

The International Comparative Legal Guide to:

Shipping Law 2016

4th Edition

A practical cross-border insight into shipping law

Published by Global Legal Group, with contributions from:

Advokatfirman Lindahl

Ana Cristina Pimentel & Associados,

Sociedade de Advogados, SP, RL

Andreas Neocleous & Co LLC

ANK Law Office

Araya & Cía. Abogados

Bech-Bruun

Bloomfield Law Practice

Borenius Attorneys Ltd

Budidjaja & Associates

Bull, Housser & Tupper LLP

Clyde & Co LLP

Clyde & Co US LLP

DELVISO-AVOCATS

Dingli & Dingli

Estudio Arca & Paoli Abogados

Fleet Hamburg LLP

FRANCO & ABOGADOS ASOCIADOS

Gardere Wynne Sewell LLP Holman Fenwick Willan Izard Weston

Kegels & Co

Kincaid | Mendes Vianna Advogados

Lee and Li, Attorneys-at-Law

LEX NAVICUS CONCORDIA

Liouta & Partners Law Firm

MURILLO, ARREDONDO ABOGADOS

Q.E.D INTERLEX CONSULTING SRL

RAJAH & TANN SINGAPORE LLP

Rosicki, Grudziński & Co.

S. Friedman & Co. Advocates

Sabatino Pizzolante Abogados

Marítimos & Comerciales

SAN SIMÓN & DUCH

STUDIO LEGALE BOGLIONE

Van Traa Advocaten N.V.

VUKIĆ & PARTNERS

Wikborg, Rein & Co. Advokatfirma DA

Wintell & Co





global legal group

Contributing Editor Ed Mills-Webb, Clvde & Co LLP

Sales Director Florjan Osmani

Account Directors Oliver Smith, Rory Smith

Sales Support Manager Toni Hayward

Sub Editor Hannah Yip

Senior Editor Rachel Williams

Chief Operating Officer Dror Levy

Group Consulting Editor Alan Falach

Group Publisher Richard Firth

Published by

Global Legal Group Ltd. 59 Tanner Street London SE1 3PL, UK Tel: +44 20 7367 0720 Fax: +44 20 7407 5255 Email: info@glgroup.co.uk URL: www.glgroup.co.uk

GLG Cover Design F&F Studio Design

GLG Cover Image Source iStockphoto

Printed by

Ashford Colour Press Ltd. July 2016

Copyright © 2016 Global Legal Group Ltd. All rights reserved No photocopying

ISBN 978-1-911367-05-5 ISSN 2052-5419

Strategic Partners





General Chapters:

- 1 Compensation for Charterparty Breach in a Downturn: What to Expect Ed Mills-Webb & Mark Tilley, Clyde & Co LLP
- 2 Maritime Liens: Update on Recent Decisions of U.S. Courts Following the Collapse of O.W. Bunker

 John R. Keough & Casey D. Burlage, Clyde & Co US LLP

Country Question and Answer Chapters:

