This country-specific Q&A provides an overview to shipping laws and regulations that may occur in Italy.

For a full list of jurisdictional Q&As visit here
1. **What system of port state control applies in your jurisdiction? What are their powers?**

   The Italian Port State Control activity is carried out by the Italian Coast Guard and it is coordinated by the 6th Division of the General Command – Safety of Navigation, acting through the Port State Control section.

   The Port State Control activity in Italy is governed by the applicable international conventions, the EU norms and the Memorandum of Understanding on Port State Control signed in Paris on 26 January 1982, as further amended.

   Directive 2009/16/EC of 23 April 2009 on Port State Control has been implemented in Italy through the legislative decree no. 53 dated 24/03/2011, which sets out the core of the regulations on port state control activity.

   Powers of the Italian Ports State Control authority include inspections, rectification of deficiencies, detentions and formal prohibitions to sail as well as access refusals.

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

   Italy has not yet ratified the Nairobi International Convention on the Removal of Wrecks of 2007, which entered into force in 2015. This matter is therefore still under the exclusive regime of the Italian Code of Navigation and in particular of its article 73, which confers wide-ranging powers to the Italian Maritime Authorities. Indeed, no criteria are set to establish when a wreck poses hazard to navigation, so that to require its removal: the Italian Maritime Authority may issue orders of wreck removal whenever the wreck is deemed to cause hazard to, or to hinder, navigation in ports, channels and in the territorial waters.

   The order of removal will set out the duty of the registered owner to remove the wreck within a certain period of time. In the event of non-compliance by the owner, the Authority will proceed ex officio. The owner will remain liable for the costs of removing the wrecks.

   Italy has ratified the International Convention for the Prevention of Pollution from Ships (MARPOL) and, being part of the European Union, it applies the communitarian rules concerning the various forms of pollution caused by ships, in particular pollution to the atmosphere and to water.

   Specifically, as to oil pollution, the Civil Liability Convention 1969 (CLC) and the relevant 1992 Protocol have been ratified by Italy, which is also party to the 1971 Convention establishing the International Fund for compensation for oil pollution, as well as to its 1992 and 2003 Protocols.
A crucial role is also played by the Legislative Decree 3 April 2006, No. 152, known as the Environmental Code.

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

Italy is a signatory to the 1910 Brussels Collision Convention since its ratification in 1913. When the Italian Code of Navigation was issued in 1942, a section of it - from article 482 to article 488 - was dedicated to the matter of liabilities arising from ship collisions; those provisions are in line with the rules set out in the Convention. Italy is also a contracting party to the two 1952 Brussels Conventions on civil and penal jurisdiction in matters of collisions and to the 1972 COLREGs. Moving to salvage, the provisions contained in the Code of Navigation were mostly superseded by the 1989 London Convention, which was ratified in 1996.

4. 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?

No, it is not. Although in 2009 the parliament had eventually authorized the ratification of the 1976 London Convention, the Convention has never in fact been ratified and this is yet today subject matter of criticism by the Italian shipping community. Conversely, it is arguable that, by Legislative Decree n. 111 of 28.06.2012, some of the provisions contained in the Convention were introduced in the Italian legal system. These may make limitation available - in the words of the legislative decree - to “the registered owner or any other person, such as the bareboat charterer, responsible for the operation of a seagoing ship”.

5. 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?

If the receiver of a delayed, lost or damaged cargo wishes to secure its claims, it is entitled to file an application for the arrest of the vessel.

Italy has ratified the International Convention Relating to the Arrest of Sea-Going Ships signed in Brussels on 10 May 1952 (“Brussels Convention”), which applies in Italy to all the ships flying a flag of one of the Contracting States. Conversely, Italy is not a party to the International Convention on Arrest of Ships signed in Geneva on 12 March 1999. In the cases
where the Brussels Convention is not applicable, in whole or in part, Italian domestic law applies.

Under the Brussels Convention, vessels flying the flag of a Contracting State can be arrested only in respect of the maritime claims identified as such in art 1 (1) of the Convention. By contrast, a vessel flying the flag of a non-Contracting State may be arrested, in Italy, not only for a maritime claim but also in respect of any other claim. However, the prevailing trend of Italian Case Law holds the Brussel Convention applicable also to vessels flying the flag of non-Contracting States, when an arrest is sought for a maritime claim.

Arrest applications brought under the Brussels Convention require a *prima facie* evidence of the maritime claim (fumus boni iuris) being provided, while arrests sought outside the perimeter of applicability of the Convention, further require that financial conditions of the debtor may jeopardize the enforcement of the future decision on the merits of the case (*periculum in mora*).

Both under the regime of the Brussels Convention and under Italian law, the arrest of a vessel is admitted as a mean to obtain security for a claim to be pursued before a foreign jurisdiction or in arbitration.

6. **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?**

   The filing of an application for arrest before any Italian Court must be made by an Italian attorney at law (*Avvocato*) appointed by virtue of a power of attorney. In case the power of attorney is issued outside the Republic of Italy, it must be notarised and apostilled or legalized, as appropriate.

