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Ali Budiardjo, Nugroho, Reksodiputro, Counsellors at Law
Andrade Dias & Associados – Sociedade de Advogados RL

Attorneys at law Borenius & Kempinen Ltd

Bull, Housser & Tupper LLP

Cabinet Isabelle Corbier

Chrysses Demetriades & Co LLC

Cox, Wootton, Griffin, Hansen & Poulos LLP

Denlaw

Garza Tello & Asociados Abogados/Attorneys

GTG Advocates

Haridass Ho & Partners, Advocates & Solicitors

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Segelken & Suchofar

Sokolov, Maslov and Partners

Straits Consulting Group

Studio Legale Siccardi Bregante & C

Thomas Cooper

Van Steenderen MainportLawyers



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Contributing editor:

Jonathan Lux
Ince & Co

Business development manager

Joseph Samuel

Marketing managers

Alan Lee
Dan Brennan
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Dan White
Tamzin Mahmoud
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Subscriptions manager

Nadine Radcliffe
Subscriptions@
GettingTheDealThrough.com

Assistant editor

Adam Myers

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Jonathan Allen

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Kathryn Smuland

Subeditors

Ariana Frampton
Charlotte Stretch

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
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Cyprus

Michael McBride, Yiannis Christodoulou and Michael Papadopoulos

Chrysses Demetriades & Co LLC

Newbuilding contracts

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

Title in a newly built ship is evidenced by the issue of a builder's certificate, that is to say, a certificate signed by the builder of the ship, and containing a true account of the ship's particulars, and of the name of the person on whose account the ship was built, and if there has been any sale, the bill of sale under which the ship, or share therein, has become vested in the owner. As ships are moveable objects, it follows that upon transfer of title taking place between the builder and the owner, there must be a contemporaneous 'physical' delivery of the ship by builders to owners.

Consequently, absolute title in a ship passes by the builders to the shipowners by means of a builder's certificate (and bill of sale, where applicable), and the physical delivery of such ship to the owner.

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

There are no statutory requirements applicable in Cyprus for refund guarantees, issued by builders to shipowners, to be valid, other than the general legal requirement for the underlying shipbuilding contracts to become effective in the first place.

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

An owner may apply to the Cyprus courts and request the issue of an order for 'specific performance' compelling the builder to deliver the ship physically to him. Specific performance is, however, a discretionary power of the court, and is applied in cases where alternative remedy is not possible.

- 4 Where the vessel is defective and damage results, would a claim lie in 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?

A shipowner would have a cause of action against the builder for defects to his ship, both under the relative shipbuilding contract, and the warranty clause contained therein, and under certain circumstances, the provisions of the sale of goods law.

In a sale of a newly built ship that continues under the builder's warranty, and where such warranties are assigned to the purchaser, with the builder's consent, then such purchaser would stand in the same legal position as the original shipowner against the builder in relation to these warranty claims. Where such warranties are not applicable, then considering that the rule of 'privity of contracts' applies in Cyprus, the purchaser would not have a right of claim against the builder, but only against the seller of the ship, and would

be based upon the terms of the contract of sale of the ship between them, usually a memorandum of agreement based on the Norwegian sales form or similar.

Ship registration and mortgages

- 5 What vessels are eligible for registration under the flag of your country?

All vessels used in navigation and not propelled by oars are eligible for registration in Cyprus provided that they meet the age restrictions set out in the official government policy regulating the registration of old ships in the Cyprus Ships Register.

- 6 What are the requirements for company formation?

A Cyprus company is formed by the registration of the memorandum and articles of association with the Registrar of Companies, and the filing of the requisite company forms registering the appointment of directors, secretary and registered office.

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

Dual registration and flagging out are both possible in Cyprus. The basis for such types of registration is the bareboat chartering of a ship by the shipowner to the charterer, and on the condition that the respective laws of the underlying registry, and of the bareboat registry, to explicitly permit dual registration, and to contain preventive covenants that matters relating to ownership, and to mortgages over the ship, shall be exclusively governed by the laws of the ships' underlying register. The bareboat charterer must also undertake to maintain the same safety standards to the ship, even though the chosen bareboat register applies safety standards that are lesser than those applied by the ships' underlying register.