Co	untry Question a	nd Answer Chapters:	
3	Australia	Holman Fenwick Willan: Hazel Brewer & Nic van der Reyden	11
4	Belgium	Kegels & Co: André Kegels	18
5	Brazil	Kincaid Mendes Vianna Advogados: Godofredo Mendes Vianna & Camila Mendes Vianna Cardoso	26
6	Canada	Bull, Housser & Tupper LLP: John W. Bromley	31
7	Chile	Araya & Cía. Abogados: Silvana Troncoso & Fernando Arancibia	36
8	China	Wintell & Co: James Hu & Mervyn Chen	42
9	Colombia	FRANCO & ABOGADOS ASOCIADOS: Javier Franco	48
10	Croatia	VUKIĆ & PARTNERS: Prof.dr.sc. Gordan Stanković	53
11	Cyprus	Andreas Neocleous & Co LLC: Costas Stamatiou & Andreas Christofides	58
12	Denmark	Bech-Bruun: Johannes Grove Nielsen & Camilla Søgaard Hudson	64
13	Dominican Republic	Q.E.D INTERLEX CONSULTING SRL: Luis Lucas Rodríguez Pérez	70
14	Finland	Borenius Attorneys Ltd: Ulla von Weissenberg	75
15	France	DELVISO-AVOCATS: Henri Najjar	81
16	Germany	Fleet Hamburg LLP: Dr. Christoph Hasche	87
17	Greece	Liouta & Partners Law Firm: Marina D. Liouta & Sotirios S. Koutsoukos	93
18	Indonesia	Budidjaja & Associates: Juni Dani & Bama Djokonugroho	98
19	Israel	S. Friedman & Co. Advocates: David Malkoff & Amir Cohen-Dor	104
20	Italy	STUDIO LEGALE BOGLIONE: Giando Boglione, LL.M.	109
21	Malta	Dingli & Dingli: Dr. Tonio Grech & Dr. Fleur Delia	114
22	Mexico	MURILLO, ARREDONDO ABOGADOS: Rafael Murillo	118
23	Netherlands	Van Traa Advocaten N.V.: Vincent Pool & Jolien Kruit	122
24	New Zealand	Izard Weston: John Burton & Robert Cahn	129
25	Nigeria	Bloomfield Law Practice: Adedoyin Afun & Bode Adegoke	134
26	Norway	Wikborg, Rein & Co. Advokatfirma DA: Morten Lund Mathisen & Gaute Gjelsten	140
27	Peru	Estudio Arca & Paoli Abogados: Francisco Arca Patiño & Carla Paoli Consigliere	146
28	Poland	Rosicki, Grudziński & Co.: Maciej Grudziński & Piotr Rosicki	151
29	Portugal	Ana Cristina Pimentel & Associados, Sociedade de Advogados, SP, RL: Ana Cristina Pimentel	157
30	Russia	LEX NAVICUS CONCORDIA: Konstantin Krasnokutskiy	162
31	Singapore	RAJAH & TANN SINGAPORE LLP: Kendall Tan & Dedi Affandi Ahmad	168
32	Spain	SAN SIMÓN & DUCH: Mercedes Duch & Luis de San Simón	174
33	Sweden	Advokatfirman Lindahl: Philip Tonkin & Elias Himsel	180
34	Taiwan	Lee and Li, Attorneys-at-Law: Daniel T. H. Tsai & James Chang	185
35	Ukraine	ANK Law Office: Alexander Kifak & Artyom Volkov	191
36	United Kingdom	Clyde & Co LLP: Ed Mills-Webb	196
37	USA	Gardere Wynne Sewell LLP: Peter A. McLauchlan & Anacarolina Estaba Bendfeldt	202
38	Venezuela	Sabatino Pizzolante Abogados Marítimos & Comerciales: José Alfredo Sabatino Pizzolante & Iván Darío Sabatino Pizzolante	209

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice.

Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

EDITORIAL

Welcome to the fourth edition of *The International Comparative Legal Guide to: Shipping Law.*

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with an overview of key issues affecting shipping law, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 36 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Ed Mills-Webb of Clyde & Co LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M. Group Consulting Editor Global Legal Group Alan.Falach@glgroup.co.uk

Cyprus



Costas Stamatiou



Andreas Neocleous & Co LLC

Andreas Christofides

1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

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

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

The Cyprus courts have jurisdiction to hear any claim for damage done to a ship and damage received by a ship *in rem*. A necessary condition for invoking the *in rem jurisdiction* is the physical presence of the *res* 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 if they have their residence or place of business in Cyprus. Where the owners are not Cyprus residents, *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 owners have submitted to the jurisdiction.

(ii) Pollution

Cyprus is a party to and has ratified the following conventions:

- the International Convention on Civil Liability for Oil Pollution Damage of 1969 ("CLC") and its Protocols of 1976 and 1992 and Amendments of 2000;
- the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 and its Protocols of 1976 and 1992 and subsequent amendments; and

■ the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols and amendments ("Barcelona Convention").

