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United States
Shipping

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

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United States: Shipping

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

The United States Coast Guard is responsible for port state control and enforces compliance with regulations under the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International Ship & Port Facility Security (ISPS) Code and other applicable laws and international conventions on vessels trading in U.S. ports.

The Coast Guard is authorized to conduct examinations and enforce compliance with the laws and regulations within its ambit, and to detain or deny entry to the territorial waters of the United States for vessels operating outside of acceptable standards. The Coast Guard may issue civil penalties for deficiencies, and vessels subject to a detention may be required to post a bond or letter of undertaking covering the amount of the penalty to gain entry to a U.S. port or obtain clearance to depart, or as security for possible fines.

The Coast Guard also functions as a law enforcement agency that may conduct criminal investigations separately or in coordination with other federal agencies, such as the Department of Justice and the Environmental Protection Agency, which may result in the issuance of fines or other sanctions, including in some circumstances criminal prosecution, for violations of security and environmental regulations.

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

With respect to wreck removal, the United States has not adopted the Nairobi International Convention on the Removal of Wrecks (Wreck Removal Convention) 2007. Certain provisions of the Rivers and Harbors Act of 1899, also known as the Wreck Act, and accompanying regulations, impose a duty of diligent removal upon the owner, lessee or operator of a vessel sunken in a navigable waterway. Failure to remove such a vessel subjects it to removal by the U.S. government, and subjects the vessel owner, lessee or operator to reimburse the government for the cost of removal or destruction and disposal.

With respect to pollution, currently, the United States is a signatory to Annexes I, II, III, V and VI of MARPOL. Annexes I, II, V and VI have been incorporated into U.S. law by the Act to Prevent Pollution from Ships (APPS) and implemented within 33 USC 1901 and 33 CFR 151. The U.S. incorporates Annex III by the Hazardous Materials Transportation Act (HMTA) implemented within 46 USC 2101 and 49 CFR 171 -174 and 176. The U.S. has not ratified Annex IV but has equivalent regulations under the Federal Water Pollution Control Act (FWPCA) (as amended by the Clean Water Act, 33 USC 1251 et seq. and implemented by 33 CFR 159) for treatment and discharge standards of shipboard sewage. The MARPOL Annex IV requirements also would apply to vessels flagged by a country that is a party to that treaty when operating in U.S. navigable waters.

On December 4, 2018, the “Vessel Incidental Discharge Act” or “VIDA” was also signed into law, restructuring the way the EPA and U.S. Coast Guard (USCG) regulate incidental discharges from commercial vessels. VIDA requires EPA and USCG to develop standards of performance and implementing regulations, respectively, for these discharges. With respect to EPA rulemaking, the final rule was effective as of November 8, 2024. Companion regulations implementing the new standards will be enforceable through corresponding USCG regulations, which pursuant to VIDA must be developed within two years of publication of the EPA's final rule. In the interim, until publication of the USCG implementing regulations, the existing EPA Vessel General Permit (“VGP”) and USCG ballast water regulations remain in full force and effect.

The U.S. likewise has an extensive body of federal and state environmental laws and regulations concerning oil pollution prevention and spill response including, for example, the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.

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?

As noted above, the United States is a signatory to Annex VI of MARPOL. Annex VI of MARPOL includes a global cap on the sulphur content of fuel oil and, as of January 1, 2020, the limits were amended reducing the sulphur

content of fuel used on most commercial ships to 0.5% mass by mass (m/m), down from the previous limit of 3.5% m/m. As of March 1, 2020, the carriage of fuel oil for use on board ships was also prohibited if the sulphur content exceeds 0.5% unless the ship is fitted with an equivalent alternative (e.g., scrubbers) to meet the sulphur limit.

There are MARPOL Emission Control Areas (ECAs) in force in and around the United States, for which sulphur content standards are even stricter. As of January 1, 2015, ships operating within an ECA are not permitted to use fuel with sulphur content in excess of 0.1% m/m. Currently, the IMO has designated four ECAs, including specified portions of the Baltic Sea area, North Sea area, North American area and United States Caribbean area, and amendments to MARPOL Annex VI made in December 2022 reflect that a fifth area – the Mediterranean Sea – became an ECA on May 1, 2024, with limits to take effect starting May 1, 2025. The North American ECA includes specified areas of the United States and Canadian coastline, and the United States Caribbean ECA includes Puerto Rico and the U.S. Virgin Islands.

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

The United States did not ratify the Brussels Collision Liability Convention of 1910, and has historically followed the general maritime law of the United States, only belatedly adopting principles of proportionate liability and comparative fault. See, e.g., United States v. Reliable Transfer Co., 421 U.S. 397, 411, 95 S. Ct. 1708, 1716 (1975). The United States adheres to the International Regulations for Preventing Collisions at Sea 1972 (COLREGS). The U.S. Departments of Defence and Commerce, as well as the Coast Guard within the Department of Homeland Security, publish regulations to ensure U.S. compliance with the COLREGS.