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

The Register Book is entrusted by the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963, as amended, to the Registrar of Cyprus Ships, and contains a description of the ship, and of the particulars of mortgages registered thereon. As there are two forms of mortgages, the one securing a principal amount and interest, and the other securing a current account, the information that is entered in the Register consists of the name and address of the mortgagee, the date of the mortgage instrument, time of recordation, the form of the registered mortgage, and its ranking.

Limitation of liability

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

The Convention on Limitation of Liability for Maritime Claims of 1976 and of its Protocol of 1996 amending the said Convention (Ratification) and for Matters Connected Therewith Law of 2005 (Law 20(III)/2005) applies.

The following claims are subject to limitation:

- (i) claims in respect of loss of life or personal injury 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;
- (ii) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (iii) claims in respect 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;
- (iv) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (v) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship; and
- (vi) 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 this convention, and further loss caused by such measures.

The claims set out under paragraphs (iv), (v) and (vi) are not subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

The owner, charterer, manager and operator of a seagoing ship and salvors can limit their liability. An insurer of liability for claims is subject to limitation.

10 What is the procedure for establishing limitation?

Provision is made in the conventions ratified by Cyprus. The matter has not been tested before the Cyprus courts (see questions 27 to 34).

11 In what circumstances can the limit be broken?

The limit can be broken when the actual fault or privity of the shipowner is proved.

Port state control

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

The port control agency is entrusted to the Department of Merchant Shipping, and operates under the Paris Memorandum of Understanding of Port State Control.

13 What sanctions may the port state control inspector impose?

The port state control inspector may impose all sanctions provided for under the Paris Memorandum, including detention of ships.

14 What is the appeal process against detention orders or fines?

Orders made or fines imposed under Port State Control fall under normal government administration practice, all of which are subject to a recourse made at the Supreme Court of Cyprus within 75 days of the giving of the order, or of the imposition of the fine.

Classification societies

15 Which are the approved classification societies?

All members of the IACS class societies are recognised by Cyprus.

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

A class society would be held liable if the cause of the action falls within the criminal domain.

For civil actions, a class society would generally be held accountable if it does not contractually disclaim liability with the shipowner.

Collision, salvage, wreck removal and pollution

17 Can the state or local authority order wreck removal?

Yes it can.

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

For collisions:

- The Convention on International Regulations for Preventing Collisions at Sea, 1972 (Ratification) and for Matters Connected Therewith Law of 1980 (Law 18/80), and the following amendments:
 - the Convention on International Regulations for Preventing Collisions at Sea, 1972 (Ratification) and for Matters Connected Therewith (Amendment) Law of 1981 (Law 8/81);
 - the Convention on International Regulations for Preventing Collisions at Sea, 1972 (Ratification) and for Matters Connected Therewith (Amendment) Law of 1982 (Law 66/82); and
 - the Convention on International Regulations for Preventing Collisions at Sea, 1972 (Ratification of Amendments) Law of 1989 (Law 4/89);
- the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision, 1952, (Ratification) Law of 1993 (Law 31(III)/93).

For salvage:

- The Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea and Protocol of Signature, Brussels 23 September 1910 (extended to Cyprus on 1 February 1913).

