

SHIPPING

India



Shipping

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Quick reference guide enabling side-by-side comparison of local insights into newbuilding contracts; ship registration and mortgages; limitation of liability; port state control; classification societies; collision, salvage, wreck removal and pollution; ship arrest; judicial sale of vessels, carriage of goods by sea and bills of lading; shipping emissions; ship recycling; jurisdiction and dispute resolution; international conventions; and recent trends.

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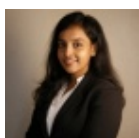
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NEWBUILDING CONTRACTS

Transfer of title

When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Under a shipbuilding contract, once the full consideration for the ship or vessel is paid and a bill of lading is issued in favour of the shipowner, the title to the ship passes onto the shipowner. Lastly, the said transfer of title of the ship is entered with a registry.

Law stated - 03 May 2022

Refund guarantee

What formalities need to be complied with for the refund guarantee to be valid?

There are no prescribed formalities or forms for a refund guarantee to be valid. The terms of a refund guarantee are subject to the agreement entered into by the shipbuilder and the shipowner. The terms of the agreement should provide a valid consideration for the refund guarantee to be enforceable.

Law stated - 03 May 2022

Court-ordered delivery

Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

In the event the yard refuses to deliver the vessel, the delivery of such vessel could be compelled by approaching local courts for seeking specific performance of the ship-building contract. Interim reliefs can also be sought against the yard by making out a prima facie case for breach of contract.

Law stated - 03 May 2022

Defects

Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

In case of a defect in a vessel delivered to a shipowner by a yard, the shipowner can initiate proceedings against the yard for deficiency. However, a purchaser from the original shipowner or a third party who sustains damages will not have any remedy available against the shipbuilder as there is no privity of contract between the second purchaser and the shipbuilder.

Law stated - 03 May 2022

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Any merchant vessel, bulk carrier, tankers, barges, tugs, dredgers, etc, can be registered under the Indian flag by following procedure and requirements enlisted in Part V of the Merchant Shipping Act 1958.

Vessels under construction cannot be registered in India, and only fully built vessels can be registered under the Indian flag.

Law stated - 03 May 2022

Who may apply to register a ship in your jurisdiction?

Under the Merchant Shipping Act, 1958 only the following persons are eligible to register a ship in India:

- a citizen of India;
- a company or a body established by or under the central or state enactments that has its principal place of business in India; and
- a co-operative society that is registered or deemed to be registered under the Co-operative Societies Act 1912.

Law stated - 03 May 2022

Documentary requirements

What are the documentary requirements for registration?

In order to register a ship in India, the following documents are required for registration:

- the surveyor's certificate;
- the builder's certificate;
- any instrument of sale by which the ship was previously sold;
- all declaration of ownership including a statutory declaration of ownership; and
- the following forms:
 - application to register a ship;
 - declaration of ownership and nationality.

For second-hand ships, the instrument of sale under which the property of the ship was transferred to the applicant who requires it to be registered in his or her name is also required.

All the documents should be in the format prescribed under Part V of the Merchant Shipping Act, 1958.

Neither dual registration nor dual flagging is not permitted in India.

Law stated - 03 May 2022

Dual registration

Is dual registration and flagging out possible and what is the procedure?

No, neither dual registration nor dual flagging is permitted in India.

Law stated - 03 May 2022

Mortgage register

Who maintains the register of mortgages and what information does it contain?

The Mercantile Marine Department (MMD) maintains the register of mortgages. The register of ship mortgages among other things contains the following:

- information of the ship (eg, name, flag, IMO number);
- information of the mortgagee and the mortgagor (eg, name and contact details); and
- the amount of the debt, date of repayment, interest, payment date of interest, ranking of the mortgage, former registered mortgage, etc.

Law stated - 03 May 2022

LIMITATION OF LIABILITY

Regime

What limitation regime applies? What claims can be limited? Which parties can limit their liability?

The following regimes are applicable to limitation of liability in India and are a part of the local laws:

- the Limitation of Liability for Maritime Claims 1976 applies to claims raised thereunder;
- the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976; and
- the Merchant & Shipping Act 1958 (Part X-A) (Limitation of Liability for Maritime Claims 1976, except for article 4, is incorporated in this act).