With respect to salvage, the United States has adopted the International Convention on Salvage, 1989. Courts have noted the parallels between the 1989 Salvage Convention and pre-existing general maritime law, and continue to look to applicable principles in those cases.

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?

The U.S. is not a party to the 1976 Convention on Limitation of Liability for Maritime Claims. Instead, the U.S. continues to apply the Limitation of Liability Act (the Limitation Act), passed in 1851 to encourage investment in shipping. Under this act, vessel owners (including demise charterers) may limit liability to the value of the vessel and pending freight in certain circumstances where the loss occurred without the privity or knowledge of the owner. As a matter of procedure a vessel owner's action for limitation must be commenced within six months of the owner being given adequate written notice of a claim, whether or not a claimant has initiated a legal proceeding. Limitation may apply to claims brought by the U.S. government. The Limitation Act may be applied to a wide variety of claims but is not generally favoured by the courts, and there are different limits in cases of personal injury and death, pollution liabilities, wage claims and others. In December 2022, amendments to the Limitation Act were passed into law excluding covered small passenger vessels from the benefits of the Limitation Act.

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?

The United States is not a signatory to international conventions with respect to ship arrest. In the U.S., actions involving ship arrests are governed under substantive federal law and the Federal Rules of Civil Procedure.

Maritime lien creditors and those with statutory rights may enforce their rights *in rem* against a vessel. Such arrested vessels are governed by Rule C of the Supplemental Rules for Admiralty or Maritime Claims and

Asset Forfeiture Actions (the "Supplemental Rules"), which provides that a vessel may be arrested to enforce any maritime lien or where a statute provides for *in rem* proceedings.

There is no associated or sister ship arrest regime in the U.S. However, property of the defendant may be attached under Rule B of the Supplemental Rules and, where the defendant owns a vessel and if the requirements of Rule B are met, that vessel may be seized. Under the U.S. statutory regime governing maritime liens, officers or agents appointed by a bareboat or time-charterer are presumed to have authority to procure necessaries for a vessel, such that a maritime lien for necessaries may arise against the vessel and render it subject to arrest to enforce the lien.

The federal courts have original jurisdiction over any civil case of admiralty or maritime jurisdiction (saving to suitors all other remedies to which they are otherwise entitled), and permit arrest or attachment proceedings under Rule B and Rule C "maritime claims." Such claims include suits to enforce a judgment of a foreign admiralty court or to obtain security in aid of arbitration. In general, maritime claims include actions under contracts with sufficient reference to maritime service or maritime transactions, *see, e.g.*, *Norfolk S. Ry. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 24, 125 S. Ct. 385, 393 (2004), and tort claims occurring on the high seas, or on the navigable waters of the United States where they bear a sufficient connection with maritime activity, *see, e.g.*, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534, 115 S. Ct. 1043, 1048 (1995).

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?

In a Rule B action, seeking *in personam* attachment or garnishment – which may include vessel seizures – the Court requires a verified complaint by the plaintiff setting forth a *prima facie* valid admiralty claim at the time of the filing of the Complaint, and an accompanying affidavit signed by the plaintiff or the plaintiff's attorney stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district.

In a Rule C *in rem* arrest action, the Court likewise requires a verified complaint that describes with reasonable particularity the property that is the subject of the action; and that the property is within the district or will be within the district while the action is pending.

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?

Maritime liens are recognized under federal admiralty law, to recover damages arising from maritime tort, crew wage claims, contract claims, general average, salvage and the supply of necessaries. These liens include:

- wages of a ship's master and crew;
- salvage;
- general average;
- breach of charter party;
- ship mortgages, both U.S. and foreign flag (U.S. flag mortgages having higher priority than foreign flag);
- contract liens, such as contracts for repairs, supplies, towage, pilotage and a wide variety of necessaries;
- maritime tort liens for personal injury, death and collision;
- claims for cargo loss or damage;
- claims for unpaid freight and demurrage; and
- pollution claims.

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 necessaries?

There is no requirement of *in personam* owner or demise charter liability in order for a vessel to be arrested. Under the Commercial Instruments and Maritime Lien Act (46 U.S.C. § 31301 et seq.), vessel arrests may proceed *in rem* against the vessel so long as necessaries are supplied on the order of the owner or a person authorized by the owner. Under the statute, charterers are generally presumed to have authority to procure necessaries for the vessel and suppliers of necessaries are also generally presumed to rely on the credit of the vessel and will typically be entitled to a maritime lien unless they have actual notice of a "no lien" clause in the charter. Vessels are routinely arrested to enforce necessaries liens and many ship mortgage foreclosures are commenced by such suppliers rather than mortgagee banks.