Cyprus is also a contracting party to:

- the International Convention for the Prevention of Pollution from Ships of 1973 as modified by the Protocol of 1978 ("MARPOL 73/78") and its Amendments;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters of 1972, as amended ("LDC 1972");
- the International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 ("BUNKERS"); and
- the International Convention on the Control of Harmful Anti-Fouling Systems on Ships of 2001 ("AFS").

(iii) Salvage / general average

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, of 23 September 1910 (extended to Cyprus on 1 February 1913).

Where a salvage contract exists, the Cyprus courts will enforce it (L&M Seamasters Limited 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 C.L.R. 328, Branco Salvage Ltd v The ship "DIMITRIOS" and her Cargo and Freight (1968) 1 C.L.R. 252, Cyprus Ports Authority v the Ship "Zinovia" and her Cargo ao (1990) 1 A.A.Δ. 655).

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.

(iv) Wreck removal

Cyprus is a party to and has ratified the Nairobi International Convention on the Removal of Wrecks of 2007. The Convention entered into force for the Republic of Cyprus on 22 October 2015 in accordance with article 18(2) of the Convention.

The Wrecks Law, Cap. 298 regulates wrecks. Responsibility for the removal of wrecks in the territory of Cyprus lies with the Receiver, unless the owner of the ship is present, in which case the Receiver cannot be involved. The owner must immediately notify the Receiver of the existence of a wreck in Cyprus, and all third parties are also bound to notify the Receiver of the existence of a wreck in Cyprus or, where they come in possession of a wreck, surrender it to the Receiver.

(v) Limitation of liability

Cyprus is a party to and has ratified the Convention on Limitation of Liability for Maritime Claims of 1976 and its Protocol of 1996, which were ratified by Law 20(III)/2005.

The Merchant Shipping (Shipowners' Insurance for Maritime Claims) Law of 2012 ("Law 14(I)/2012") transposed Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on insurance against maritime claims subject to the limitations of the LLMC.

The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea of 2002 ("Athens Convention"), on which the EU Passenger Liability Regulation (392/2009) is based, sets out limits of liability for death or personal injury or for loss or damage to luggage and vehicles.

(vi) The limitation fund

Under the EU Passenger Liability Regulation (392/2009), operators of ships licensed to carry more than 12 passengers are required to maintain compulsory insurance or other financial security of no fewer than 250,000 special drawing rights (approximately €289,000) per passenger per incident to cover liability under the Athens Convention, in respect of death of and personal injury to passengers. Ships must obtain a certificate from their flag state confirming that insurance or other financial security is in force.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

The Marine Accidents Investigation Committee ("MAIC") is responsible for investigating marine accidents and incidents of Cyprus flagged ships all over the world and accidents and incidents of foreign flagged ships in the territorial waters of Cyprus under the Marine Casualties and Incidents Investigation Law of 2012, which implemented EU Directive 2009/18/EC.

The Marine Casualties and Incidents Law and EU Directive 2009/18/EC give the MAIC extensive powers, including access to any relevant area or casualty site and to any evidence or witnesses. The owner or manager, master and the crew of any vessel concerned are required to cooperate fully and provide any information and evidence requested, including statements. They are also required to preserve all relevant evidence and information, including information from charts, log books, electronic and magnetic recording and videotapes, relating to the period preceding, during and after an accident.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

Cyprus has ratified the Hague Rules by means of the Carriage of Goods by Sea Law, Cap. 263 ("Cap. 263") and 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, of 25 August 1924 (extended to Cyprus on 2 June 1931). Cyprus has not ratified either the Hamburg Rules or the Rotterdam Rules.

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 and another v TH. D. Georghiades S.A.* (1980) 1 CLR 386, *Kounnas and Sons Ltd v Zim* (1966) 1 CLR 181, *Said Hamade v Anthimos Demetriou Ltd a.o.* (1994) 1 A.A.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 and another* (1992) 1B CLR 979).

2.2 What are the key principles applicable to cargo claims brought against the carrier?

The English Bills of Lading Act of 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 Limited v Dimitriou Tilliri Limited (2007) 1B CLR 1247; Standard Fruit Company (Bermuda) Limited ao 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.