Under the Merchant Shipping Act, Part X-A, the following claims can be limited:

- claims arising from loss of life of or personal injury to, or loss of or damage to, property (including damage to harbour works, basins and waterways and aids to navigation) occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- claims arising out of loss resulting from delay in the carriage by sea of cargo and passengers or their luggage;
- claims arising out of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with the provisions of the Convention or the rules made in this behalf prescribe as the case may be, and such further loss caused by such measures;
- claims for the loss of life or personal injury to passengers of a ship brought by or on behalf of any person:
 - under the contract of passenger carriage; or

- who, with the consent of the carrier, is accompanying a vehicle for live animals which are covered by a contract for the carriage of goods carried in that ship.

The following parties can limit their claims:

- the shipowner;
- a salvor;
- any person for whose act, neglect or default the shipowner or salvor, as the case may be, is responsible; and
- an insurer of liability for claims to the same extent as the assured him or herself.

Law stated - 03 May 2022

Procedure

What is the procedure for establishing limitation?

The procedure for establishing limitation is as per the procedure prescribed in Part X-A of the Merchant & Shipping Act 1958. Where any liability is alleged to have been incurred by the owner of a vessel in respect of claims arising out of an occurrence and the aggregate of the claims exceeds or is likely to exceed the limits of liability of the owner, then the owner may apply to High Court for the setting up of a limitation fund for the total sum representing such limits of liability.

The High Court to which the application is made may determine the amount of the owner's liability and require him or her to deposit such amount with the High Court or furnish such security in respect of the amount that, in the opinion of the High Court, is satisfactory and the amount so deposited or secured shall constitute a limitation fund for the purposes of the claims and shall be utilised only for the payment of such claims.

After the fund has been constituted, no person entitled to claim against it shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the fund, if that fund is actually available for the benefit of the claimant.

Cash deposits or bank guarantees are the predominant forms accepted for setting up a fund.

Law stated - 03 May 2022

Break of limitation

In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

The limitation cannot be broken for any damages except for damages caused due to pollution or when the damages are of such nature where the International Convention on Civil Liability for Oil Pollution Damage would apply.

The Merchant & Shipping Act 1958 (Part X-A) which governs the statute on limitation of liability does not incorporate the principles of article 4 of the Limitation of Liability for Maritime Claims 1976.

Law stated - 03 May 2022

Passenger and luggage claims

What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

For claims relating to passenger and luggage in India, the following regimes apply:

- Limitation of Liability for Maritime Claims 1976;
- Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976;
- Merchant & Shipping Act 1958 (Part X-A); and
- the International Convention on Civil Liability for Oil Pollution Damage, in cases of oil pollution.

The Athens Convention is not applicable in India.

Law stated - 03 May 2022

PORT STATE CONTROL

Authorities

Which body is the port state control agency? Under what authority does it operate?

The Directorate General of Shipping is the port control agency in India. It operates the Mercantile Marine Department and is under the control of the Ministry of Ports, Shipping and Waterways.

Law stated - 03 May 2022

Sanctions

What sanctions may the port state control inspector impose?

The port state control inspector may impose sanctions in accordance with the Safety of Life at Sea (SOLAS) Convention.

Law stated - 03 May 2022

Appeal

What is the appeal process against detention orders or fines?

In India, detention orders and fines are levied by the Directorate General of Shipping. There is no appeal provision against these orders or fines, however, an aggrieved party may invoke writ jurisdiction before the High Court concerned challenging the arbitrariness of detention orders and quantum of fines.

Law stated - 03 May 2022

CLASSIFICATION SOCIETIES

Approved classification societies

Which are the approved classification societies?

In India, the two approved classification societies are the International Association of Classification Societies (IACS) and the Indian Register of Shipping (IRCLASS).

Law stated - 03 May 2022

Liability

In what circumstances can a classification society be held liable, if at all?

A classification society may be held liable for breach of its contract or for violation of the regulations in respect of the duties (eg, survey, inspection) commissioned by the government authorities.

Law stated - 03 May 2022

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

Can the state or local authority order wreck removal?

The state, through the office of the Directorate General of Shipping, can order shipowners to remove a wreck. If the wreck consists of a vessel other than an Indian vessel, the office of the Directorate General of Shipping shall send a written intimation giving particulars of the wrecked vessel to the nearest consular officer of the country in which the vessel is registered, under intimation to the principal officer.