10. Are sister ship or associated ship arrests possible?

"Sister ship" or associated ship arrests are not a valid

ground upon which to commence an *in rem* arrest action, but maritime attachment is available under Rule B where a plaintiff has a maritime claim (not necessarily a lien claim) and such plaintiff can attach property of the defendant, provided that the defendant is not found within the federal judicial district where the property is located for jurisdictional and service of process purposes. Some parties may seek to "pierce the corporate veil" in arrest proceedings to reach associated vessels.

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?

The circumstances under which security or counter-security may be required are governed by Rule E of the Supplemental Rules and in the discretion of the Court. Unless otherwise ordered by the court, no security is required in connection with the issuance and execution of process to arrest a vessel. This includes the possibility of a counter-security award should a counterclaim be asserted in the arrest or attachment proceeding under Rule E(7). In all events, the expenses of the U.S. Marshals Service in connection with seizing and keeping property, or of any substitute custodian appointed, must also be covered and frequently are paid in advance at the time of the arrest.

A claim for wrongful arrest requires a showing of no *bona fide* claim and of bad faith, malice, or gross negligence on the part of the arresting party.

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

The procedure to secure the release of a vessel is set out under Rule E(5) and permits the parties to stipulate to "the amount and nature of such security" by way of a special or general bond conditioned to answer the judgment of the court or of any appellate court. Accordingly, a Club LOU or other third-party surety bond may be acceptable, if the parties can agree. In the absence of agreement, the court may fix the principal sum of the bond at an amount sufficient to cover the plaintiff's claim fairly stated with accrued interest and costs, up to a maximum of the smaller of twice the amount of the plaintiff's claim, or its value upon due appraisement, with interest thereon at 6 per cent per annum. Motions to reduce or enhance the amount of security may subsequently be made for good cause shown under Rule E(6). The release of a vessel is likewise conditioned on the payment of all costs and charges of the court and the U.S. Marshal or other substitute custodian.

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

Any party to an action, the Marshal or the custodian of the vessel may apply for sale of the vessel. As a practical matter, it is usually the mortgagee bank or the single largest creditor that moves to have the vessel sold. The fees and costs of the U.S. Marshal likewise must be covered.

A party usually makes a motion for interlocutory sale of the vessel near the commencement of the action because the vessel is a wasting asset. Notice of the action and arrest of the vessel, as well as notice of that motion for interlocutory sale, is given pursuant to statutory authority.

Although a broker may be involved by court order, the vessel sale is otherwise conducted by the U.S. Marshal, usually in the courthouse lobby. The court will later confirm the sale, at which point the vessel is delivered to the buyer free and clear of liens.

Although the length of time required to conduct a motion for interlocutory sale varies from jurisdiction to jurisdiction within the U.S., on average the time from making the motion until the time of a vessel sale is about two months. The marshal will charge poundage in the amount of 3 per cent of the first US$1,000 of proceeds, and 1.5 per cent of proceeds above that amount, and brokerage commission may be involved as well, if a broker is utilised. The proceeds of the sale of the vessel are paid into the court's registry and distributed according to the rank and priority of liens subsequent to the confirmation of sale of the vessel.

With respect to the rank and priority of claims, although it may vary from jurisdiction to jurisdiction, the general order of priority is as follows:

- Expenses, fees and costs allowed by the court, including those incurred while the vessel is in custody;
- wages of the vessel crew;
- maritime liens arising before a preferred mortgage was filed;
- maritime tort liens;
- salvage and general average claims;
- preferred mortgage liens on U.S.-flagged vessels;

- liens for necessaries;
- preferred mortgage liens on foreign-flagged vessels;
- general maritime contract liens;
- claims on non-maritime liens; and
- non-lien maritime claims.

Where liens accrue at different times, the general rule is that liens that arrive last in time take precedence. In practice, in distressed situations, any claimant coming after the mortgagee is unlikely to recover.

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

The U.S. Carriage of Goods by Sea Act governs all contracts for carriage of goods by sea to or from ports of the United States in foreign trade (and bills of lading as evidence of such contracts). 46 U.S.C. § 30701, Note § 13. COGSA governs the carrier's liability to cargo interests whenever a bill of lading or similar document of title is the contract of carriage. The "carrier" is identified in COGSA as "the owner, manager, charterer, agent, or master" of a vessel and can include all owners or charterers involved with carrying the cargo.

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

Contracts for carriage of goods by sea must be construed like any other contracts: by their terms and consistent with the intent of the parties. As such, where parties clearly specify in their contractual agreement which law will apply, admiralty courts will generally give effect to that choice. COGSA applies "tackle to tackle" by force of law, but the period it covers (e.g., pre-loading and post-discharge or carriage between two non-U.S. ports) frequently may be extended by clauses in bills of lading.

