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The International Comparative Legal Guide to:

Shipping Law 2014

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A practical cross-border insight into shipping law

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Poland

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

i) Collision

Not only in the event of collision, but also with regard to almost each and every maritime event, applicable regulations are to be found either in the Polish Maritime Code or in the various international acts, as Poland is a party to numerous conventions.

The issue of liability for damages occurring as a result of collision, as regulated in the Code, is based on two conventions: (i) the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (Brussels, 1910); and (ii) the Convention on the International Regulations for Preventing Collisions at Sea (COLREG; 1972). It is worth noting that the Brussels Convention has been implemented with one amendment. The Convention covers primarily events of collisions between seagoing vessels. The Code expands its regulations also to include collisions between seagoing ships and either inland shipping vessels or seaplanes.

ii) Pollution

In general, a shipowner is liable for damage caused by pollution coming from a vessel in connection with carriage of goods, exploiting the vessel or disposing of waste or other objects in the sea. However, there are several circumstances which result in exclusions from liability thereof, such as Acts of God or intentional acts of a third party. Besides the abovementioned liability, the authorities may demand a restitution of the original state of the environment to be performed by the liable shipowner.

Poland applies the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage (London, 2001) and the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 1969) amended by the 1992 Protocol (London).

iii) Salvage / general average

Poland is a party to the International Convention on Salvage issued by the IMO in 1989 and has implemented the Convention with the following reservations: (i) Poland applies provisions of the Convention to battleships and other non-commercial vessels owned or operated by Polish shipowners; and (ii) Poland does not apply provisions of the Convention: (a) when a salvage operation takes place at inland waters and all of the vessels involved are inland vessels; (b) when salvage operation takes place at inland waters and there is no vessel involved ("vessel" as per the Maritime Code is a seagoing ship or any other watercraft used in shipping); or (c) when the object of salvage operation is a cultural asset of pre-historical, archaeological or historical value and it lays on the seabed.

With regard to the general average, the Maritime Code is based on the York-Antwerp Rules. It defines the general average as an extraordinary sacrifice or expenditure intentionally and reasonably incurred for the purpose of preserving the vessel, cargo carried on board thereof and freight, from a common peril. Indirect losses, resulting from demurrage or difference in prices, are not allowed as general average. An extra expense incurred in place of another (which would be allowed as general average) is allowed but only to the amount of the substituted one.

General average losses are apportioned over the vessel, cargo and freight upon their actual values, even though the peril giving rise to the extraordinary sacrifice or expenditure has been due to the fault of any party.

Establishing and assessment of the general average is carried out by the average adjuster appointed by a shipowner not later than within one month after the termination of the voyage. In the event of shipowner's delay, the order may be given by the other party to the general average.

Any claims from the general average are barred at the expiration of two years from the day of termination of the voyage. The time limit is interrupted by adjustment proceedings and a new time limit begins from the termination thereof.

iv) Wreck removal

Wreck removal is regulated by the Maritime Code's provisions on recovery of property from the sea. For that purpose, the "property" means vessel, cargo or other object sunken in Polish internal sea waters or in the Polish territorial sea.

In general, the owner should, within a year, give notice to the authorities of his intention to recover that property. If the owner fails to recover the property in the given time limit, the authorities may arrange the recovery at owner's expense.

v) Limitation of liability

Poland is a party to the Convention on Limitation of Liability for Maritime Claims (London, 1976) as amended by the 1996 Protocol which entered into force, in respect of Poland, on 15 February 2012. There is also a complex regulation in the Maritime Code, which refers to the Convention, however in case of any conflict, the Convention prevails.

vi) The limitation fund

All limitation funds, i.e. under the 1976 LLMC convention (see (v) above), the 1969 CLC convention (see (ii) above) and the 2001 Bunker convention (see (ii) above), are constituted in court

proceedings which are subject to civil procedures. The Regional Court in Gdansk has the exclusive jurisdiction in respect of the proceedings. The proceedings comprise of two instances.