Wreck removal is regulated by the Merchant Shipping (Wrecks and Salvage) Rules, 1974 framed under the Merchant Shipping Act, 1958.

Law stated - 03 May 2022

International conventions

Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

The Nairobi International Convention on the Removal of Wrecks and the International Convention on Civil Liability for Oil Pollution Damage (CLC) is applicable in India. However, India is only a signatory to the said convention and has not yet incorporated it in its local laws and regulations.

The Merchant & Shipping Act 1958 is the statute governing the issues related to collision, wreck removal, salvage and pollution.

Law stated - 03 May 2022

Salvage

Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory local form of salvage agreement in India. The Lloyd's Standard Form of Salvage Agreement is acceptable. The owner is responsible to carry out salvage operations through registered salvors.

Law stated - 03 May 2022

SHIP ARREST

International conventions

Which international convention regarding the arrest of ships is in force in your jurisdiction?

Both the International Convention Relating to the Arrest of Sea-Going Ships 1952 and the International Convention on the Arrest of Ships 1999 were predominately the governing conventions applicable regarding the arrest of ships in India. However, the arrest of ships is now strictly governed by the provisions of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017. In case of any inconsistency, the statute will prevail over the conventions.

Law stated - 03 May 2022

Claims

In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Vessels can be arrested for Maritime claims. Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 enlists maritime claims as follows:

1. disputes regarding the possession or ownership of a vessel, or the ownership of any share therein;
2. disputes between the co-owners of a vessel as to the employment or earnings of the vessel;
3. mortgage or a charge of the same nature on a vessel;
4. loss or damage caused by the operation of a vessel;
5. loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
6. loss or damage to or in connection with any goods;
7. agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;
8. agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
9. salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
10. towage;
11. pilotage;
12. goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;
13. construction, reconstruction, repair, converting or equipping of the vessel;
14. dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;
15. claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and

- 151 of the Merchant Shipping Act, 1958 (44 of 1958);
16disbursements incurred on behalf of the vessel or its owners;
17particular average or general average;
18dispute arising out of a contract for the sale of the vessel;
19insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;
20commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;
21damage or threat of damage caused by the vessel to the environment, coastline or related interests;
22costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and
23maritime liens.

For the purposes of clause (17), the expressions 'particular average' and 'general average' have the same meanings as assigned to them in sub-section (1) of section 64 and sub-section (2) of section 66 respectively of the Marine Insurance Act, 1963 (11 of 1963).

These are the only classes of maritime claims for which vessels can be arrested. The arrest of associate ships is not permissible in India. A bareboat chartered vessel can be arrested, provided the liability is against the bareboat charterer.

A time-chartered vessel cannot be arrested for a claim against the time-charterer. The maritime claim has to be against the owner of the vessel or against the vessel at the instance of the owner.

Law stated - 03 May 2022

Maritime liens

Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

India recognises the concept of the maritime lien and has incorporated it into its local laws. The claims contemplated under section 9(1)(a)-(e) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 are the only forms of maritime liens existing. They are as follows:

Law stated - 03 May 2022

Wrongful arrest

What is the test for wrongful arrest?

The test for wrongful arrest is malafide intention and bad faith by the arresting party. On an application by owners, the Admiralty Court may declare the arrest of the vessel as wrongful. The shipowner will have to prove the losses suffered on account of wrongful arrest and the court at its own discretion may grant damages in favour of the shipowner.

Law stated - 03 May 2022

Bunker suppliers

Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

The bunker supplier cannot arrest the vessel if the supply is at the instance of the charterer and not at the instance of the owner or bareboat charterer.

Law stated - 03 May 2022

Security

Will the arresting party have to provide security and in what form and amount?

The arresting party need not provide any counter-security at the time of filing for the arrest. Such a party will have to provide an undertaking on an affidavit at the time of filing the suit and application for arrest. However, the court may at its discretion or application by the owners, order the arresting party to furnish countersecurity.

Law stated - 03 May 2022

How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

On the basis of the claim made by the arresting party, the court will test whether a claim has prima facie justification and fix the security amount accordingly at its discretion. It may be equivalent to the claim of the plaintiff or less. The owner may apply for a review of such security amount fixed by the court by filing an application for reduction of security.