As a matter of contract interpretation, federal courts sitting in admiralty seek to interpret a contract "so as to give meaning to all of its terms — presuming that every provision was intended to accomplish some purpose, and that none are deemed superfluous." *E.g., Foster Wheeler Energy Corp. v. An Ning Jiang MV, Etc.*, 383 F.3d 349, 354 (5th Cir. 2004). Ambiguities can lead to disputes – for example, if a competing regime applies a higher limitation of liability than COGSA's $500 per package limitation – and as such careful attention should be paid to the contract language including its choice-of-law and forum selection provisions. *See id*.

16. Are jurisdiction clauses recognised and enforced?

Yes. Forum selection, arbitration and choice of law clauses are enforced if they are properly incorporated into the bill of lading.

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?

The terms of a charter party can be incorporated into a bill of lading, provided it is clearly done on the face of the bill of lading.

Foreign forum selection clauses and foreign arbitration clauses found in incorporated charter parties are enforced if the charter party is properly incorporated in the bill of lading. To enforce an arbitration clause against a third-party holder, a bill of lading should specifically identify the charter party and clearly incorporate the arbitration clause. A party seeking to avoid enforcement of a foreign arbitration or forum selection clause has the burden of proving a likelihood that "the substantive law to be applied will reduce the carrier's obligations to the cargo owner below what COGSA guarantees." *Vimar Seguros Y Reaseguros v. M/V Sky Reefer*, 515 U.S. 528, 539, 115 S. Ct. 2322, 2329 (1995).

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?

The US applies a version of the Hague Rules through the Carriage of Goods by Sea Act (COGSA) as well as the Harter Act. The US has also signed the Rotterdam Rules, which are not yet ratified. COGSA has been in place for generations and provides a reasonable and predictable cargo loss and damage liability regime.

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?

The US is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), as implemented by the Federal Arbitration Act, 9 U.S.C. § 201 et seq (the "FAA"). The grounds to resist enforcement of the award are limited. As specified in the FAA, "[t]he court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." As such, the FAA incorporates only the limited enumerated exceptions or defences set forth in Article V of the New York Convention. Absent such a defence, a US court "shall confirm" the award.

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).

Statutes apply to limit actions on many species of maritime claims. Cargo claims must be brought within COGSA's one-year limitations period. COGSA § 3(6), 46 U.S.C. § 30701 note (previously codified at 46 U.S.C. § 1303(6)). Salvage claims are governed by a two-year statute of limitations. 46 U.S.C. § 80107(c). Suits for damages for personal injury or death arising out of a maritime tort must be commenced within three years after the cause of action arose. 46 U.S.C. § 30106. With respect to passenger claims, carriers by sea may impose a contractual limitation period of no less than one year to file suit from the date of injury or death. 46 U.S.C. App 183b.

Where no statute applies, suits for enforcement of a maritime lien or other maritime claim are typically governed by the equitable doctrine of laches. Under this doctrine, courts will ask whether there has been "inexcusable delay" and resulting prejudice to the party against whom the claim is brought. In making this determination, a court sitting in admiralty will often use analogous local limitation statutes as a rule-of-thumb. If outside of the analogous limitations period, the burden will fall on plaintiff to show that laches does not apply. If within an analogous limitations period, a presumption of laches would not attach and the burden of showing inexcusable delay would fall on the defendant.

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

"Force majeure" is a concept recognized under U.S. law and will in general be governed by the particular terms of the parties' agreement as well as the governing law, which may be subject to variation from state to state. The burden of demonstrating a force majeure event falls upon the non-performing party seeking to have its performance excused. That party must "demonstrate its efforts to perform its contractual duties despite the occurrence of the event that it claims constituted force majeure." *Phillips P.R. Core, Inc. v. Tradax Petroleum, Ltd.*, 782 F.2d 314, 319 (2d Cir. 1985). In one case involving a warranty contract to supply fuel on a daily basis, for example, the Third Circuit found that "the nonperforming party must still prove how it tried to overcome the event and its effects." *Gulf Oil Corp. v. Fed. Energy Regulatory Com.*, 706 F.2d 444, 452 (3d Cir. 1983). Under New York law where they are in play, these clauses are typically narrowly construed and "will generally only excuse a party's nonperformance if the event that caused the party's nonperformance is specifically identified. . . .[they] are aimed narrowly at events that neither party could foresee or guard against in the agreement." *In re Cablevision Consumer Litig.*, 864 F. Supp. 2d 258, 264 (E.D.N.Y. 2012). Force majeure clauses also do not typically protect against risks that are contemplated or obligations expressly assumed at the time of the contract.

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