

Legal 500

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Cyprus

Shipping

Contributor



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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Cyprus.

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Cyprus: Shipping

1. What system of port state control applies in your jurisdiction? What are their powers?

The system and powers of Port State Control in Cyprus are regulated by The Merchant Shipping (Port State Control) Laws of 2011 and 2015, The Merchant Shipping (Port State Control) Notification 2015, the Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Law of 2004 (Law no. 131(I)/2004) as amended and various Orders made thereunder and related Circulars of the Deputy Ministry of Shipping. Cyprus is also a member of both the Paris MoU and the Mediterranean MoU on Port State Control.

The competent authorities of Cyprus exercising port state control are responsible for the inspection of foreign ships in the national ports, for the verification that crew, ship and equipment comply with the requirements of international conventions on safety, pollution prevention, operation, management and security, qualifications, living conditions and terms of employment.

Port State Control officers have wide-ranging powers of inspection, boarding of vessels, investigating and copying of materials. They may interrupt ships on voyage or detain ships with deficiencies found during an inspection or are hazardous to safety, health or the environment or even where their operators or masters fail to timely provide to the competent authorities particular information prescribed by law. The competent authorities may also in certain circumstances prohibit the entry of ships into national ports. Finally, the competent authorities may impose administrative fines. In general, the inspections of the PSC aim at ascertaining that the ship complies with local and EU legislation and international conventions such as MARPOL, SOLAS, STCW and MLC.

Upon calling at a port or anchorage in the Republic of Cyprus, each ship is assigned a risk profile according to factors prescribed from time to time by the competent ministry. Every ship is subject to periodic inspections as well as additional inspections. The interval between periodic inspections is calculated according to each ship's corresponding risk profile – the higher the risk, the shorter the period. For high risk ships the interval between periodic inspections never exceeds six months. Additional inspections can take place at any time irrespective of the last periodic inspection and their

timing is left to the professional judgement of the Port State Control Officers.

Generally, a detention will last until the deficiency is rectified. In circumstances where the deficiency cannot readily be fixed, the ship may be allowed to sail to the nearest port of repair or may be allowed to sail with the undertaking of fixing the deficiency within a maximum of 30 days.

Ships' operators and masters have the individual responsibility of providing the PSC Officers with any requested information as well as a signed declaration stating that the information so provided is accurate. Failure to comply can result in a prison sentence of and a fine.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

With regard to wreck removal, Cyprus has ratified the Nairobi International Convention on the Removal of Wrecks of 2007 (Law no. 12(III)/2015). The Convention entered into force on 22/10/2015.

With regard to pollution, Cyprus has ratified the following conventions: (1) International Convention on Civil Liability for Oil Pollution Damage of 1969 and the Protocols of 1976 and 1992 and Amendments of 2000 (Law no. 63/1989) as amended, (2) International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 and its Protocols of 1976 and 1992 (Law no. 109/1989) (3) International Convention for the Prevention of Pollution from Ships of 1973 (Law no. 57/1989) as amended, (4) International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 (Law no. 19(III)/2004), (5) International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea of 1996 (Law no. 21(III)/2004), (6) International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter of 1972 and the Resolutions LDC5(III), LDC6(III) of 1978 and LDC12(V) of 1980 (Ratification) and for the Matters Connected Therewith Law of 1990 (Law no. 38/1990) and (7) Basel Convention on the Control Transboundary Movement of Hazardous Wastes and

Their Disposal of 1989 (Law no. 29(III)/1992) as amended.

Further, as regards both wreck removal and pollution, Cyprus is a signatory and a state-party to the UN Convention on the Law of the Sea.

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

The limit on sulphur content of fuel oil used by any ship within the territorial waters of Cyprus is 0.5% by mass (m/m). Further, the limit on sulphur content of fuel used by any ship while at a Cyprus berth is 0.1% by mass (m/m). There is not any MARPOL Emission Control Area in force for the Cypriot territorial waters.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

With regard to collision cases, the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels and Protocol of Signature of 1910 was extended to Cyprus when it was still a British colony and continues in force. Further, the English Maritime Conventions Act of 1911, which adopted the said Convention, was similarly extended to Cyprus and remains in force, by virtue of 19(a) and 29(2)(a) of the Cyprus Courts of Justice Law of 1960 as amended.