Security provided is predominantly in the form of a bank guarantee or cash deposits. It can exceed the value of the ship; however, the shipowner can limit his or her liability.

Law stated - 03 May 2022

Formalities

What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

The formalities that any claimant is required to undertake to make an application for arrest are as follows:

- A vakalatnama (note of appearance) is required to be executed in favour of the lawyer.
- A power of attorney or board resolution and copies of other documents relied upon in support of the claim are required to be filed in court.
- At the time of filing the arrest application, copies of the documents would suffice.
- However, when the matter goes to trial, original documents are required to be produced in court.
- If a power of attorney is issued in a foreign country, the same will have to be notarised and legalised as per the

laws applicable of that country where the power of attorney is executed. Since India is a signatory to the Apostille Convention (Hague Convention), apostilled documents are also accepted by courts.

- A substantive suit is required to be filed in India and therefore all documents in support of the case or in defence are to be annexed or exhibited to the pleadings. In case the documents are not in the English language, the same will be required to be officially translated and the official translation will have to be filed along with the said document.
- In case of any affidavits affirmed by any person based outside India, the same will be required to be notarised and legalised or apostilled in the home country as per the laws applicable of that country.
- In case any of the formalities cannot be complied with, owing to limited time, an undertaking can be given to the court that compliance with the pending formalities shall be completed within a specific time, which the court normally grants.
- At present, the documents can be filed electronically in certain jurisdictions (High Courts), but the same if only for a limited period, following which physical copies will have to be filed before the respective court.
- Once all documents are made available, the arrest application can be made within 24 hours.
- The application for arrest is required to be made to the admiralty court of the coastal state, in whose jurisdiction the vessel is found.

Law stated - 03 May 2022

Ship maintenance

Who is responsible for the maintenance of the vessel while under arrest?

The shipowner is responsible for the maintenance of the vessel while under arrest. In case the owner fails to maintain the vessel or abandons her, the arresting party will be required to maintain the vessel and the cost incurred for maintaining the vessel will be treated as sheriff's expenses and paid in priority accordingly.

Law stated - 03 May 2022

Proceedings on the merits

Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Parties cannot merely arrest a vessel for the purposes of obtaining security for proceedings elsewhere. The arresting party will have to file a substantive admiralty suit for a maritime claim. However, if there is an arbitration clause arrest is permissible for the security of the award. If the defendant provides security, the dispute may be referred to arbitration and the substantive suit may be adjourned sine die. The security so provided will remain deposited in court bearing interest. If the defendant does not enter an appearance or provide security, the matter will be prosecuted in an Indian court.

Law stated - 03 May 2022

Injunctions and other forms of attachment

Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Yes, there are other forms of attachment orders, such as attachment before judgment available to the party for

securing its claim. However, the shipowner or defendant must be within the jurisdiction of the court and such a claim is a claim in personam against the shipowner or the defendant.

Law stated - 03 May 2022

Delivery up and preservation orders

Are orders for delivery up or preservation of evidence or property available?

Indian courts grant orders of delivery up or preservation of evidence or property by appointing a receiver or a court commissioner on reports of surveyors and assessors.

Law stated - 03 May 2022

Bunker arrest and attachment

Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Bunkers cannot be independently arrested unless there is a claim against a vessel.

Law stated - 03 May 2022

JUDICIAL SALE OF VESSELS

Eligible applicants

Who can apply for judicial sale of an arrested vessel?

A party arresting through court or other statutory authorities can apply for judicial sale of an arrested vessel.

Law stated - 03 May 2022

Procedure

What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

A vessel is surveyed and a valuation of the vessel is undertaken. The price of the vessel is then determined and fixed and an advertisement for sale is published. The vessel is then sold by a bidding process.

Generally, it takes one to three months to complete the sale process after an order for the sale of the vessel is passed. In the event no bids are received within the stipulated time, bids will be called again and this may delay the conclusion of judicial sale.

The expenses incurred by the sheriff for appraisal and valuation of the vessel, expenses relating to the publication of the auction and conducting the auction (ie, costs incurred by a court) are calculated at actuals and settled from the sale proceeds as sheriff's expenses.

Law stated - 03 May 2022

Claim priority

What is the order of priority of claims against the proceeds of sale?

