The Shipping Law Review

Editors
James Gosling and Rebecca Warder

Law Business Research

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CONTENTS

EDITORS' PREFACE

This book aims to provide those involved in handling wet and dry shipping disputes in multiple jurisdictions with an overview of the key issues relevant to each jurisdiction. We have sought contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

We begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry internationally: piracy, marine insurance, shipbuilding, logistics, and competition and regulatory law.

Each jurisdictional chapter then gives an overview of the procedures for handling shipping disputes in each country, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked each author to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, any security or counter-security requirements and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regime in force in each country, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, along with the local rules in respect of collisions, wreck removal, salvage and recycling.

Passenger and seafarer rights have both recently been enhanced with the entry into force in 2014 of the 2002 Protocol to the 1974 Athens Convention and the Maritime Labour Convention in 2013, and contributors set out the current position in each jurisdiction. The authors have then looked forward and have commented on what they believe are likely to be the most important forthcoming developments in their jurisdictions.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US$380 billion in terms of global freight rates, amounting to around 5 per cent of global trade overall. More than 90 per cent of the world's freight is transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book reflect that.

This past year has, of course, been a challenging one for the international shipping industry, as it continues to feel the effects of the global financial recession. At the same time, the shipping industry has witnessed increased regulation and environmental scrutiny. There has been a recent plethora of increasingly stringent emissions regulation measures focused on sulphur oxides and nitrogen oxides emissions.

Within emissions control areas, the current limit is 1.0 per cent sulphur content, falling to a tougher 0.1 per cent from 1 January 2015 (although California has accelerated its sulphur emissions limits to the new standard already). Tier II limits on nitrogen oxides emissions have been in place globally since 2011. Tier III, which represents a significantly more stringent regime than Tier II limits, will be implemented in emissions control areas from 2016. Furthermore, also from 2016, the United States Clean Air Act will introduce a target of an 80 per cent reduction in nitrogen oxides emissions from vessels by 2030.

The International Maritime Organisation (IMO) has so far not introduced similar limits on the emission of greenhouse gases, such as carbon dioxide, although it is generally perceived that the IMO is in the future likely to further regulate global carbon dioxide emissions from vessels. Outside of the IMO, the EU and individual countries are focusing on greenhouse gas reduction policies. In particular, the European Commission's current proposal is that, from 2018, vessels calling at ports in the EU should be expected to monitor, report and verify carbon dioxide emissions. The strategy is intended to evolve into carbon dioxide reduction targets and market-based measures in the longer term, in line with the EU's approach to land-based greenhouse gas emissions. Steps have already been taken in this regard in France where, since October 2013, vessels calling at French ports have been required to record and report their carbon dioxide emissions. Any EU market-based measures are expected to include tradeable emissions permits for the shipping industry.

Another challenge facing the shipping industry relates to the handling of ever-larger casualties. The most recent high-profile container ship casualties, such as the *MSC Napoli* or the *Rena*, involved relatively small vessels with a maximum capacity of up to 4,688 containers; however, the latest mega-containerships can carry up to 15,000 containers. It is likely that at some stage there will be a casualty involving one of these new larger vessels and this may prove a major test for the industry. It has been suggested that the current salvage industry may find it difficult to deal with the scale of any wreckage. The regulatory environment is becoming increasingly stringent, with far stricter controls on both clean-up and wreck removal, which will also make handling any mega-container ship casualty more challenging. The London underwriting community has responded to concerns about the general average implications by evolving a new insurance product, which, it is suggested, could replace the traditional approach to general average for large container ships. It remains to be seen whether this will be accepted by the market.

Piracy remains a considerable issue for the shipping industry worldwide. There has been a decline in the number of incidents off Somalia since the peak in 2010/11, but an increase in West Africa and (to an extent) elsewhere. Although the use of armed guards and increased naval policing in recent years have undoubtedly contributed to the decline, challenges remain and the shipping industry must continue to be alive to the threat.

We would like to thank all the contributors for their assistance with producing this inaugural edition of *The Shipping Law Review*. We hope that this volume will provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Finally, we would like to thank our colleague, Tessa Huzarski, for all her hard work in compiling this book.

James Gosling and Rebecca Warder
Holman Fenwick Willan LLP
London
July 2014

Chapter 21

ISRAEL

Amir Cohen-Dor and Michael Safran[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

On 1 January 2014, the Israeli fleet consisted of 51 vessels, with a total of approximately 3.3 million DWT, 2.6 million GRT and 1.4 million NRT. The fleet included nine Israeli-flagged vessels, representing 9.5 per cent of the total DWT.[2]

The Israeli fleet is operated by several shipping companies, including Zim Integrated Shipping Services Ltd and XT Shipping Ltd.

The ports of Israel are the main gateway to the Israeli foreign trade of goods (99 per cent of Israeli imports and exports). The Israeli ports consist of two energy ports in Hadera and Ashkelon, and the three commercial ports: Haifa, Ashdod and Eilat.

During 2013, 6,314 vessels passed through the Israeli ports; approximately 70 million tonnes of goods (including 27 million tonnes of bunker and coal); and 2.5 million TEUs (1.27 million TEUs were unloaded and 1.26 loaded).