Cyprus has by statute ratified (1) the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision of 1952 (Ratification) Law of 1993 (Law 31(III)/1993) and (2) the International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation of 1952 (Law no. 32(III)/1993).

Cyprus has also ratified the International Regulations for Preventing Collisions at Sea of 1972 (Law no. 18/1980) as amended.

With regard to salvage, the Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea and Protocol of Signature of 1910 was extended to Cyprus when it was still a British colony and continues in force.

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Cyprus is a party to the Convention on Limitation of Liability for Maritime Claims of 1976 and the Protocol of 1996 (Law no. 20(III)/2005). The persons who may rely on the Convention limitation of liability provisions are owners, charterers, managers and operators of seagoing ships.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Cyprus is not actually a party to the 1952 Arrest Convention. However, the Convention applies in Cyprus through sections 19(a) and 29(2)(a) of the Courts of Justice Law 1960 and the (English) Administration of Justice Act 1956 which largely follows the Convention. Cyprus has not ratified the 1999 Convention.

If cargo arrives delayed in breach of the contract of carriage and the consignee/indorsee (in the case of a bill of lading contract) or the charterer (in the case of a charterparty) sustains damages as a result, the consignee/indorsee/charterer may file an application in Court for the issue of a warrant of arrest of the carrying vessel (or, in certain circumstances, her sister ship). Moreover, if cargo arrives lost or damaged, proceedings for the arrest of the carrying vessel (or her sister ship) may also be taken (apart from the consignee/indorsee/charterer), by the receiver/owner of the goods.

In order that a party may apply for the issue of an arrest warrant, it must first file an admiralty action *in rem*

against the vessel in the Supreme Court of Cyprus in its Admiralty Jurisdiction. The claim must fall under one or more of the heads of claim that are mentioned in section 1(1) of the Administration of Justice Act 1956.

In cases where there is a maritime lien on the vessel, the claimant may apply for her arrest, no matter who is the owner. Claims giving rise to maritime liens are claims for Master and crew wages and other sums due to the Master and crew under their contracts of employment, Master's disbursements, "damage" claims based exclusively on tort (delict) and arising from collision with or impact of a vessel, salvage claims and bottomry (the last category is more or less obsolete).

Moreover, a mortgagee may proceed *in rem* against a vessel and apply for her arrest in enforcement of its mortgage.

In cases where the claim falls within the admiralty jurisdiction but does not give rise to a maritime lien and is not a claim by a mortgagee for enforcement of a mortgage, an arrest warrant in respect of a vessel is only possible where (a) the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the vessel and (b) at the time when the action is brought, that vessel is beneficially owned as respects all the shares therein by that person. An *in rem* action must be instituted against the vessel. A warrant of arrest may also be issued in *in rem* proceedings against any other ship which, at the time when the action is brought, is beneficially owned as aforesaid (sister ship arrest).

An arrest warrant may be issued despite the fact that the vessel may be outside the jurisdiction, even though it will be executed only when the vessel comes within the jurisdiction.

It should be mentioned that when a vessel is judicially sold in the context of an admiralty action, she is sold free of all claims, maritime liens and encumbrances and, therefore, such vessel may not be arrested again in respect of any claims that may have arisen against her or her owners prior to the judicial sale.

It is not permissible to arrest a vessel in order to obtain security in aid of foreign court proceedings or arbitration.

Apart from a formal arrest, when it is not possible to file an admiralty action *in rem* against a vessel, the vessel may be effectually detained by the issue of a Mareva injunction/freezing order in the context of a main action in the civil courts instituted against her owner. This would

be possible under section 32 of the Courts of Justice Law 1960, which permits a claimant who has a claim against the owner to apply for interim measures against him. The conditions that must be met before such an order may be issued are that (a) there is a serious question to be tried at the hearing of the main action, (b) there is a probability that the claimant is entitled to relief and (c) unless the order is made, it will be difficult or impossible for complete justice to be done at a later stage.

A vessel may also be detained by Cyprus competent authorities for breaches under various international maritime conventions or of local laws (see answer to Q.1 above).

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

There are no formal authorisation requirements that must be met (e.g. power of attorney) so that a lawyer in Cyprus may file admiralty or civil proceedings or an application for arrest on behalf of a claimant.