The priority of maritime claims against the sale proceeds is determined under section 10 of the Admiralty Act, as follows:

The following principles shall apply in determining the priority of claims:

- if there are more claims than one in any single category of priority, they shall rank equally; and
- claims for various salvages shall rank in inverse order of time when the claims thereto accrue.

Law stated - 03 May 2022

Legal effects

What are the legal effects or consequences of judicial sale of a vessel?

A vessel is sold through judicial sale is free from all encumbrances including liens and mortgages.

Law stated - 03 May 2022

Foreign sales

Will judicial sale of a vessel in a foreign jurisdiction be recognised?

Judicial sale of a vessel in a foreign jurisdiction is recognised in India.

Law stated - 03 May 2022

International conventions

Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

India is a signatory to the International Convention on Maritime Liens and Mortgages 1993.

Law stated - 03 May 2022

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

Admiralty courts in India follow the Hague Rules and the Hague-Visby Rules. However, they are yet not statutorily incorporated or ratified.

Law stated - 03 May 2022

Multimodal carriage

Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

The laws applicable to the different modes of transport other than sea are:

- the Carriers Act 1965;
- the Carriage of Goods by Road Act 2007;
- the Carriage by Air Act 1972; and
- the Multimodal Transportation of Goods Act 1993 (as amended in 2000).

Law stated - 03 May 2022

Title to sue

Who has title to sue on a bill of lading?

A party to whom the title and property have passed as per section (1) of the Bills of Lading Act 1955 can sue on a bill of lading. Normally, the consignee or the holder of a bill of lading duly endorsed is entitled to sue on a bill of lading.

Law stated - 03 May 2022

Charter parties

To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

The terms of the charter party can be incorporated in a bill of lading, including the arbitration clause to the extent that the reading of the same does not lead to an absurd and unworkable situation. The reference to an arbitration clause has to be specific for it to be incorporated in the bill of lading.

Law stated - 03 May 2022

Demise and identity of carrier clauses

Is the 'demise' clause or identity of carrier clause recognised and binding?

Yes, 'demise' clauses or identity of carrier clauses are recognised in India, subject to provisions in the contract.

Law stated - 03 May 2022

Shipowner liability and defences

Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

A contract between the shipper and shipowner is under the master bill of lading. However, a bill of lading issued by a freight forwarder or a non-vessel operating common carrier (house bill of lading) cannot foist liability on the shipowner. Such a shipowner can use the defence of absence of privity of contract.

Law stated - 03 May 2022

Deviation from route

What is the effect of deviation from a vessel's route on contractual defences?

The effect of deviation from a vessel's route on contractual defences would depend on the terms of the contract.

Law stated - 03 May 2022

Liens

What liens can be exercised?

Liens can be exercised on cargo and freight either contractually or by operation of law.

Law stated - 03 May 2022

Delivery without bill of lading

What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

The carrier is liable for damages for loss in delivery of cargo without production of the bill of lading and in some cases for the entire cost of the consignment. The carrier's liability can be limited under the provisions of the Carriage of Goods by Sea Act, 1925. Additionally, the parties can enter into an agreement to limit the carrier's liability, however, the amount shall not be lesser than mentioned in the Carriage of Goods by Sea Act, 1925.

Law stated - 03 May 2022

Shipper responsibilities and liabilities

What are the responsibilities and liabilities of the shipper?

The responsibilities and liabilities depend entirely on the nature of the contracts (ie, cost, insurance and freight or free on board).

Law stated - 03 May 2022

SHIPPING EMISSIONS

Emission control areas

Is there an emission control area (ECA) in force in your domestic territorial waters?

There is no ECA in force within India's territory.

Law stated - 03 May 2022

Sulphur cap

What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

In MARPOL Annex VI, Regulation 14, the International Maritime Organization, of which India is a member state, set the sulphur content of fuel oil used by ships outside ECAs to 0.5 per cent mass by mass. This limit is followed by India. The Directorate General of Shipping has released a circular providing guidance and requirements for Indian shipping companies regarding compliance with this regulation.

Law stated - 03 May 2022

SHIP RECYCLING

Regulation and facilities

What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

The state of Gujarat has the largest ship recycling industry in India and is governed and regulated by the Ship Recycling Regulations 2015, issued by the Gujarat Maritime Board. The ship recycling industry is primarily governed by the Recycling of Ships Act, 2019.

Law stated - 03 May 2022

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

Which courts exercise jurisdiction over maritime disputes?