The import of containerised cargo was generated in 2013 mainly from western Europe (34 per cent), Asia and the Far East (33 per cent), the eastern Mediterranean (16 per cent), North America (7 per cent) and eastern Europe (6 per cent). The destination of export for containerised cargo in 2013 mainly was to western Europe (45 per cent), the eastern Mediterranean (17 per cent), North America (15 per cent), Asia and the Far East (8 per cent), and eastern Europe (6 per cent).

Israel has landside connections with Jordan, Egypt and the Palestinian Authority.

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1 Amir Cohen-Dor and Michael Safran are partners at S Friedman & Co.

2 Figures according to the Ports and Shipping Annual Statistical Journal for 2013, published by the Administration of Shipping & Ports, Ministry of Transport, National Infrastructure & Road Safety,

i Competition law

Up to the end of 2012, the Israeli Restrictive Trade Practices Law of 1988 contained a statutory exemption for agreements between carriers relating to international sea transport, as long as such agreements were filed with the Minister of Transport as per the terms of this law.

At the end of 2010, the Israeli parliament decided to remove this exemption for the maritime sector as part of the Omnibus Law for the State Financial Market (Statutory Amendments for the Fulfilment of the Budget and Economical Policy Targets for the Budget Years 2011–2012). The removal of the statutory exemption was effected on 1 January 2013, two months after a Block Exemption for operational agreements between carriers (i.e., consortia agreements) was published.

The Block Exemption is based on the European Consortia block exemption[3] with several changes that are related to the size of the Israeli market and Israeli competition law, such as the following:

a The aggregated market share threshold was set at 40 per cent (in the EU it is 30 per cent).

b The maximum 'Notice Period' was set at 12 months and the maximum 'Initial Period' of 36 months (in the EU these periods are allowed only for highly integrated consortia).

c Due to the extremely wide definition of 'Restrictive Arrangements' in the Law, even simple slot charter agreements will be considered restrictive arrangements unless they are within the boundaries of the Block Exemption, or have been individually exempted by the Israel Antitrust Authority (IAA) or approved by the Antitrust Tribunal.

d In Israel, if the parties exceed the market share threshold the arrangement may still fall within the Block Exemption if the self-assessment conducted by the parties is positive. In the EU, if the threshold is exceeded the parties are automatically outside the boundaries of the block exemption and will have to conduct a self-assessment that will not be subject to the Block Exemption's conditions (such as the lock-in and termination periods).

e In Israel, once the arrangement is outside the framework of the Block Exemption (for example, due to long initial and termination periods) there is no option to conduct a self-assessment and the parties will have to apply to the IAA for an individual exemption or apply to the Antitrust Tribunal for approval of the arrangement.

The Guidelines for the shipping sector published by the IAA on 28 of July 2013, refer to the EU regulations and decisions when interpreting the new block exemption, 'subject to' the necessary adjustments to 'the Israeli law' and the terms and conditions of the shipping sector in Israel.

It is important to note that in spite of the IAA's declaration that it would stick to the EU regulation and interpretation, it has made it clear in the Guidelines that,

3 Regulation (EC) No. 906/2009.

although the EU has instructed otherwise, the market share of other parties who are engaged with either of the parties to the arrangement in other operational arrangements within the same market (such as slot charterers) will also be taken into account when calculating the aggregated market share of parties to an arrangement.

When taking into account the volumes of the Israeli market and the number of services that it can reasonably accommodate for each 'product market', it is likely that a significant number of operational arrangements will exceed the 40 per cent threshold and will require self-assessments (although these may have not been required in Europe for the very same arrangements).

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Before the establishment of the State of Israel (in 1948), during the period of the British Mandate, the Supreme Court of Palestine was established by the provisions of the Palestine Order in Council of 1922 in terms of powers set out in the Foreign Jurisdiction Act of 1890. Thereafter, following the Palestine Admiralty Jurisdiction Order of 1937, which was enacted under the powers of the Colonial Courts of Admiralty Act of 1890, it was ruled that the Supreme Court of Palestine should be the Admiralty Court and should exercise admiralty jurisdiction.

The Palestine Admiralty Court applied the admiralty law adopted by the English High Court of Admiralty in 1890, and therefore statutes enacted in England following 1890 did not apply in Palestine. The Admiralty Court thus had the same jurisdiction as that exercised in admiralty matters by the High Court of Justice in England in 1890, subject to any enactments by the local legislative authority, and could exercise such jurisdiction in the same manner and to the full extent as the High Court in England.

Upon the establishment of the State of Israel, and following the Law and Administration Ordinance enacted at that time by the Provisional Council of State, it was ruled that the law that existed in Palestine on 14 May 1948 should remain in force and that the law courts existing in the territory of the state should continue to function within the scope of the powers conferred upon them by law. In 1952, in terms of the Israeli Maritime Court Law, it was provided that all the powers and procedures of the Supreme Court, in its capacity as a Court of Admiralty, should be vested in the District Court of Haifa, which should act as the Maritime or Admiralty Court.