7. **What maritime liens are recognised?**

   Maritime liens on the vessels are recognized in Italy by two different sources of law: on the one side, by the Italian code of Navigation (particularly under article 552), and, on the other side, by the 1926 Brussels Convention on maritime liens and mortgages which Italy ratified on 6 January 1928.

   The rules contained in the Italian code of navigation apply only to vessels that fly Italian flag, whilst the international Convention mentioned above applies to any vessel that flies the flag of a Contracting State.

   Due to the similarity between the provisions of the domestic code of navigation and those of the Convention, it is possible to affirm that the maritime liens which are recognized in Italy are those listed in article 2 of the 1926 Brussels Convention, which can be divided in five groups and roughly described as follows:
1. **Dues**: law costs due to the State; various State dues and taxes and charges; pilotage dues and costs of watching and preservation of the vessel in the last port;

2. **Claims arising from the Contract of Engagement**: claims filed by master and crew;

3. **Remunerations**: for salvage and contribution in G.A.;

4. **Indemnities**: collision and damages to harbours, docks etc., personal injuries to passengers and crew; loss or damages to cargo and luggage;

5. **Contractual claims**: exclusively those arising from contracts entered by the Master far from the home port, for the preservation of the vessel or the continuation of the voyage (and not those arising from contracts concluded either by the ship owning company of by the ship managers).

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8. **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 necessaries?**

A vessel can be arrested in Italy not only in respect of claims for which the registered owner is liable: the particular vessel (in respect of which the claim arose) can be arrested also in respect of maritime claims for which the demise charterer, or the time charterer or even the voyage charterer of the vessel is responsible.

However, according to the prevailing opinion of Authors, such extension (of the possibility to arrest a vessel) only occurs in the event that the claim for which security is demanded gives rise to a maritime lien on the vessel. Therefore, according to such interpretation, a debt of the time charterer for unpaid bunker can cause the arrest of the vessel (in favour of which the bunker was actually supplied) only if – pursuant to the law of the vessel’s flag state – the claim is assisted by a maritime lien.

Italian Courts, on the contrary, are more inclined to grant the arrest of a vessel (for a case where a person other than the registered owner is liable) even if the claim does not give rise to a maritime lien, as long as it falls within the category of the maritime claims set out under article 1 of the 1952 Brussels Convention on the arrest of ships.

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9. **Are sister ship or associated ship arrests possible?**

Yes. Italian Courts apply article 3 of the 1952 Brussel Convention, according to which a claimant may arrest not only the particular ship in respect of which the maritime claim arose, but also any other ship which was owned by the owner of that particular ship at the time when the maritime claim arose (“sister ships”). Of course, this rule does not apply when the arrest is demanded in connection with any of the maritime claims enumerated in article 1, letters o) p) or q) of the Convention (disputes as to title or ownership, disputes between co-owners and claims arising from mortgages or hypothecation). In such cases, only the particular vessel in respect of which the claim arose may be arrested.

The arrest of “associated vessels” (i.e. vessels which are beneficially owned by the same
company as the vessel in respect of which the claim arose) is allowed by Italian Courts only in exceptional circumstances.

10. **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 principle a counter-security (to secure the claim for damages deriving from a wrongful arrest) can be ordered by the Italian Courts, yet this is not common practice, as the discretion to grant counter-security belongs to the same judge deciding on the application for arrest. Therefore, whenever the Judge grants the arrest, he is normally convinced that such arrest will not be set aside and no liability of the arrestors will arise for damages.

    In addition, liability for wrongful arrest can only be established if it turns out, not only that the claim in respect of which the arrest was granted is totally groundless, but also that the arrestor acted without due care and attention.

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

    Once the arrest of a vessel is granted by an Italian Court ex parte, the owner of the vessel will be entitled to dispute the arrest and to argue that the same is groundless and it must be revoked. To this purpose a hearing for discussion will be scheduled, normally few days after the date of the arrest, in front of the same Judge. Furthermore, in the event that after such hearing the arrest is confirmed, an appeal against the order of arrest can also be filed to a Board of three judges, different from the Judge who granted the arrest.

    In any event, the owner of the arrested vessel may obtain the release of the vessel by providing security in Court for the full amount of the arrest, by way of depositing in a bank account opened in the name of the Court the full amount of the arrest or by depositing in Court a bank guarantee, to be issued by a primary Italian bank.

    Letters of guarantee by P and I Clubs are not acceptable by the Italian Courts, therefore the owners can release the vessel from the arrest by providing a Club’s LOU only if the claimant agrees to it.

12. **Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

    Once an enforceable title is obtained by the claimant (judgment or arbitration award) the vessel will be sold by public auction under the control and the supervision of the local competent Court, starting from a base price which the Court will determine by appointing a surveyor (maritime broker or naval architect). The proceeds of the enforced sale will be distributed amongst creditors according to the following criteria: the creditors with preferred
maritime lien on the vessel (see point 7 above) will be paid first, then the balance will be paid to the mortgagees. If any further sum remains available after payment as above, it will be distributed to the creditors having civil law privileges and finally to un-preferred creditors.