For pollution:

- The Convention for the Protection of the Mediterranean Sea Against Pollution and for Connected Protocols (Ratification) Law of 1979 (Law 51/79). (Gazette No. 1524, supplement I, dated 8 June 79).
 - The Convention for the Protection of the Mediterranean Sea Against Pollution and for Connected Protocols (Ratification) (Amendment) Law of 2001 (Law 20 (III) / 2001). (Gazette No. 3537, Supplement I (III), dated 15 October 2001).
 - The Convention for the Protection of the Mediterranean Sea Against Pollution and for Connected Protocols (Ratification) (Amendment) Law of 2007 (Law 35 (III)/2007);
- the International Convention for the Prevention of Pollution of the Sea from Ships of 1973, its Protocol of 1978 and the Resolutions MEPC 14(20) of 1984, MEPC 16(22) and MEPC 21(22) of 1985 (Ratification) and for Matters Connected Therewith Law of 1989 (Law 57/89) and its amendments:
 - the International Convention for the Prevention of Pollution of the Sea from Ships of 1973, its Protocol of 1978 and the Resolutions MEPC 14(20) of 1984, MEPC 16(22)

and MEPC 21(22) of 1985 (Ratification) and for Matters Connected Therewith (Amendment) Law of 1995 (Law 11(III)/95);

- the International Convention for the Prevention of Pollution of the Sea from Ships of 1973, its Protocol of 1978, as Amended by the Resolutions of 1987-1995 (Ratification) and for Matters Connected Therewith (Amendment) Law of 2001 (Law 11 (III)/ 2001);
- the International Convention for the Prevention of Pollution of the Sea from Ships (Ratification) and for Matters Connected Therewith (Amendment) Law of 2003 (Law 38 (III)/ 2003);
- the International Convention for the Prevention of Pollution of the Sea from Ships (Ratification) and for Matters Connected Therewith (Amendment) Law of 2004 (Law 46 (III)/ 2004) (EU harmonisation law); and
- the International Convention for the Prevention of Pollution of the Sea from Ships (Ratification) and for Matters Connected Therewith (Amendment) Law of 2005 (Law 36 (III)/ 2005). (EU harmonization law), including: the Submarine Pipe-Lines for the Transfer of Oil and Other Hydrocarbon Products Regulations, 1995 and the Port Reception Facilities for Ship-generated Waste and Cargo Residues Regulations, 2003;
- the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 and of its Protocol of 1976 (Ratification) and for Matters Connected Therewith Law of 1989 (Law 109/89), and its amendment:
 - The Protocol of 1992 Amending the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 (Ratification) and Matters Connected Therewith (Amendment) Law of 1997 (Law 15(III)/97); and
- the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 and the Resolutions LDC5(III), LDC6(III) of 1978 and LDC12(V) of 1980 (Ratification) and for the Matters Connected Therewith Law of 1990 (Law 38/90).

19 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 salvage form. Lloyd's standard form is acceptable in Cyprus. Any person may carry out salvage operations.

Ship arrest

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

Cyprus is not a party to the 1952 Arrest Convention; however, the UK has passed the Administration of Justice Act 1956 to ratify the said Convention and the Administration of Justice Act 1956 applies to Cyprus by virtue of its Constitution and section 29 of Law 14/60.

21 In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?

The Admiralty Jurisdiction of the Supreme Court of Cyprus has jurisdiction to hear any of the following questions or claims:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;

- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the Civil Aviation Act 1949, of the law relating to salvage to aircraft and their apparel and cargo);
- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts, 1894 to 1954, is recoverable as wages or in the court and in the manner in which wages may be recovered;
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry; and
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty, together with any other jurisdiction which either was vested in the High Court of admiralty immediately before the date of the commencement of the Supreme Court of Judicature Act, 1873 (1 November 1875) or is conferred by or under an Act which came into operation on or after that date on the High Court as being a court with Admiralty jurisdiction and any other jurisdiction connected with ships or aircraft vested in the High Court apart from this section which is for the time being assigned by rules of court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court.

Subject to the provisions of the next following section, the admiralty jurisdiction of the Supreme Court may in all cases be invoked by an action in personam.

The admiralty jurisdiction of the Supreme Court may in the cases mentioned in paragraphs (a) to (c) and (s) of subsection 1 of section 1 of this Act be invoked by an action in rem against the ship or property in question.