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 him (*Andreas Orthodoxou Ltd v Dimitriou Tilliri Ltd* (2007) 1B CLR 1247). Furthermore, given the decision in *Andreas Orthodoxou Limited*, 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.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

Where the Hague Rules apply, for example if they are expressly incorporated in the bill of lading or other document of title, the shipper is under a duty to properly declare cargo, and failure to do so would result in the shipper being liable to the carrier for damage to the ship, under strict liability. The shipper may also be liable for damage to other cargo where hazardous cargo has not been declared or has been misdeclared.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents ("the Regulation") is fully applicable in Cyprus as an EU Member State. The Regulation lays down a harmonised regime of liability and insurance for the carriage of passengers by sea, based on the Athens Convention and the International Maritime Organisation guidelines for implementation of the Athens Convention, adopted in 2006.

Operators of ships licensed to carry more than 12 passengers are required to maintain compulsory insurance or other financial security of no fewer than 250,000 special drawing rights (approximately £289,000) per passenger per incident to cover liability under the Athens Convention, in respect of death of and personal injury to passengers. Ships must obtain a certificate from their flag state confirming that insurance or other financial security is in force.

The definition of 'passenger' in article 1 of this convention encompasses anyone who is carried on a ship under a contract of carriage, or who (with the consent of the carrier) is accompanying a vehicle or live animals that are covered by a contract of carriage of goods not governed by the Athens Convention. This definition also encompasses the drivers of vehicles carried on board roll-on/roll-off cargo vessels; consequently, the Cyprus authorities consider that cargo vessels which carry more than 12 such persons are also subject to the Athens Convention and the Regulation. Such vessels must therefore have the necessary compulsory insurance in place and submit evidence of insurance cover in order to obtain the requisite certificate from the Cyprus authorities.

International carriage is defined under the Regulation as any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Cyprus is not itself a party to the International Convention Relating to the Arrest of Sea-Going Ships of 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 of 1956, which ratifies the 1952 Arrest Convention, applies to Cyprus and the Cyprus courts will consider it (Montegrillo Di Navigazione SNC a.o. v RO/RO "IVA" of the Port of Rigeka, Yugoslavia now Lying at the Port of Limassol (1989) 1 CLR 473).

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. 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 Section 1(1) (m) of The Administration of Justice Act of 1956 as a claim in respect of the construction, repair or equipment of a ship.

Maritime liens enjoy priority over other claims. 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).

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 a.o. v RO/RO "IVA" of the Port of Rigeka, Yugoslavia now Lying at the Port of Limassol* (1989) 1 CLR 473)).

The arrest of a sister ship is possible by virtue of Section 3(4) of the English Administration of Justice Act of 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*.

Under the Cyprus Admiralty Jurisdiction Order of 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. The arresting party may apply for a specific form of security or bail but it is at the court's discretion to determine its nature. The usual practice is to require a guarantee issued by a local bank.

Where arrest is not possible, a litigant can apply for a freezing order under article 32 of the Courts of Justice Law of 1960.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Yes. See, for example, admiralty case number 32/2014 (1) *Interbunker Management Ltd*, and (2) *Novoil Ltd v m/v "BARIS"*, in which an arrest warrant against the vessel, which was in the port of Larnaca, was issued following an *ex parte* application at the Supreme Court of Cyprus.

4.3 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

A contractual lien can be exercised against cargo, sub-freight or sub-charter hire where a lien clause is expressly included in a charterparty. A common law lien may arise against goods for freight due, general average contributions and expenses incurred by the owner for the purpose of preserving the goods.

A shipowner may exercise a lien on cargo under common law only for the recovery of a general average contribution due from the cargo, for expenses incurred by the shipowner to protect the cargo and to recover freight charges due on delivery of the cargo under the bill of lading or the charter. A common law lien cannot be invoked for deadfreight, demurrage charges or shipper's liabilities in respect of the cargo. Where a contractual lien on sub-freights is given to the owners by a charterer incorporated in Cyprus, it must be registered as a charge against the charterer or else it will be void against the liquidator and any creditor of the company.