Thus, basically, the Admiralty law and practice in the State of Israel is still based on the provisions of the British Admiralty Court Acts of 1840 and 1861 and the rules of procedure as set out in the Vice Admiralty Rules of 1883. Accordingly, the above laws and procedures govern the proceedings for enforcement of a foreign vessel's mortgage before the court.

III FORUM AND JURISDICTION

i Courts

It is possible to identify two types of courts within which shipping disputes are litigated in Israel.

Civil courts

General cargo claims against carriers and damage caused to vessels are considered as commercial or civil disputes and therefore may be handled by the civil courts in accordance with the amount sued. Claims up to 2.5 million new Israeli shekels are sent to the magistrates' courts and above this sum claims are sent to the district courts. Generally speaking, these types of claim are governed by the Israeli Carriage of Goods by Sea Ordinance as amended in 1992 (as amended Codex 1379, 5752 (22.1.1992)), which incorporates the Hague-Visby Rules into the Israeli law. These Rules govern claims concerning cargoes that are both imported into Israel and exported out of the country. According to these Rules the statute of limitation in cargo claims is one year after the date that the cargo was discharged or should have been discharged.

The Admiralty Court

Under the terms of the Israeli Admiralty Court Law of 1952 the District Court of Haifa serves as an Admiralty Court, jurisdiction of which is derived of the old British Admiralty Court Acts of 1840 and 1861, according to which the court has jurisdiction to decide in claims concerning title or ownership of a vessel, salvage, towage, services rendered to a vessel, damage done by any ship, necessaries supplied to a ship, building, equipping or repairing a ship, or damage to cargo. Furthermore, the Israeli Shipping Law (Vessels) of 1960, specifies several types of occurrence that give rise to a maritime lien over a vessel and therefore provides the Admiralty Court jurisdiction to decide in claims that concern such liens: expenses in respect of selling a vessel by the court, payments made for docking services and pilotage operations, payments sued of a vessel by its crew, payments sued of a vessel pursuant of casualties or injuries occurring on a vessel, damages sued pursuant to a collision of a vessel and payments sued for the supply of necessaries, etc.

The Admiralty Court has jurisdiction over a vessel provided that it is in Israeli waters, regardless of whether the dispute involves an Israeli citizen, company or vessel.

ii Arbitration and ADR

ADR and arbitration instruments are not common in Israel as far as maritime disputes are concerned and there are no special facilities for such resolutions.

iii Enforcement of foreign judgments and arbitral awards

The Israeli legislator allows for enforcement of foreign judgments and arbitral awards. The Israeli Enforcement of Foreign Judgments Law of 1958 provides that an Israeli court may declare a foreign judgment enforceable in Israel subject to several conditions:

a that the court that gave the judgment was certified to give it;
b that the judgment is final and is not subject to appeal;
c that the judgment is enforceable in nature and does not contradict public policy;
d that the judgment is enforceable in the country in which it was given; and
e that the judgment was given in a country which enforces Israeli judgments.

Foreign arbitral awards are enforceable as Israel is a party to the New York Convention, which allows the court to approve a foreign arbitral award and declare it enforceable in Israel as if it were given by an Israeli court.

IV SHIPPING CONTRACTS

i Contracts of carriage

By virtue of the Israeli Carriage of Goods by Sea Ordinance as amended in 1992, the Hague-Visby Rules apply on any bill of lading in respect of carriage of goods by sea in any vessel:

a from a port in Israel to another port, whether in Israel or outside of Israel;

b from a port in a country who is party to the Hague Rules or the Hague-Visby Rules, or when the bill of lading was issued in a country that is party to the Rules;

c when they apply to the contract of carriage included in the bill of lading or the bill serves as proof of its existence, according to a term stipulated in a contract or under the laws of the country whose laws apply to such contract;

d to a port in Israel, when the laws of the State of Israel apply to such carriage whether according to the contract of carriage, according to another agreement between the parties, or according to the determination of the court.

Regarding the application of the provisions of this section, the nationality of the vessel or the nationality of the carrier, shipper, consignee or any other person concerned is immaterial. The Hamburg Rules are not applicable.

In Israel, the terms and conditions of liner bills of lading are applicable and enforceable and formally valid according to Israeli law. According to the Carriage of Goods by Sea Ordinance, the Hague-Visby Rules are applicable to bills of lading in respect of the carriage of goods by sea in any vessel, *inter alia*, 'when they apply on the contract of carriage included in the bill of lading'. The law therefore considers the bill of lading as an instrument that includes the contract of carriage. Furthermore, according to various Israeli Supreme Court precedents, the bill of lading is considered and classified as 'evidence to the contract of carriage' and not necessarily as the entire agreement, given that additional terms and conditions (including those varying the terms of the bill of lading) may have been agreed between the parties thereto elsewhere (in a service contract, by oral agreement, etc.) and may be evidenced by both contractual parties. Given that a bill of lading is considered a standard contract, the Standard Contracts Law 5743-1982 applies. According to the this law, a client is entitled to challenge any contractual term included therein by claiming that the condition under deliberation – having regard to the totality of the conditions of the contract and to other circumstances – involves an undue disadvantage to customers or an unfair advantage to the supplier, likely to lead to a deprivation of customers. In such a case, the court may annul or vary the condition of a standard contract.

