies available for a claim which is subject to litigation and one which is referred to arbitration?

There is no distinction between the remedies available for a claim that is subject to litigation and one that is referred to arbitration.

8.10.4 What tests are applied to establish a right to each remedy?

Article 32(1) of the Courts of Justice Law, Law 14 of 1960, which empowers the courts to grant injunctions, specifies that before issuing an interlocutory injunction the court must be satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled

to relief and that it will be difficult or impossible to do complete justice at a later stage unless an interlocutory injunction is granted.

It is ultimately at the discretion of the court whether to grant the injunction or not.

It is possible to apply for interim orders on an *ex parte* basis provided that the applicant can show an element of urgency. In such cases the applicant has a duty to make full and frank disclosure of all material facts, including facts that are detrimental to the applicant or facts that may be raised as a defence by the respondent. This duty is not restricted to facts actually known by the applicant but also extends to additional facts which the applicant would have known if he had made proper enquiries. A breach of the disclosure duty can automatically result in the cancellation of any interim orders issued on an *ex parte* basis.

8.10.5 Is the applicant required to provide counter security, and if so by what means?

The applicant is generally required to lodge security with the court in the form of a bank guarantee or cash.

8.10.6 What exposure does an applicant have for damages if the attachment is deemed wrongful?

In principle, a defendant that has suffered loss due to the inappropriate granting of an interim injunction may raise an action for compensation and the court is entitled to grant full compensation for damages proved.

8.11 Enforcement

8.11.1 Is your country a signatory to the New York Convention?

Cyprus has ratified without any reservations the New York Convention through the Enforcement of Foreign Arbitral Awards of 1979, Law 84 of 1979.

8.11.2 To what extent is the New York Convention applied in practice?

Courts in Cyprus use the Convention as the yardstick for examining the recognition, registration and enforcement of foreign arbitral awards.
The registration, recognition and enforcement of a foreign arbitration award can be effected by the filing of an application by summons by the award creditor at the competent District Court. The application must be served on the award debtor and must be supported by an affidavit together with the documents referred to in Article IV of the New York Convention. The award debtor has the right to oppose the application. In case of opposition a hearing will take place and the court will decide whether the award in issue will be recognised, registered and enforced or not.

When the court issues a judgment recognising an award and permits its registration and enforcement, the award may be enforced in the same manner as a judgment or order of a Cyprus court, using any of the methods of execution of domestic court judgments.

8.12 Vienna Convention

8.12.1 Is your country a signatory?

Cyprus is by way of accession a signatory to the Vienna Convention, which it ratified by Law 55(III) of 2004.

9. GENERAL FORMALITIES

9.1 Does a lawyer require a formal power of attorney to be able to act?

Lawyers do not require a formal power of attorney to be able to act in Cyprus.

9.2 Do claim documents (and their translation) require notarisation?

Claim documents (and translations of these where they will be served outside the jurisdiction) should be stamped and sealed by the Registrar of the District Court. Other than this, they do not require any further notarisation, but regard must be given to any local requirements at the state where service is to be effected.

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