The funds can be constituted either by depositing the relevant amount to a bank account belonging to the Court or through an accepted by the Court guaranty (security) issued by a bank or an insurance company having registered office in Poland. However, if all parties to the proceedings agree otherwise, the Court may consent to such other guarantee (security) of payment of the amount.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

There are two institutions for conducting an investigation in the event of collision of vessels or any other accident at sea connected with persons, either private or legal, in Poland: (i) the Maritime Chamber; and (ii) the State Commission on Maritime Accidents Investigation.

The Chambers are quasi-judicial authorities (there are two in Poland, one in Szczecin and another in Gdynia). They are competent to decide in cases of accidents at sea.

The Chambers decide in cases of accidents at sea of vessels of Polish flag or other vessels, if the accident occurred either in Polish internal waters or territorial waters, or if the shipowner of the vessel or the master thereof lodges a motion for them to initiate an investigation. Proceedings in the cases of accidents at sea consist of two stages: (i) the investigation stage; and (ii) the hearing stage.

The decision of the Chamber should contain exact establishment of the causes of the accidents, indicating, if possible, the vessel and persons who caused the accident, and determining the degree to which they contributed to the accident.

The Commission was established quite recently, in September 2012 (because of the Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council).

The Commission is an independent authority investigating marine casualties and incidents in the following situations: (i) whenever the participant(s) thereof was: (a) a Polish vessel; (b) another vessel, if the accident occurred either in Polish internal waters or in territorial waters; and (c) a ro-ro passenger ferry or a high speed craft, if the accident occurred outside the internal or territorial waters; of an EU Member State and the last port called by the vessel was a port in the Republic of Poland; and (ii) when Poland is the substantially interested state.

It is to be highlighted that the Commission does not decide on the guilt and responsibility, the only purpose of the proceedings is to establish the cause of the incident and other circumstances thereof.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The carrier's liability for loss or damage to cargo, together with relevant marine cargo claims, have been set out in the Polish Maritime Code (Title VI – Contracts, Chapter I – Carriage of cargo, Art. 103 to 171), in conformity with the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 25 August 1924 (Hague Rules) with the amendments adopted in the Protocol signed in Brussels on 23 February 1968 (Visby Protocol, together Hague-Visby Rules) and with the amendments adopted in the Protocol signed in Brussels on 21 December 1979 (SDR Protocol).

The relevant provisions of the Maritime Code apply – as to the principle – to every contract of carriage (the Code has maintained a traditional distinction between a voyage charter and a booking note being an equivalent of a bill of lading contract), but with one important exception – in relation to the contract governed by a bill of lading the provisions of the Code are mandatory and the carrier's liability, as provided by the Code, cannot be validity excluded or amended by contractual provisions.

Regarding contracts of carriage covered by a charterparty (including incorporated *ex contractu* Hague-Visby Rules), the rule of the freedom of contracts is, as to the principle, fully applicable.

Last, but not least, it is worth noting that Poland is one of the first signatories of the Rotterdam Rules and currently is preparing to their ratification. Please also see the response to question 8.1 below.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

In accordance with Art. 165 § 1 of the Maritime Code, the carrier is liable for loss or damage to the cargo in the period from its receipt for carriage until its delivery to the consignee. A contract between the parties may determine the carrier's liability in a manner different from that provided in the Code for the period of time from the receipt of the cargo for carriage until the commencement of its loading onto the vessel and from the completion of discharge until the delivery of the cargo (formula "before and after").

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from circumstances or events included in the same list of the Hague-Visby Rules exceptions, applying the same as in the Hague-Visby Rules, and in the English law, the sequence of burden of proof.

In terms of the limitation of the carrier's liability, Art. 167 of the Code refers directly to the Hague-Visby Rules with the SDR Protocol which means that Art. IV Rule 5 of the Hague-Visby Rules and principle of reciprocity directly regulate the matter *in extenso*, including the loss of right to limit as per Art. IV Rule 5(e) of the Hague-Visby Rules.