According to the law, any bill of lading and any such document of title given in Israel, containing a contract or serving as evidence of the existence of a contract to which the Hague-Visby Rules apply by virtue of the said Carriage of Goods by Sea Ordinance, an explicit notice should be included therein saying that such bill of lading or such document of title will be in force considering the provisions of the aforementioned Rules as imposed by the Ordinance, and the bill of lading or the document of title will be in force considering such Rules, even where no such explicit notice is included therein.

According to the Ordinance, the party to which the cargo was consigned (the consignee) and the party to which the bill of lading was duly endorsed (the endorsee)

are considered, as applicable, as a party to the bill of lading, and as such are entitled to all the rights arising from the transaction due to which the bill was made, and subject to the obligations referring to such transaction in exercising their aforementioned rights.

The provisions in this section will not prejudice:

a the right of delay in transit;

b the right to claim the shipping fees from the shipper of the goods or from their owners; or

c any charge applicable to the consignee or endorsee due to receiving the goods.

Otherwise, it is worth mentioning that under Israeli law there are no provisions stipulating who bears responsibility for carriage, insurance, loading and discharge; however, the Israeli Sales law (International Sale of Goods) 1999, which incorporated the UN Convention on Contracts for the International Sale of Goods (Israel's accession to which was ratified on 16 August 2001), and which applies to contracts of sale of certain types of goods between parties whose places of business are in different states under various conditions, does contain various provisions on delivery (especially Articles 31 to 34) and passing of risk (Articles 66 to 70), although parties can exclude said law by contract. Who bears the cost of loading and discharge is a matter of inter-party negotiations.

Cabotage rules

On the 31 October 2012 the Minister of Transportation and Infrastructure published the official version of the Coastal Shipping (Permit to Foreign Vessel) (Application for Permit) Regulations 5773-2012 (the Regulations). These Regulations will now enable the enforcement of the already existing provisions of the Coastal Shipping (Permit to Foreign Vessel) Law 5766-2005 (the Coastal Shipping Law) by detailing in full the procedure governing the application for the permit, the various pre-conditions to be fulfilled, technically and in terms of manning, and the terms of such permit.

According to the Coastal Shipping Law, cabotage by a foreign vessel will be prohibited unless a permit is issued by the Shipping and Ports Directorate of the Ministry of Transportation and Infrastructure in accordance with the terms and conditions to be set out in specific regulations. Given that these Regulations have recently been published, *de facto* the Law may be presently implemented in full.

According to the Coastal Shipping Law, 'coastal shipping' is very broadly defined, and includes carriage of goods and passengers originating and destined to or from a port, vessel, facility or structure located in the coastal or internal waters of Israel without calling a foreign port thereby, and also any other operation performed in such waters, excluding fishing, oil and natural gas drilling and production, placing of pipes for the conduction of same on the sea bed or below.

According to the Regulations, various detailed pre-conditions and procedures must be fulfilled in order to entitle a foreign vessel to obtain a permit, including ongoing technical supervision and fulfilment of technical requirements. Additionally, partial crewing of the foreign vessel by Israeli seaman (and not less than two Israeli crewmen) is required.

Originally, the Regulations allowed the Shipping and Ports Directorate to grant an interim exemption to a vessel that, at the time of the publishing of the Regulations,

was already involved in coastal shipping for a period of one year or until the termination of the contractual period, according to the earlier of the two. In any case, even assuming such interim exemption was granted, the latest date of validity of such period would have been 1 December 2013.

A foreign vessel to which a permit has been given, and which carries out coastal shipping activities, will employ, inasmuch as is possible, Israeli crew members whose language is Hebrew, and no less than two such crew members and, in the event that crew members serve in such vessel as officers, one of the two Israeli crew members will be an officer.

Nevertheless, the manager may, in terms of shipping and operational considerations of the foreign vessel and the nature of the coastal shipping activity, instruct that the foreign vessel be exempt from such directives, in whole or in part; such exemption may be dependent on conditions and its validity may not exceed one year.

ii Cargo claims

Many cargo claims in Israel are brought against carriers by insurers of cargo on the basis of their subrogation rights, but neither is it uncommon to have the importers or exporters themselves sue. The courts obtain jurisdiction over the claim since the cargo (allegedly lost or damaged) is either discharged or loaded in Israel. Nevertheless, should the contract of carriage contain a jurisdiction clause, whether same is an arbitration clause or regular jurisdiction, the court may dismiss the case at its discretion and in compliance with guidelines prescribed by Supreme Court precedents. Furthermore, in some cases the court may find that the Israel is not the correct forum for litigating a case despite of the existence of Israeli jurisdiction. In a recent case brought before the Magistrates Court of Tel Aviv the court dismissed a case for *forum non conveniens* in spite of the fact that the cargo was discharged in Israel and was designated for Israel under the bill of lading. The case concerned a general average declared due to a fire that broke onboard a Panamanian vessel while it was outside Hong Kong bound for Singapore. The reason for the court's decision in this case was that all of the witnesses reside outside Israel and that the Hong Kong jurisdiction is more adequate for discussing the case.