The coastal High Courts of Bombay, Karnataka, Kolkata, Orissa, Kerala, Andhra Pradesh, Telangana and Madras exercise jurisdiction over maritime disputes in India. Appeals from the High Court lie before the Supreme Court of India.

Law stated - 03 May 2022

Service of proceedings

In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

Where there is a maritime claim against a vessel or its owner, service is by warrant of arrest being affected on a vessel. In personam claims are governed by the Code of Civil Procedure, 1908.

Law stated - 03 May 2022

Arbitration

Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

The Indian Council of Arbitration is the most active arbitral institution specialising in maritime arbitration.

Law stated - 03 May 2022

Foreign judgments and arbitral awards

What rules govern recognition and enforcement of foreign judgments and arbitral awards?

The Arbitration and Conciliation Act, 1996 (as amended in 2015) governs and recognises the enforcement of foreign arbitral awards. India is a signatory to the New York Convention 1958 and the Geneva Convention 1927.

Law stated - 03 May 2022

Asymmetric agreements

Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

The enforceability depends on the seat of arbitration and the substantial law of the contract. Also, if the award is to be enforced in India, then the test in sections 47 and 48 of the Arbitration and Conciliation Act 1996 has to be satisfied.

Law stated - 03 May 2022

Breach of jurisdiction clause

What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

An application to stay the proceeding can be filed challenging the jurisdiction. Additionally, parties may also choose to initiate their own proceedings before the appropriate courts having jurisdiction as per the jurisdiction clause.

Law stated - 03 May 2022

What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

An application, challenging the jurisdiction can be filed to stay the domestic proceedings. Additionally, parties may also choose to initiate their own proceedings before the appropriate foreign courts or arbitral tribunal.

Law stated - 03 May 2022

LIMITATION PERIODS FOR LIABILITY

Time limits

What time limits apply to claims? Is it possible to extend the time limit by agreement?

Breaches of contract and claims in tort are subject to a time limit of three years; inward cargo to three years; and outward cargo, one year.

A limitation period may be extended provided there is a continuous cause of action or a fresh promise to pay by the party who is liable to pay. Such fresh promises to pay ought to be within the expiry of the original limitation period.

Law stated - 03 May 2022

Court-ordered extension

May courts or arbitral tribunals extend the time limits?

Courts or tribunals in India cannot extend a period of limitation.

Owing to the covid-19 pandemic, the Supreme Court of India, using its extraordinary powers, has passed several orders that the period of the pandemic will not be considered or count towards the computation of limitation.

Law stated - 03 May 2022

MISCELLANEOUS

Maritime Labour Convention

How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

India is a signatory to the Maritime Labour Convention 2006 and has enacted the Merchant Shipping (Maritime Labour) Rules, 2016. It will apply to Indian flagged vessels.

Law stated - 03 May 2022

Relief from contractual obligations

Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Yes, by way of seeking specific performance of the shipping contract.

Law stated - 03 May 2022

Other noteworthy points

Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

No.

Law stated - 03 May 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

The Indian government has proactively focussed on the shipping, maritime and port industries, and is in the process of developing and modernising its rules and legislation.

Law stated - 03 May 2022

Jurisdictions

	Angola	VdA
	Australia	Holding Redlich
	Brazil	Kincaid Mendes Vianna Advogados
	Cyprus	Chrysses Demetriades & Co LLC
	Ecuador	Villagran Lara Attorneys
	Egypt	Eldib Advocates
	Ghana	Kimathi & Partners Corporate Attorneys
	India	Phoenix Legal
	Israel	J.SPRINZAK Maritime Law Firm
	Italy	Studio Legale Mordiglia
	Japan	Okabe & Yamaguchi
	Malaysia	SKRINE
	Malta	Dingli & Dingli Law Firm
	Mozambique	VdA
	Netherlands	Van Steenderen MainportLawyers
	New Zealand	Hesketh Henry
	Nigeria	Creed & Brooks
	Norway	Advokatfirmaet BAHR AS
	Portugal	Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL
	Russia	Jurinflot International Law Office
	Singapore	Haridass Ho & Partners
	South Korea	Cho & Lee
	Taiwan	Lee and Li Attorneys at Law
	Turkey	Cavus & Coskunsu Law Firm
	United Arab Emirates	Afridi & Angell



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