Where the time-charterer is the cargo owner, the owner has the right to exercise a lien over the cargo, if the charterparty provides for this. However, the lien cannot be extended as against third parties holding bills 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).

Finally, any claims of the Republic of Cyprus for fees, dues, or tonnage taxes chargeable and assessable under the Merchant Shipping (Fees and Taxing Provisions) Law of 1992 constitute a lien on the ship.

4.4 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

The courts very rarely depart from their usual practice of requiring a guarantee issued by a local bank.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Article 32 of the Courts of Justice Law 14 of 1960 empowers courts in Cyprus to grant interlocutory injunctions on such terms and conditions as the court considers appropriate where it appears just and convenient to do so. These include "Anton Piller" orders, a bundle of interlocutory orders designed to enable a plaintiff to secure the preservation of relevant evidence that might be otherwise destroyed or concealed by the defendant. It is also possible to obtain "Norwich Pharmacal" orders for the disclosure of information.

Article 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law (which is identical to the English Merchant Shipping Act of 1894) provides for a special type of 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).

5.2 What are the general disclosure obligations in court proceedings?

Any party may apply to the court for an order of discovery on oath

and/or for inspection of documents that are or have been in the other party's possession or power as regards any matter relating to such documents. If a party ordered to produce documents in a discovery proceeding fails to do so, he or she may not subsequently enter any document as evidence on his or her behalf that he or she failed to disclose or declined to allow to be inspected, unless the court is satisfied that he or she had sufficient excuse. If the documents that are the subject of the discovery or inspection are confidential, self-incriminating, or privileged, a claim for privilege may be raised.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

Admiralty actions must be brought before the Supreme Court of Cyprus in its admiralty jurisdiction. The district courts have limited jurisdiction to try certain admiralty actions, but only on referral by the Supreme Court. Actions commence with the issue of a writ of summons, which must identify all parties and state the nature of the claim and the relief sought. In an action *in rem*, the writ of summons must be served at least 21 days before the date specified for the parties to appear before the court, and in an action *in personam*, the writ must be served at least 10 days before the appearance date.

Arbitration is not yet widely used in Cyprus to resolve shipping claims, despite the existence of a well-established legal framework for international arbitration based on the International Commercial Arbitration Law of 1987. The courts will recognise arbitration and jurisdiction clauses in contracts and documents incorporated into contracts.

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind?

Cyprus has a host of advantages as a shipping centre. Strategically located where three continents meet, it is a member of the EU and the Eurozone, with a high quality of life founded on a free economy, free movement of capital and a well-established, reliable legal system. It has a modern, low-tax regime and double tax agreements with more than 50 countries. The shipping taxation regime is particularly favourable, with an EU-approved tonnage tax regime for owners, charterers and ship managers giving complete income tax exemption on dividends paid to shareholders, on interest earned on working capital and on any profit made from the sale of a qualifying ship. There are no succession taxes, no income tax on the emoluments of officers and crew on board Cyprus ships and no stamp duty on ship mortgage deeds or other security documents.

Cyprus is a fully-serviced and long-established shipping centre, and one of the world's largest third party ship management centres. It has low set-up and operating costs for companies, and a world-class business infrastructure, including excellent transport links and telecommunications, world-class professional and financial services and highly-educated, English speaking people. It is a party to numerous international maritime conventions and has bilateral merchant shipping agreements with 23 countries.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

The available mechanisms are as follows:

- EU Regulations 44/2001 and 1215/2012 ("the Brussels I Regulation") and 805/2004;
- Common Law;
- Statute; and
- Bilateral Treaties and Multilateral Conventions.

The EU Regulations apply to all judgments given in civil and commercial matters (but not revenue, customs or administrative matters) by the courts of Member States except Denmark.

Judgments in civil and commercial matters that originate in other jurisdictions may be enforced under statute or a bilateral treaty, if one exists, or under common law.