Claims arising out of the contract of carriage are subject to a two-year time-bar (Art. 108 § 1 of the Code). However, claims in respect of damage or loss to cargo carried under a bill of lading extinguish after a lapse of one year from the day of its delivery or the date when it should have been delivered.

The bill of lading determines the legal relationship between the carrier and the consignee of the cargo. Where the carrier has not been named in the bill of lading, it is assumed that the ship's operator (*"armator"*) is the carrier. Where in the bill of lading the carrier has been named accurately or falsely, the operator of the vessel, upon which the cargo has been loaded, is liable to the consignee of cargo for loss resulting therefrom; in such a case, the operator has a recourse claim against the carrier. In fact, the aforesaid provision is the form of statutory regulation of a "demise clause".

Art. 131 § 2 of the Code is the equivalent of Art. III (4) of the Hague-Visby Rules, confirming that the bill of lading shall be *prima facie* evidence of the receipt by the carrier of the cargo, and

the conclusive evidence where the bill of lading is in the hands of a *bona fide* endorser.

Accordingly, the policy of clausing bills of lading, indicating some defects in the cargo or its packaging, follows the same pattern as far as it concerns *prima facie* and conclusive value of evidence as every other statement contained in the bill of lading concerning description of the cargo. It is noteworthy that Art. 137 of the Code contains detailed provision concerning clausing of bills of lading, which goes far beyond the provision of Art. III (3) of the Hague-Visby Rules.

Provisions of the contract of carriage are binding upon the consignee only when the bill of lading refers thereto. The Polish Courts apply a *contra proferentem* approach to any clause or other provision of the charterparty, etc. incorporated into the bill of lading.

An even more strict approach is taken if an arbitration or jurisdiction clause is applied by reference to the charterparty incorporated into the bill of lading.

In accordance with Art. 1 § 2 of the Code, in the absence of provisions of the Code, provisions of the civil law are applicable to the civil law relations, including contracts of carriage of goods by sea.

Accordingly, there is a possibility of non-contractual claims against the carrier, i.e. in tort (*ex delicto*), which, as to the principle, is allowed under Polish law in situations when there is no contractual relationship between the parties involved in a particular aspect of the carriage of goods by sea (e.g. a relationship between actual carrier and consignee, etc.).

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

In accordance with Art. 136 § 1 of the Maritime Code, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading, showing among other things the details provided in Art. III Rule 3 of the Hague-Visby Rules (marks, number, quantity or weight and apparent order and condition of the cargo), applying to this duty the criteria of due diligence.

Apart from this general obligation, in accordance with Art. 122 § 2 and § 3 of the Code, on easily inflammable, explosive or otherwise dangerous cargo the shipper is bound to place a suitable marking indicating such as dangerous, and to give the carrier the necessary information on the nature of the cargo. When supplying for carriage things which should be handled in a particular manner, the shipper is bound to place a suitable marking thereon and to inform the carrier as to their nature.

The aforesaid obligations encompass dangerous cargo *sensu stricte*, but they could also cover cargo that may be subject to international sanctions – treating it in a "figurative way" as dangerous cargo.

Further to the above – as to the principle – the shipper is liable to the carrier as well as to passengers, crew and owners of other cargo for damages caused by an inaccurate or untrue declaration regarding the kind or nature of its cargo.

In relation to the "dangerous cargo", in broad meaning of this term, Art. 127 of the Code follows strictly Art. IV Rule 6 of the Hague-Visby Rules, with all legal consequences arising therefrom.

In addition to the above, Art. 132 § 2 of the Code incorporates the provision of Art. III Rule 5 of the Hague-Visby Rules, confirming that the shipper shall be deemed to have guaranteed to the carrier the accuracy, at the time of shipment, of the marks, number, quantity and weight as furnished by him and the shipper shall indemnify the carrier against all losses, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Poland is a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the 1976 Protocol. Poland has not acceded to or ratified the 2002 Protocol yet. The Athens Convention is a well-established law, and therefore we shall not expand on it herein.