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

As to what maritime liens / maritime privileges are recognised in Cyprus, please see the answer in Q.6 above. The recognition of maritime liens in Cyprus is determined by the law of the forum (*lex fori*).

9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?

When a claim gives rise to a maritime lien or is for the enforcement of a mortgage on the vessel, an arrest warrant may be issued against the vessel irrespective of any personal liability of the owner or demise charterer. Where the claim does not give rise to a maritime lien and is not for the enforcement of a mortgage, it must necessarily be shown that the owner would be liable *in personam* for the claim.

Unless the demise (or time charterer) is, at the time when the action against the vessel is brought, the beneficial owner of all the shares in the vessel, the vessel may not be arrested in respect of the debts of the demise (or time) charterer, unless such debts may be said on the facts to have been incurred on behalf of the owner.

10. Are sister ship or associated ship arrests possible?

Sister ships arrests are possible (see the answer to Q.6 above). The concept of "associated ship arrest" is not recognised under Cyprus law.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

In granting an application for the arrest of a vessel the Admiralty Judge exercises a discretion and imposes such terms and conditions as he/she deems fit. A condition that is invariably imposed is that the arresting party must put up a counter-security for damages that the owner of the vessel may sustain as a result of the arrest. This condition must be fulfilled before the arrest warrant may be drawn up by the Court, on the basis of which the vessel will be arrested.

If the arrest is subsequently set aside, the arrestor may be liable in damages arising by reason of the arrest, if the arrest is found to have been "wrongful", i.e. if, in obtaining the order for the arrest, the arresting party acted in bad faith or with such gross negligence as to lead the Court to imply malice.

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

At the time of granting the order for the arrest of a vessel, the Court fixes the amount and kind of security that must be deposited to the Court so that the vessel may be released. The prevailing practice is for the deposit of a bank guarantee issued by a local bank. Unless the arresting party consents, it is very unlikely that the Court will accept a Club LOU as a security for release.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of

claims?

After the arrest, the claimant may apply to the Court for an order for the appraisal and sale of the vessel. Such an application may be made either before judgment (*pendente lite*) if the vessel is considered by the Court a wasting asset, or after final judgment. The sale may be ordered to be either by public auction or private treaty.

In the case of a public auction, the Admiralty Marshal will have the vessel appraised and advertised in both the local press and international shipping publications. If there is a bid higher than the appraised value, the Marshal will knock the vessel down for that price. If all bids are below the appraised value, the Marshal will apply to obtain the sanction of the Court to sell her to the highest bidder.

In the case of a sale by private treaty, offers to buy the vessel may be made to the Marshal, who has a duty to realise the highest price obtainable. If all parties who have a claim against the vessel (and the shipowner, in the event that the claims do not exceed the value of the vessel) agree to the sale to the person who has made the highest offer, the approval of the Court may, upon application, be given. If the said parties do not agree, it may still be possible, after appraisal, for the Court to be convinced, upon application by any party, that the private offer is higher than any offer which is reasonably expected to be obtained either in a first or subsequent public auction. If so, the Court may approve the sale to the person who made the said offer.

The successful bidder then pays the purchase money into Court and the proceeds of sale are made available for the satisfaction of the claims of the claimants who have obtained or will obtain judgments *in rem* against the vessel or her proceeds of sale.

The ordinary order of priority of claims is as follows:

1. Costs, charges and expenses of the Admiralty Marshal in respect of the arrest, custody, valuation and sale of a vessel.
2. Recoverable legal costs of (a) the arresting party up to and including the arrest and (b) the party who obtained the order for the appraisal and judicial sale.
3. Claims of the Republic of Cyprus for fees, dues and tonnage taxes, in the case of a Cyprus-flag vessel.
4. Possessory liens.
5. Maritime liens (as to which see the answers to Q.5 and Q.7 above).
6. Cyprus registered mortgage claims.
7. Foreign or unregistered mortgages.
8. Administrative fines imposed by the Competent

Authorities of Cyprus.

All other "maritime claims" (i.e. claims in respect of which a claimant is entitled by statute to issue admiralty proceedings and to apply for the arrest of a vessel).

14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

The persons who may be liable under a bill of lading are those (either the owners or the charterers), with whom the contract of affreightment evidenced thereby is deemed to have been made with the shippers.