The vast majority of cargo claims in Israel are directed against the carrier named in the bill of lading and the vessel onboard which the cargo was carried. Such claims are based on both the contractual obligation of a carrier that issued the bill of lading and on the tort caused either by the same carrier or by another.

iii Limitation of liability

There are two main facilities that impose a limitation of liability of a vessel, both of which are based on internationally accepted sets of rules.

The first, as noted above, the Hague-Visby Rules, incorporated into Israeli law, provides general defences and immunities to a carrier.

The second, the Israeli Shipping Law (Limitation on a Shipowners Liability) of 1965 incorporates the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (Brussels, 10 October 1957). In a nutshell, this Convention provides a shipowner with the opportunity to establish a limitation fund

that will serve as a maximum exposure against the shipowner for any specific occurrence giving rise to the dispute. This tool has not been dealt with by Israeli courts extensively, but it remains in force and often serves as a catalyst for settlements.

V REMEDIES

i Ship arrest

For the type of claims that can give rise to a cause for arresting a vessel, see Section III.i, *supra*. The procedure for arresting a vessel is quite simple and all that is required is a short application to the Admiralty Court, which includes an application for arresting the vessel and a claim supplement. This application is made *ex parte* and the court reviews the application; if it meets the requirements of any of the causes of arrest then the court will issue a warrant for an arrest. Such a warrant remains in force for six months after its issuance and may be executed once the vessel enters Israeli waters. In this regard, it is possible to arrest a vessel even if not at berth and waiting outside the port (as long as it anchors on Israeli territory). If, however, the vessel is not moored alongside a pier then it may be difficult to enforce as it is almost impossible to prevent a ship from sailing without permission in such circumstances.

After the vessel is arrested, it is possible to release it in exchange for a P&I club LoU or equivalent security. In the event the vessel is not released and the claim against it is accepted, then the court will initiate a procedure to sell the vessel in order to enforce the judgment given.

There has been a notable increase in bunker supply-related arrests during the past few years in Israel but recently the Admiralty Court rejected a claim of a sub-contractor of a bunker supplier, and ruled that the entitlement to sue for unpaid bunkers lies with the entity that supplied and contracted with the vessel.[4] This is an important ruling that indicates that the court has little tolerance for the current trend of claims against a vessel by entities that served only as mediators and intermediate traders in the supply chain of bunkers, and apply to arrest the vessel regardless of the fact that its owners paid in full for the bunkers supplied to the direct supplier (which may or may not have paid the other entities in the supply chain).

Israeli law does not recognise an arrest of a vessel for a liability claimed against her sister ship.

ii Court orders for sale of a vessel

Court orders for sale of a vessel are usually the outcome of claims for the enforcement of mortgages, either following a prior arrest order on the basis of a maritime lien (or cause of action falling within the jurisdiction of the Admiralty Court) or following an independent action for the enforcement of the mortgage. The Admiralty Court has the exclusive and full jurisdiction to admit and deal with all claims and causes of action of any person in respect of any mortgage on a ship or vessel, and to decide on any suit instituted by any such person in respect of any such claims or causes of action, subject

4 MC 45897-02-12 *OW Bunker Malta Ltd v. MV Emmanuel Tomasos*.

to the said ship or vessel being under arrest by process issuing from the court, or the proceeds (from the sale thereof) having been so arrested.

The consequences of this conditional jurisdiction are that the commencement of *in rem* proceedings based on a claim in respect of a mortgage over a foreign-flagged vessel requires the ship or vessel to have been arrested by another third party based on a different cause of action in respect of which the court has jurisdiction (such as, for instance, claims for necessaries supplied, for damage to imported cargo, damage done by the ship, wages due to a seaman, etc.). Similarly, the jurisdiction of the court over claims for building, equipping or repairing of a ship is also subject to the ship or proceeds thereof being under arrest by the court.

It is to be noted that the court may, either before or after final judgment, order that the vessel under arrest of the court be appraised, or be sold with or without appraisal, by public auction or by private contract, and if the vessel is deteriorating in value, the court may order it to be sold forthwith and the sale proceeds will serve as substitute security for the claim, pending judgment.

VI REGULATION

i Safety

There are various sets of regulations dealing with safety requirements for vessels calling at Israeli ports. The main guidelines and particulars may be found in the Port Regulations (Safety of Navigation) of 1982 as amended form time to time. These Regulations make reference to several international conventions, including SOLAS, the STCW Convention as amended in 1995, the IMO Codex and IMO Resolutions, the ISM Code and various other specific codes.

ii Port state control

According to Administration of Shipping and Ports of the Ministry of Transport, the State of Israel implemented the port state control (PSC) inspection system in 1997, in accordance with IMO and ILO resolutions. PSC inspections are conducted to ensure that foreign vessels calling at Israeli ports comply with international regulations and conventions.