In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the admiralty jurisdiction of the Supreme Court may be invoked by an action in rem against that ship, aircraft or property.

In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection 1 of section 1 of this Act, being a claim arising in

connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the Supreme Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against:

- that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person, or
- any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

22 What is the test for wrongful arrest?

The test for wrongful arrest is bad faith.

23 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?

Yes, provided the bunker supplier shows that his claim falls within one of the sections in question 21 (point (m) in particular).

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

Yes, in the form of a local bank guarantee. The amount varies, as there is no general rule. Practically, usually a figure representing 10 to 15 per cent of the amount claimed is ordered to be put up.

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

The initial arrest expenses are paid by the arresting party to the admiralty marshal who is responsible for the maintenance of the vessel, while on arrest. Such expenses are paid out first in any priority proceedings.

Carriage of goods by sea and bills of lading

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

The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading and Protocol of Signature, Brussels 25 August 1924 (extended to Cyprus on 2 June 1931) applies in Cyprus.

Carriage at sea begins on loading of the cargo, and ends on discharge from the ship (on passing the ship's rails).

27 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?

There are no conventions or domestic laws in force.

28 Who has title to sue on a bill of lading?

There is little or no Cyprus case law on the matter, and the position under Cyprus law would be identical to that under English law. The Supreme Court of Cyprus in its admiralty jurisdiction applies the law that was applied by the High Court of Justice in the UK prior to and up to 1960. Any case law up to 1960 is of binding effect, and

any subsequent authorities are of a very persuasive nature to the Cyprus courts.

Thus, the Bills of Lading Act 1855, is applicable in Cyprus (see *Southfields Industries Ltd v M/V Adriatica K and others*, (1989) 1 CLR 301; and *Stavros Georgiou & Son (Scrap Metals) Ltd v the Ship 'Lipa' Ibid.*) Section 1 of the Bills of Lading Act, 1855 reads as follows:

Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

29 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 parties are free to expressly incorporate the terms of the charter party in the bill of lading.

General words in a bill of lading incorporating into it all the terms and conditions, or all the terms, conditions and clauses, of such charterparty, are not sufficient to bring such arbitration clause into the bill of lading so as to make its provisions applicable to disputes arising under that document (*Elie Sadek and another v Efpalinos Shipping Company Limited and another* (1983) 1 CLR 696)

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

Yes, it is recognised and binding.

31 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 charterer may be the carrier, and whether the bill of lading is an owner's or charterer's bill is a matter of fact. English law cases would be followed to determine such question.

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

Principles of English law are to be followed (ie, liability as common carrier). Where the Carriage of Goods by Sea Law, Cap 263 applies, any deviation in saving or attempting to save life or property at sea, or any reasonable deviation, is not deemed to be a breach of the contract of carriage.

33 What liens can be exercised?

The following liens can be exercised:

- contractual liens, that is, those arising under a charterparty, for example, against cargo or sub-charter hire or freight or sub-freights;
- at common law against the goods for freight, general average contributions, and expenses incurred by the shipowner or master in preserving the goods;
- maritime liens and statutory lien (once action in rem has been instituted) and a possessory lien, all against the ship, and
- the claims of the Republic of Cyprus for fees, dues, or tonnage taxes chargeable and leviable under the Merchant Shipping (Fees and Taxing Provisions) Law of 1992, constitute a lien on the ship.

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

It is the duty of the shipowner to see that the goods are delivered to the person to whom he has contracted to deliver them. Delivery to a person not entitled to the goods without production of the bill of lading is prima facie a conversion of the goods and a breach of the contract of affreightment (*Archangelos Domain Limited v Adriatica Societa Per Azione Di Navigazione* (1978) 1 CLR 439).

- 35 What are the responsibilities and liabilities of the shipper?

The principles of English law are to be followed.

Jurisdiction and dispute resolution

- 36 Which courts exercise jurisdiction over maritime disputes?