In order to identify who the "carrier" is, the Court will look into both the printed "identity of carrier" clause on the reverse of the bill of lading as well as the typed words in the signature box on the front. If there is a contradiction between the two and the typed words on the front are clear, the Court should normally find that the "carrier" is the party named on the front as per the typed words.

It may be added that in the cases where the contract is found not to have been made with the owners, the cargo owners may sue the owners in tort for damage to the cargo.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

In deciding who is the "carrier" the Court will construe the terms in the bill of lading contract in accordance with the principles of construction of the proper law of the contract evidenced in the bill of lading. In determining what the proper law is, the Court will consider any choice of law clause in the bill of lading and will apply the law which the parties may have chosen.

In accordance with Article 5 of Regulation (EC) no. 593/2008 on the law applicable to contractual obligations (Rome I), in the absence of an express or implied choice of law the proper law shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

16. Are jurisdiction clauses recognised and

enforced?

Jurisdiction clauses are generally recognised and enforced by Cyprus Courts.

17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

If a bill of lading contains specific words which try to incorporate an arbitration clause contained in a charterparty, Cyprus Courts will recognise and enforce the clause provided the provisions in the charterparty are so worded as to make sense in the context of the bill of lading and they do not conflict with any express term of the bill of lading.

18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Cyprus has enacted the Carriage of Goods by Sea Law, Cap. 263, which provides that the rules set out in the Schedule thereto (which are the Hague Rules) shall (subject to its provisions which contain certain modifications) have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Cyprus to any other port in or outside Cyprus.

In addition, 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 25/08/1924 (Hague Rules) (which was extended to Cyprus on 02/06/1931 when it was a British colony).

Cyprus has not ratified any other Rules of similar nature, e.g. the Hamburg or the Rotterdam Rules.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist

enforcement?

Cyprus has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Law no. 84/1979). The available grounds to resist enforcement of a foreign arbitral award are that (a) there has not been strict compliance with the provisions of Article IV of the Convention (which sets out the documentation that must accompany the application), (b) (i) incapacity of parties or invalidity of the arbitration agreement, (ii) the respondent was unable to present his case in the arbitration, (iii) the award deals with matters beyond the terms of the submission to arbitration, (iv) improper composition of the arbitral tribunal or (v) the award has not yet become binding on the parties or has been set aside or suspended or (c) (i) the subject of the difference is not capable of settlement by arbitration under Cyprus law or (ii) the recognition or enforcement of the award would be contrary to public policy.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

The limitation period for commencing court proceedings in a claim for breach of contract is six years from the date the cause of action accrued. Where the claim is based on or is in respect of a mortgage the relevant period is twelve years.

The limitation period for bringing a claim in negligence, including claims for personal injury or other passenger claims, is three years from the time when the plaintiff sustained damage or, where the negligence caused fresh damage continuing from day to day, from the time the damage ceases to occur. If the passenger claim is based on breach of contract, the limitation period is six years from the date the cause of action accrued.

When the contract of carriage is governed by the Hague

Rules, either by statute or by agreement, the time limit for commencing proceedings is one year from the date of delivery of the goods or the date when the goods should have been delivered. Otherwise, the statutory limitation period for bringing a claim in respect of a breach of contract is six years from the date the cause of action accrued and three years from the date of damage when it is based in negligence.

The limitation period for bringing a claim on salvage is two years from the day on which the operations of assistance or salvage terminate.

The limitation period for collision claims is two years from the date the damage, loss or injury was caused.

The limitation period for bringing a claim for product liability is three years from the time when the claimant became aware or should have reasonably become aware of the damage, the defect and the identity of the producer. In any event, unless certain circumstances are met, the right to bring proceedings is extinguished ten years from the time when the defective product was put into circulation.

21. Does your system of law recognize force majeure, or grant relief from undue hardship?

Cyprus law recognizes the defence of *force majeure*. This is a contractual defence and in order for it to apply it must be expressly provided for in the relevant contract which governs the relationship between the parties. Further, the circumstances giving rise to the *force majeure* must be clearly mentioned in the contract and the relevant facts must fit in those circumstances.

The circumstances that are said to give rise to *force majeure* must not be induced by the own actions or omissions of the party invoking the same, in other words, the said circumstances must be beyond that party's control.

"Undue hardship" is not a defence recognised under Cyprus law.

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