The Legal 500 Country Comparative Guides

Philippines: Shipping

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

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 Philippines is a member of the Tokyo MOU and closely follows its procedures for inspection and detention. Thus, it is in place for the effective implementation of international regulations on crewing, safety and marine environmental protection. Its powers cover the following:

- Conduct of inspection
- Issuance of deficiencies
- Detention of ships
- Stoppage of vessel operations
- Expulsion or restriction of ships from entering Philippine ports

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


Wreck removal is governed by domestic law. However, efforts are underway for the adoption of domestic regulations that reflect the Nairobi Convention on the Removal of Wrecks, 2007 even in advance of the Philippine State’s becoming a party to said Convention.

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

The Philippines is a party to COLREG Convention 72.

On salvage, the Philippines is not a party to the 1989 Salvage Convention. Domestic law, Act 2616, applies. Per experience, it is not uncommon for salvage operations to be undertaken on Lloyd’s Open Form (LOF) terms.

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, the Philippines is not a party to said convention.

Limitation of liability is based on the Code of Commerce, particularly Arts. 587, 590 and 837, that embody the idea that ‘maritime law is exclusively real and hypothecary that operates to limit such liability to the value of the vessel, or to the insurance thereon’. It is thus necessary that the vessel be abandoned for limited liability to apply.
Limitation of liability can be relied upon by the shipowner and ship agent.

According to case law, instances where the shipowner or agent may not avail of limited liability are as follows:

- the shipowner is at fault or there is concurring negligence between the Captain and the shipowner
- there is insurance; and,
- claims based on Workmen’s Compensation Act.

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?**

The Philippines is not a party to either the 1952 Arrest Convention or the 1999 Convention.

Arrest of vessels in relation to obtaining security for cargo damage is done through preliminary attachment in relation to a principal claim for damages.

Preliminary attachment is a general remedy, and is not limited to maritime claims. Thus, any claim against the vessel or its owner can be secured by the attachment of said vessel as the property belonging to said owner. This remedy can be obtained whilst the vessel is in Philippine territory but there are limited grounds for issuance of a preliminary attachment.

Arresting in order to obtain security for a claim to be pursued in arbitration is likewise possible as part of interim measures of protection. However, arresting for purposes of security for a claim to be pursued in another jurisdiction is not possible as the arrest is but an ancillary remedy to a principal action.

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?**

In regard to effecting an arrest / attachment, the following documents are required:

- Power of Attorney
- Affidavit of Merit for the claim
- Proof of Ownership of the Defendant of the vessel to be attached
7. **What maritime liens are recognised?**

There are no maritime liens proper, as understood in English law, recognised in the Philippines. There are certain claims that enjoy priority however. This concept is similar to the concept of ‘privilege’ that is recognised in many civil law countries. Among these claims are as follows:

- pilotage charges, tonnage dues, and other sea or port charges;
- salaries of the depositaries and keepers of the vessel and any other expenses for its preservation from the time of arrival until its sale;
- rent of warehouse where the rigging and stores of the vessel have been taken care of;
- salaries for captain and crews vessel’s last voyage; and,
- reimbursement for the goods of the freight which the captain may have sold in order to repair the vessel.

It must be noted that in the Ship Mortgage Decree of 1978, maritime liens for claims based on mortgage and necessaries are recognised.

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?

Yes, there must be a liability in personam.

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

Yes, these arrests are possible given that the sister ship or associated ship is likewise owned by the same owner as the ship in respect of which the claim arose.

If the vessels are not owned by the same owner, associated ship arrest will however require piercing the corporate veil to demonstrate the ‘associatedness’. To date we have not yet encountered associated ship arrest.

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?**

Yes, a bond issued by a Philippine-accredited bonding company in an amount to be fixed by the Court and generally equivalent to the amount of the claim is required in effecting the arrest / attachment.

Said bond will pay all the costs which may be adjudged to the party whose property has been
arrested and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the arresting party was not entitled thereto.