Israel is a signatory to the regional PSC organisation, the Mediterranean MoU.[5] The Administration of Shipping and Ports is responsible for all PSC activities, and aims to inspect each and every tanker and passenger ship arriving at Israeli ports, as well as 25 per cent of the container ships and general cargo, with an emphasis on bulk carriers.

iii Registration and classification

Vessel registration is dealt with by the Shipping Law (Vessels) 1960, the Shipping Regulations (Vessels) (Building & Acquisition of Vessels and Mortgages Thereon) 2002

5 Fellow signatories are Algeria, Cyprus, Egypt, Jordan, Lebanon, Malta, Morocco, Tunis and Turkey.

and the Shipping Regulations (Vessels) (Registration and Marking) 1962. Israel has one central Register of Vessels maintained in the office of the Registrar of Vessels in Haifa (the Registrar). There is no official age limit for vessels that will be approved for registration based on ownership and seaworthiness (each vessel must possess all safety and other customary certificates). Survey and safety requirements are in line with IMO/ILO/WHO requirements. The American Bureau of Shipping, Bureau Veritas, DNV GL, Lloyd's Register of Shipping and Nippon Kaiji Kyokai have been authorised to survey vessels and issue certificates on behalf of the Israeli government.

A vessel (including a floating dock) that is majority owned (i.e., more than 50 per cent) by the State of Israel or by an Israeli citizen or by an Israeli corporation is eligible for registration in the Israeli Register of Vessels and any vessel that is eligible for registration must be so registered.

A vessel under construction in Israel or abroad that complies with the eligibility conditions mentioned above may be registered in Israel in accordance with certain prescribed rules set out in the regulations.

Notwithstanding the foregoing, the Minister of Transport and Road Safety (the Minister) may inform the Registrar that any vessel is not eligible for registration in Israel if he or she has special reasons for doing so, such reasons being connected with the ownership of the shares not owned by the state, Israeli citizens or Israeli corporations (to date, the Minister does not appear to have exercised this right).

Where a vessel does not comply or has ceased to comply with the aforementioned conditions for eligibility (mainly vessels owned by foreigners), the Minister may, if satisfied that a sufficient link exists between the vessel and the State of Israel, permit the owner of that vessel to register the vessel in the Israeli Register subject to conditions, or unconditionally, as he or she deems fit. What constitutes a 'sufficient link' appears to be open to the Minister's interpretation. In past cases, permits were given to (1) foreign entities who bareboat chartered vessels to Israeli corporations and (2) foreign entities whose shares were owned by Israeli corporations.

If registration is effected in Israel, such registration is permanent; however, provisional registration of a vessel may be made through a diplomatic or consular representative of Israel abroad. Deletion of a vessel from the Register requires a formal application to the Registrar setting out the reasons for such deletion. If deletion is requested due to a sale of a vessel abroad, the owner or seller must give the Registrar at least a 14 days' notice to this effect. Prior to deletion the vessel must be free from registered encumbrances unless the consent of the mortgagee or chargee is produced to the Registrar.

An owner applying for registration of a vessel in Israel in respect of a vessel which is at such time registered elsewhere, must provide to the Registrar a certificate of deletion of the vessel from her prior registry or proof, acceptable to the Registrar, that deletion proceedings have commenced and a certificate of deletion is forthcoming as well as proof that the vessel is free from registered encumbrances unless the consent of the mortgagee or chargee to register the vessel in Israel has been produced to the Registrar.

Bareboat (parallel) registration is not allowed in Israel.

It should be noted that in accordance with the provisions of the Shipping Law (Foreign Vessel Controlled by Israeli Interest) 2005, any Israeli interest (i.e., Israeli citizen, Israeli resident or a corporation incorporated in Israel but excluding a foreign

company registered as such in Israel under Section 346 of the Companies Law 1999) that has control over a foreign-registered vessel (i.e., a vessel that is not obliged to be registered in the Israeli Register) is required to give notice to this effect to the Registrar within 30 days of gaining control of such vessel and such vessel will be registered by the Registrar in a special register maintained for this purpose.[6]

The definition of 'control' is extremely vast and further sets out details and modes of deemed control. It is highly recommended to carefully examine each case on its merits.

The said law further provides that the Shipping Law (Seaman) 1973 will apply to a foreign vessel registered in the register book as if such vessel is duly registered in Israel as an Israeli vessel. This law provides for the crewing of certain positions on board by Israeli crewmen (same as for Israeli-registered vessels).

iv Environmental regulation

The CLC Convention was incorporated into the domestic Law for Liability for Oil Pollution Damages of 2004. The Oil Pollution Fund Convention, as amended 2000, is also in force by virtue of the same local law. According to this law, the liability for oil pollution is of the registered owner of the vessel. Clause 22(2)(d) of said law explicitly excludes, where a cause of action for liability may be established according to the law, the liability, *inter alia*, of the vessel's charterers (without making any distinction between the various possible classifications of the charterer, i.e., time, voyage or otherwise), managers or operators according to any other law, to the extent that said damage was not caused by any action or omission intentionally made by the aforesaid in order to cause the pollution, or due to recklessness, made with the actual knowledge that the action would probably cause the damage.