The grounds on which a courts may decline to recognise an overseas judgment are very limited, and are principally where:

- the judgment is contrary to the public policy of Cyprus;
- where the judgment was given in default of appearance, the defendant had not been not served with the proceedings in good time or in a manner as to enable him to prepare his defence himself:
- where the judgment is inconsistent with an earlier judgment of the Cyprus courts between the same parties; or
- if recognition is inconsistent with an earlier judgment between the same parties regarding the same cause of action given elsewhere.

Pending the formal recognition, registration and enforcement of the foreign judgment, the judgment creditor may apply for interim relief. 7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Arbitration awards are enforceable on the basis of the Law on International Arbitration and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of the United Nations of 1958 (the "New York Convention"). As a contracting party to the New York Convention, Cyprus is bound to enforce awards made in other contracting States.

The Law on International Arbitration minimises court intervention. Following delivery of an award, the court may set aside an award or refuse recognition or enforcement only on the following grounds:

- incapacity of the parties;
- invalidity of the arbitration agreement;
- lack of proper notice or denial of a party's right to present his case;
- lack of jurisdiction of the tribunal;
- the subject matter of the dispute not being capable of settlement by arbitration under the law of Cyprus; and
- incompatibility of the award with public policy in Cyprus.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

The Department of Merchant Shipping is committed to constant improvement of the technical, administrative, legal and financial infrastructure of Cyprus in the maritime sector, to further improvement of the quality of the ships registered in Cyprus and the crew employed on them and to improvement of safety standards and conditions of living and work of seamen on board Cyprus ships in accordance with international conventions currently in force, as well as to the establishment of economic and other incentives to develop the sector in Cyprus.



Costas Stamatiou

Andreas Neocleous & Co LLC Neocleous House Makarios Avenue P O Box 50613, Limassol, CY-3608 Cyprus

Tel: +357 25 110000 Email: stamatiou@neocleous.com URL: www.neocleous.com

Costas graduated in law from the University of Wales, Cardiff in 2001 and obtained a Master's degree in Legal Aspects of Marine Affairs from the same university in 2002 and a Master's degree in European Legal Studies from Bristol University in 2003. He was admitted to the Cyprus Bar in 2004. He has served on the shipping committee of the Cyprus Bar Association since 2009, and since 2010, he has also acted as a visiting law lecturer in local universities.



Andreas Christofides

Andreas Neocleous & Co LLC Neocleous House Makarios Avenue P O Box 50613, Limassol, CY-3608 Cyprus

Tel: +357 25 110000

Email: andreas.christofides@neocleous.com

URL: www.neocleous.com

Andreas graduated in law from the University of Sheffield in 2012 and was awarded an LL.M. from King's College London in 2013. He joined us in 2013 as a trainee, and upon completion of his legal training and admission to the Cyprus Bar in 2014, he continued his career as an associate in the litigation department. Since late 2014, he has focused on shipping litigation. Andreas speaks Greek and English and has a working knowledge of French.

MEOCLEOUS

Established in 1965, Andreas Neocleous & Co LLC is now one of the largest law firms in south-eastern Europe and the eastern Mediterranean region, and has earned a world-class reputation for quality. Headquartered in Limassol, Cyprus, the firm also has offices in Nicosia and Paphos in Cyprus, as well as in Russia, Belgium, Hungary, Ukraine, and the Czech Republic.

Andreas Neocleous & Co LLC has a team of more than 140 experienced professionals in Cyprus and mainland Europe, giving the strength and depth of resource to provide international businesses and their advisers with world-class standards of quality and responsiveness. The firm values diversity and its staff speak most major European languages. All are fluent in English.

All the major independent legal rating agencies place Andreas Neocleous & Co LLC at the top of their Cyprus rankings. *The Legal 500* and *Chambers & Partners* rank the firm as a top-tier firm in shipping and in all other practice areas.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Franchise
- Gambling
- Insurance & Reinsurance

- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255 Email: sales@glgroup.co.uk