13. **Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

The liable party for loss or damage to the carried goods, is the carrier, i.e. the party who undertook to perform the carriage of cargo at destination.

The identification of the carrier mainly depends on the interpretation of the statements contained both on the front and on the reverse of the bill of lading.

The Italian jurisprudence set out the following guidelines of interpretation.

When the heading of the bill of lading is consistent with the signature of the document, the carrier is he whose name appears on the document.

When the bill of lading is signed by the master or by the agent, the following situations may arise:

- if the bill of lading validly incorporates a charterparty, the carrier should be identified in accordance with the charterparty;
- if the bill of lading does not incorporate any charterparty and it does not contain any name or logo, the owner of the vessel is to be considered the carrier.

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

In case the Hague-Visby Rules apply, the proper law of the bill of lading is only relevant to the matters which are not governed under the Rules.

If, on the contrary, the Hague-Visby Rules do not apply, then any aspect of the carriage will be ruled by the proper law of the bill of lading, which is evidence of the contract of carriage between the carrier and the shipper.

The proper law of the bill of lading is normally the one indicated in the relevant choice of law clause contained in the bill of lading. In the rare cases where the bill of lading does not contain such clause, the governing law is determined on the basis of the private international law rules.

15. **Are jurisdiction clauses recognised and enforced?**

Over the past few years the validity of jurisdiction clauses contained in bills of lading has
been increasingly acknowledged by Italian Courts, as a result of the European Court of Justice’s interpretation of Article 17 of the 1968 Brussels Convention (now Article 25.1 of EU Regulation 1215/2012).

In recent decisions the Italian Supreme Court explained that, based on the abovementioned rules, it is possible to infer the parties’ consent to the jurisdiction clause when specific commercial usages exist, of which the carrier and the receiver are or ought to have been aware.

In this respect, the court held that it is normal practice in the international transport business that bills of lading are signed only by the carrier.

Such practice is regarded as a commercial usage, of which international trade operators should be aware.

Further, in several occasions Italian judges affirmed the principle that when, by starting the proceedings, the plaintiffs produce the bill of lading with no reservation or objection, they are bound by the jurisdiction clause, since the presentation of such document proves the plaintiffs reliance on the terms and conditions of the bill of lading, thereby including the jurisdiction clause contained in it.

16. **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?**

According to Italian Courts a valid incorporation of the charterparty in the bill of lading requires that reference to such charterparty be “specific”.

Italian case law tends to identify the date of conclusion of the contract as an element usually adequate for the purpose of identifying the charterparty into the bill of lading.

Therefore, a generic printed clause in the bill of lading, mentioning the incorporation of the charterparty without indication of the date of its conclusion, is considered null and void.

According to the Italian Courts, an arbitration clause contained in the incorporated charterparty is deemed valid and applicable in the event that (i) the charterparty is validly incorporated in the bill of lading, pursuant to the above guidelines, and (ii) the back of the bill of lading expressly refer to the arbitration clause amongst the terms and conditions of the charterparty applicable to the bill of lading. In such a case, the incorporation of the arbitration clause into the bill of lading is to be considered sufficiently specific and, consequently, valid.
Is your country party to any of the international conventions concerning bills of
17. **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?**

Italy has ratified the Hague-Visby rules, which entered into force in our country on 22 November 1985.

Italy is a contracting party neither to the Hamburg Rules nor to the Rotterdam Rules.

18. **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?**

Italy has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. At the same time, the Italian Code of Civil Procedure provides autonomous rules which are subsidiary to the system of the 1958 NY Convention, and apply when an arbitration award has been rendered in a non-contracting State.

Under both systems, the recognition and enforcement of a foreign arbitration award should be denied, at the request of the party against whom it is invoked, only if that party proves the existence of one of the following: (i) certain defects related to the dispute, the subject matter, the arbitration panel or the award being not covered by the arbitration agreement; (ii) reasons related to the parties’ right of notification and defence; (iii) the subject matter was not capable of settlement by arbitration in Italy; or (iv) the award is contrary to Italian public policy.

19. **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 general time limit for the exercise and enforcement of rights in Italy is ten years. However, shorter time limits related to shipping matters are provided for, both under applicable international conventions and under domestic legislation. They can be summarized as follows:

(a) Claims in contract generally benefit of the ordinary ten years deadline, while claims in tort are barred in five years.

(b) For rights arising under a contract of carriage, the time limits vary as follows: (i) carriage of goods: 1 year, in the event of application of the Hague-Visby Rules, and 6 months, in the event of application of the national Code of Navigation; (ii) multimodal transport: 1 year; (iii) transport of passengers: 6 months. The above national time limits are increased to 1 year,
months and 1 year respectively, in case the transportation started or ended outside Europe or the Mediterranean Sea.

(c) Salvage and collision claims must be brought within the time limit of 2 years, both in case the relevant international convention applies (i.e. the 1989 London Convention), and in case of application of domestic rules.