The specific laws dealing with oil pollution do not impose, as such, liability on a charterer (time or voyage) or owner of the oil carried on board the vessel. Nevertheless, such liability may be established on the basis of the local tort laws, to the extent that negligence on part of the charterer or cargo owners may be established in connection with the pollution and damages. Nevertheless, in the event of damage or incident falling within the terms of the Law for Liability for Oil Pollution Damages of 2004, the aforesaid parties will be exempted from liability unless it is proved that their action or omission was intentionally made in order to cause the pollution, or due to recklessness.

Civil liability may be imposed also by virtue of the Seawater Pollution by Oil (Prevention) Ordinance (New Version) 1980, with the reservation that such law does not specifically impose liability on a charterer or owner of the oil carried on board the vessel. Otherwise and generally, according to various environmental laws in Israel, liability for environmental incidents will be imposed on the person that actually caused the environmental incident or that violated the provisions of the relevant environmental laws, and such laws include not only criminal penalties, but also liability for the costs of restoration of the damages caused thereby.

The main criminal law which may be applied to such circumstances (criminal proceedings) is the aforementioned Ordinance, according to which the owner or master

6 This registry is commonly called the 'Grey Registry'.

of the vessel from which the oil is discharged or allowed to escape will be liable for a fine as determined.[7] The law does not impose liability on a charterer or owner of the oil carried on board the vessel as such, but same law does not preclude the criminal liability of other parties according to the general criminal law (not only for negligence but personal injury, for instance).

The Bunker Convention entered into force internationally on 21 November 2008, but the Israeli legislator has not yet commenced the implementation of this new convention into the domestic law.

v Collisions, salvage and wrecks

The Ports Ordinance 1971 is the relevant legislation for the handling of wrecks and salvage of ships in Israeli waters. This Ordinance provides that should a vessel be lost or abandoned in Israeli waters and it poses a danger for the navigation or docking of vessels, then the authorised authority (the Israeli Ports Company Ltd, a state company) may demand the wreck's removal of its owners. In the event that the owner does not cooperate, the authority may remove the wreck by itself and later sue the owner for its costs or damages.

Additionally, the Wrecks and Salvage Ordinance (An Ordinance to make provision for control over wrecks and payment of salvage) of 1926 determines that where any services are rendered wholly or in part within the waters of Israel in saving life from any vessel, or in assisting any vessel that is wrecked, stranded or in distress, or saving the cargo or apparel of that vessel, or any part thereof, there shall be payable to the salvor by the owner of the vessel, cargo, apparel or wreck, a reasonable amount of salvage, to be determined through mandatory arbitration in the event of dispute. Salvage in respect of the saving of life of any person on the vessel will be payable by the owner of the vessel in priority to all other claims for savage payable.

vi Passenger rights

There is no specific legislation applied to passenger rights. Those rights would be determined according to the usual civil law, namely the various laws regulating contracts and the tort laws regulating the injured party's rights in case of personal injuries. The Athens Convention has not been incorporated into Israeli law. Nevertheless, a claimant for death or bodily injury of passengers in a vessel enjoys a maritime lien on the vessel according to the Israeli Shipping (Vessels) Law of 1960.

vii Seafarers' rights

Like all employees in Israel, seafarers also enjoy working conditions and protective rights applicable by virtue of the various labour laws existing under Israeli law, *inter alia*, restrictions pertaining to the number of working hours per day or week, provisions in

7 If he or she has been convicted before of an offence under this section, or aggravated circumstances may be established, he or she shall be liable to a greater fine or imprisonment for one year.

respect of vacation and sick leave, a weekly rest day, ensuring payment of and provisions for pension insurance and provisions relating to termination of employment relations.

Additionally, the rights of seafarers are also regulated under a dedicated law: the Shipping (Seamen) Law 1973 (the Seamen Law) and the regulations promulgated thereunder. Thus, for example, the Seamen Law explicitly regulates the prohibition on payment of 'inclusive wages' to any crew member (without separate payment due to overtime actually performed), the duty of an owner of a vessel to deliver a written service contract to any crew member upon the commencement of employment, and to include therein all the agreed conditions of service applicable to the service of such crew member. Also, regulations promulgated under the Seamen Law explicitly and specifically regulate the basic and special requirements for the accommodation of the crew on board a vessel registered in Israel employed for any commercial purpose or transportation of cargo.

Furthermore, the working conditions of seafarers are particularly regulated within the scope of special collective agreements which include benefiting and improving clauses regarding the terms of their employment, beyond what is set out in the protective legislation of the labour laws and specific regulation.

According to Israeli law, where any Israeli citizen (or any person other than an Israeli citizen whose service has been approved by the Superintendent of Seamen) meets the general conditions of eligibility[8] and the owner of the vessel wishes to employ him or her as a crew member, he or she will be issued a seaman's book by the Superintendent of Seamen. According to Israeli law, it is prohibited to employ any person not holding a seaman's book or regarding whom there is no such permit.