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

For the release of the arrested / attached vessel, a counter-bond is executed in an amount equal to the value of vessel as determined by the court.

By way of practice, there are courts that accept CLOGs to secure the release of the vessel from arrest. Other courts, which are unfamiliar with CLOGs, deem the same unacceptable. There is no law that compels a court or the claiming party to accept a CLOG as a counter-security.

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

Once judgment in favour of the attaching party is rendered, payment of the judgment sum is to be made within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment. Where payment is not made within such period, the attached vessel shall be sold at public auction for the satisfaction of the judgment.

A written notice of the time and place of the sale shall be posted for not less than five (5) days in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the sale is to take place.

Said written notice shall be given to the attached party at least three (3) days before the sale.

A certificate of sale is then executed and delivered to the purchaser in the sale.

The proceeds of the sale are distributed in the following order:

1. expenses and fees allowed and costs taxed by the court and taxes due to the Government;
2. crew’s wages;
3. general average;
4. salvage, including contract salvage;
5. maritime liens arising prior in time to the recording of the preferred mortgage;
6. damages arising out of tort; and,
7. preferred mortgages.

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

The party liable is the issuer of the bill of lading. Consequently, the identity of the carrier is put at issue in regard to questions of which party is liable.

There are however no guidelines similar to those set in the dicta in certain English cases including *The Starsin*. Thus, it is common litigation practice that multiple defendants are sued on the bill of lading and eventually parties agree to amicably settle the claim.

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

Considering the Civil Code provision on common carriers that ‘the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration’, the litigation over goods destined for the Philippines is primarily governed by Philippine law.

Such provision however does not preclude the application of private international law rules to determine the proper law, including giving effect to the contractual stipulation of the parties.

15. Are jurisdiction clauses recognised and enforced?

Generally speaking, rules on private international law apply. Where the goods are destined for the Philippines, this fact is deemed sufficient to establish a link to the Philippine jurisdiction whereby the proper Philippine court takes cognizance of the suit. There is a tendency for Philippine courts to maintain that parties cannot enter into a stipulation ousting a Philippine court of jurisdiction.

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?

Case law has recognized and upheld the arbitration clause contained in a charterparty that is incorporated in the bill of lading.

It is important to note however that arbitration clauses bind only the parties. Thus, where the suit involves multiple parties and there is a claim by a non-party to the arbitration clause, the suit may still proceed even as against a party to an arbitration clause.

17. 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?
No, but the Philippines has the Philippine Carriage of Goods by Sea Act (COGSA) adopted from the US COGSA of 1936. Said Philippine COGSA continues to be suppletorily applied today.

The application of the Philippine COGSA is without prejudice to the provisions on ‘common carriers’ in the Civil Code of the Philippines. Under the concept of ‘common carriers’, extraordinary diligence is to be observed in the vigilance over the goods and for the safety of the passengers transported by said carriers. Thus, many defences available to the carrier as contained in Article IV of the Hague-Visby Rules are not recognised under Philippine law. However, under Philippine law, a common carrier will not be responsible for the loss, destruction, or deterioration of the goods, if the same is due to any of the following causes only:

1. Flood, storm, earthquake, lightning, or other natural disaster or calamity;
2. Act of the public enemy in war, whether international or civil;
3. Act or omission of the shipper or owner of the goods;
4. The character of the goods or defects in the packing or in the containers;
5. Order or act of competent public authority.

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?**

Yes, it is. The grounds provided in Article V of the Convention have been reproduced in the pertinent domestic law and thus apply to resist enforcement of a Convention Award.

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).**

Written contracts prescribe in 10 years

Quasi-delicts or torts prescribe in 4 years

Personal injury claims prescribe in 3 years if in relation to labour claims, but 4 years if based on tort.

Collision claims are covered by a tort and prescribe in 4 years.

Cargo claims prescribe in 1 year based on the Philippine COGSA.

Salvage claims are normally pursued on LOF terms. In any event, voluntary salvage should be deemed a quasi-contract that prescribes in 6 years.