Poland, as a member of the European Union, is bound by 2 regulations relating to passengers carried by sea. The first is the Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents. The second is the Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004. The Regulations, as a matter of European law, are directly applicable in Poland and supersede domestic law, in case of inconsistency.

There is also the Maritime Code in Poland, which contains a chapter on carriage of passengers by sea.

The Regulation 392/2009 implements into the European law the 2002 Protocol to the Athens Convention. The implementation is subject to the IMO Reservations and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006. Moreover, the Regulation extends the 2002 Protocol and the IMO Reservations and Guidelines to carriage of passengers by sea within a single Member State of the EU on board ships of A and B Class (within the meaning of the Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passengers ships). Although it has not been decided finally yet, it seems that Poland will adopt Art. 11 of the Regulation and defer application of the Regulation to ships of B Class in carriages within Poland until the end of 2018.

The Regulation applies to international carriage, within the meaning of the Athens Convention as amended by the 2002 Protocol, and to carriage within a single Member State by A and B Class ships where: (i) the ship is flying the flag of a Member State or is registered within the State; (ii) the contract of carriage was made in the State; or (iii) the place of departure or destination according to the contract is in the State.

Limits of liability for death of personal injury under the Regulation are significantly greater than under the Athens Convention. However, because of the IMO Guidelines, they are still below the limits set out in the Athens Convention as amended by the 2002 Protocol. Notably, the limits are 250,000 SDR per passenger or 340,000,000 SDR per ship, whichever is lower (the Athens Convention as amended by the 2002 Protocol provides up to 400,000 SDR per passenger in case of non-shipping incidents). Limits for loss of or damage to: (i) cabin luggage – 2,250 SDR; (ii) vehicle – 12,700 SDR; and (iii) other luggage – 3,375 SDR. Nonetheless, in any event the Regulation does not modify the rights of the carrier under the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996.

Claims for damages arising out of death or personal injury or for loss of or damage to luggage are subject to a general two-year time-bar. In some situations the effective time-bar can appear to be longer, even up to five years.

It is noteworthy that the Regulation provides for an advance payment when death or personal injury is caused by a shipping incident. In the event of death, the payment cannot be less than 21,000 EUR. Moreover, the Regulation also provides for mandatory insurance or other financial security of the carriers against liability under the Regulation.

The Regulation 1177/2010 sets out numerous rules in respect of sea and inland waterway carriage of passengers. In a nutshell, it provides for: (i) non-discrimination of passengers; (ii) non-discrimination and assistance for disabled persons and persons with reduced mobility; (iii) rights of passengers in case of cancellation or delay; (iv) information to be provided to passengers; and (v) the handling of complaints.

The Regulation applies to carriages where the port of embarkation or disembarkation is within the Member State of the EU (in the latter case only when carriage is provided by the EU carrier, i.e. established within the Member State or offering carriages from or to the Member State) and to cruise services where port of embarkation is within the Member State.

Any direct or indirect discrimination because of the nationality of a passenger or establishment of a carrier, with respect to contract conditions and tariffs offered to the general public, is prohibited.

Similarly, offering reservations and tickets to disabled persons and persons with reduced mobility at additional costs or under different conditions from those which apply to all other passengers is also prohibited. It is also prohibited, save for a few exceptions, to refuse to accept reservations, to issue tickets or to embark persons on the grounds of their disability or reduced mobility. The Regulation provides a wide range of assistance to disabled persons or persons with reduced mobility.