The Israeli Supreme Court ruling in *Moshe Ben Raphael Levi v. The Minister of Transport et al*[9] stated that:

> *[t]he issue of withdrawing the seamen's book is a very serious matter of denying the citizen's right to engage in his profession, and this matter requires careful and meticulous handling on part of the parties with whom the decision of this matter was placed by the legislator.*

The Seamen Law provides that Israeli personnel only shall serve on a vessel, insofar as possible. Israeli law prohibits the service of a non-Israeli as master of a vessel, except by special permit.

8 In general, according to Israeli law, a person above the age of 16 years (and if that person is an apprentice in a maritime school, 15 years), who is suitable health-wise for service at sea, has no criminal record and was found suitable in terms of the disciplinary requirements is eligible for service. For service in a position not requiring accreditation, vocational suitability for service at sea is also required, as well as successful completion of a basic safety course. The validity of the certificate of accreditation is for five years.

9 HCJ 292/80 *Moshe Ben Raphael Levi v. The Minister of Transport et al* IJ 35(1)57).

VII OUTLOOK

Israeli law has two sets of rules regarding rights to take action against a vessel: the British Colonial Admiralty Court Acts, dating from the middle of the 19th century, and the Israeli Shipping Law (Vessels) from 1960. The Admiralty Acts define the types of claims over which the Admiralty Court has jurisdiction. Since the Admiralty Court has the authority to order the arrest of a vessel, the meaning is that an arrest of a vessel is possible in all these kinds of claims. In addition, the Israeli Shipping Law defines the types of debt that are secured by a maritime lien on the vessel, which gives the creditor a direct cause of action against the vessel.

The right of suppliers to take action against a vessel is established both in the Admiralty Acts, and in the Shipping Law. The Acts mention the Admiralty Court's jurisdiction over a 'claim for necessaries'; the Israeli law provides a maritime lien for 'payments claimed for or in connection with supplies or services provided to the vessel under agreements or transactions entered into by the master of the vessel within the scope of the authority conferred on him by law, insofar as such supplies or services were required for the safeguarding of the vessel or for the continuation of its voyage'. This duplication creates legal ambiguity regarding the nature of transactions for goods or services supplied to a vessel that grants the supplier a right to take action against the vessel when payment is not made.

In *Jupiter v. MV Tara Kaptanoglu*,[10] the Admiralty Court ruled that a maritime lien arises not only when the supply was made following a contract with the master, but also when bunkers were supplied to a vessel following a contract made with its owners. One of the assumptions that supported the court's conclusion, which may seem to be in contrast with the wording of the Shipping Law, was that bunkers fall within the definition of 'necessaries' supplied to a vessel. The court explained its ruling by pointing out the fact that the master is the agent of the owners, and thus if the master can bind the vessel by ordering supplies, there is no reason to conclude that the owner cannot.

A further uncertainty arises when the supply is ordered not by the master and not even by the owners of the vessel, but by a charterer. The question if a supply ordered by a charterer can impose a maritime lien on a vessel has been raised in several claims submitted to the Maritime Court, but has not yet been determined.

Another question regards the identity of the supplier that is entitled to benefit from the maritime lien. This question arises when the contract for supply is made on behalf of the vessel with one supplier or trader, but the goods are physically supplied by another supplier (physical supplier), which is then the trader's sub-contractor. In a recent judgment, the Admiralty Court rejected a claim of a sub-contractor of a bunkers supplier and trader, and ruled that the only supplier entitled to a maritime lien is the supplier or trader who directly contracted with the vessel.[11]

10 MC 42908-03-11.

11 MC 45897-02-12 *OW Bunker Malta Ltd v. MV Emmanuel Tomasos*.

Appendix 1

ABOUT THE AUTHORS

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Amir Cohen-Dor is a partner at S Friedman & Co, and head of the admiralty department. He has been with the firm for more than 20 years and his practice is focused upon representing vessel interests and all of the major P&I clubs, in maritime litigation and dispute resolution.

He has vast experience in structuring, negotiating and drafting joint venture-charter and slot charter agreements between shipping interests. Mr Cohen-Dor has been engaged on behalf of vessel interests in the areas of marine insurance law and related issues such as, GA, salvage and related arbitrations and litigation, regularly advising P&I clubs and foreign insurers on various issues related to Israeli law. He is experienced acting for clients in front of the Haifa Admiralty Court and regularly conducts arbitrations before the LMAA.

Mr Cohen-Dor acts as the legal adviser to the Chamber of Shipping of Israel and in said capacity represents the Chamber and its members in various regulatory matters versus the legislature and governmental bodies and officials, as well as against the antitrust authorities.

Mr Cohen-Dor was educated at Tel Aviv University (LLB), and was admitted to practise in Israel in 1989. He is a member of the Israel Bar Association and is a member in the Israel Maritime Law Association, (holding the position of vice president). He speaks Hebrew, English, Spanish and Italian.

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Michael Safran is a partner at S Friedman & Co, specialising in shipbuilding, ship sale and purchase and shipping finance.

Mr Safran's experience includes shipbuilding, ship sale and purchase and related finance, negotiating, structuring and drafting complex cross-border financial transactions, cross-border asset-backed finance, lending and syndicated lending, restructuring and rescheduling of debt and complex lease and lease-back arrangements for marine containers finance.

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