Arrest proceedings and maritime claims (in rem and in personam proceedings) must be brought before the Supreme Court of Cyprus, in its admiralty jurisdiction. This court has exclusive jurisdiction over such questions or claims as defined by the Act. A recent amendment of the Courts of Justice Law 1960 as amended, has conferred limited admiralty jurisdiction upon the various district courts in Cyprus to hear certain admiralty actions subject to their referral by the Supreme Court.

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

The courts generally have discretion on the method they may direct service to be effected. Otherwise, depending on the country in which the defendant resides, there are numerous bilateral treaties and international conventions that Cyprus has ratified.

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

No, there is no domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration.

- 39 What rules govern recognition and enforcement of foreign judgments and awards?

EU judgments

By article 33 of the EC Regulation, a judgment, including a decree, order, decision or writ of execution, given in a member state may be recognised in the other member states without any special procedure being required, and under no circumstances may a foreign judgment be reviewed as to its substance.

Foreign judgments

Recognition and enforcement of foreign judgments in civil and commercial matters and supplementary protocol thereto ratified by Law No. 11/76.

A decision rendered in one of the contracting states is entitled to recognition and enforcement in another contracting state under the terms of this Convention.

If not within the above convention, the judgment creditor may apply to the district court at any time within six years after the date of the judgment, to have the judgment registered in the district court, pursuant to the Foreign Judgments (Reciprocal Enforcement) Law, Cap 10. Alternatively he may sue on the foreign judgment at common law.

Foreign arbitral awards

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed at New York on 10 June 1958 (the New York Convention), and in force as of 29 March 1981.

Update and trends

Cyprus is in the process of formalising its tonnage tax system to make it compatible with the State Aid Guidelines of Shipping issued by the EU Commission. The new system is expected to become law by the end of 2009.

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

There are no specific remedies available. The defendant might file an action seeking a declaration that the claimants' (foreign) action is null and void and should be stayed; however, Cyprus courts, as a matter of public policy, based on the principle of the comity of nations, would be very reluctant to entertain such an action, and would prefer to leave the matter to the foreign court to decide.

- 41 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?

The defendant may apply for a stay of proceedings, however the court always has discretion whether to grant such an application.

Limitation periods for liability

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

Unfortunately the position under Cyprus Law is not very clear.

The provisions of the Cyprus Limitation of Actions Law have been suspended since 1964 (following inter-communal troubles). The said provisions have been 'revived' following the enactment of Law 110(I)/2002 which provides that the provisions of the Limitation of Actions Law (LoA Law) come into effect from 1 June 2005. In other words, for example, in case of a cause of action that would be prescribed after three years (according to the suspended provisions of the LoA Law) it would now be considered prescribed on 31 May 2008. However the situation became slightly more confused with the suspension of the provisions of Law 110(I)/2002 until 31 March 2010.

The following would be prescribed according to the LoA Law:

- in actions for negligence three years after the cause of action arose; and
- in actions for breach of certain types of contract six years after the cause of action arose, and in others three years.

For the six years claim, time begins to run from 1 June 2005. For the three years claim, since time begun to run also on 1 June 2005, but there is an extension until 31 March 2010, it would normally be considered prescribed on 1 April 2010.

- 43 May courts or arbitral tribunals extend the time limits?

Yes they have discretion to do so, provided they satisfy themselves of certain requirements.

Miscellaneous

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

Under certain circumstances an attachment order may be issued. Otherwise the position is the same as in questions 27 to 34.

45 Can external factors, such as the recent global restriction on the availability of credit, affect the legal rights and liabilities of the parties to a shipping contract?

Generally speaking no. Only where these external factors are tantamount to 'preventing' the contract from being performed may one rely on the frustration principles to set aside such contract.

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

No.

Chrysses Demetriades & Co LLC

Michael McBride
Yiannis Christodoulou
Michael Papadopoulos

284 Arch. Makarios III Avenue
3105 Limassol
Cyprus

Tel: +357 25 800 000
Fax: +357 25 588 055
www.demetriades.com