In case of cancellation and delay, passengers are entitled to continuous and updated information regarding the delay or cancellation, as well as to alternative connections. If a cancellation or delay of more than 90 minutes is expected, passengers are entitled to free of charge snacks, meals and refreshments, and when a stay of one or more nights becomes necessary, passengers are entitled to free of charge accommodation (whether on board or ashore). Moreover, when there is a cancellation or delay of more than 90 minutes expected, passengers are offered the choice between re-routing to their final destination or reimbursement of the ticket price. Finally, passengers are entitled to compensation, in the event of a delay in their arrival, amounting from 25% to 50% of the ticket price.

Passengers are to receive information on their travel, before and throughout their journey, and in line with their rights under the Regulation.

Handling of complaints is to be set up by carriers as well as by Member States. Passengers are entitled to make complaints to carriers within 2 months of when the service was or should have been performed. Carriers are to reply to the complaint within 1 month, however in any event within 2 months from the receipt of the complaint. As regards Member States, they can decide that before making a complaint to the national authority, a passenger is first to complain to the carrier – the national authority will then act as appeal body to complaints not resolved with carriers. In Poland, the Director of the competent Maritime Office is the national body which will act as the appeal body.

In accordance with the Maritime Code, after the Regulation 1177/2010 has entered into force, the Code is intended to apply to contracts for carriage of passengers only insofar as the Regulation does not regulate the carriage.

Similarly, the Code does not apply to carriages to which the Regulation 392/2009 applies.

However, where the Regulation 392/2009 does not apply, the Code provides that, to carriages contemplated by the Code, the Athens Convention applies (not being amended by the 2002 Protocol). Therefore, in particular, carriers' liability for damages to passengers and their luggage is provided for in the Athens Convention.

The Code provides for a two-year time-bar for claims arising out of the contract of carriage, other than claims resulting from the Regulation 392/2009 or the Athens Convention.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

The most popular, effective and practical security of claims against vessel owners is arrest of a vessel. In case of vessels registered within the Polish Register of Ships, claims can also be secured by a mortgage over a vessel. Although it is debatable, one can also consider security by way of a mere seizure of a vessel – not actually a vessel arrest. The latter is debatable, because Poland is a party to the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels on 10 May 1952, which supersedes national regulations to the extent provided for in the Convention. In any case, even if possible, the seizure is not as effective and practical as the arrest, as the latter includes detention, which is not part of the seizure (aimed at protecting a creditor against a sale or other disposure of a property by a debtor).

As it has been already said, Poland is a party to the 1952 Arrest Convention. As the Convention is a well-established and known international piece of legislation, we shall not expand much on it, but only mention the most important provisions.

Vessels flying flags of States being parties to the Convention can be arrested in Poland only in respect of maritime claims (Art. 2 thereof) within the meaning of the Convention (Art. 1 thereof). Other vessels can be arrested in respect of maritime claims as well as any other claim (Art. 8 thereof). Sister-ship arrest is permissible upon the provisions of the Convention (Art. 3 thereof).

Pursuant to Art. 4 of the Convention, in order to arrest a vessel in Poland it is necessary to obtain an arrest decision from the Polish Courts. A vessel cannot be arrested in Poland upon a foreign arrest decision, as they are not enforced or recognised in Poland. In order to obtain the arrest decision from the Polish Courts, an application is required to the Court. The application needs to show that it is probable that the claim should be secured. This is a lower level of certainty than to prove it should. The application also needs to show the legal interest in obtaining the security, which means that lack of the security will make it impossible or seriously difficult to satisfy an award (judgment) contemplating the claim. All attachments to the application, if originally made in a foreign language, are to be translated into Polish by a sworn translator. The law provides that the Court should consider and decide on the application within a week. Usually it does not take that long (approx. a week), however sometimes it can take slightly longer. The Court fees in respect of the application amount to approx. 25 EUR. When the arrest decision is rendered by the Court,

enforcement of the decision is performed by the Court Bailiff. The Bailiff proceeds immediately following the receipt of the motion for enforcement and a copy of the original arrest decision. The Bailiff fees are quite substantial compared to Court fees, and are calculated on the value of the secured claim.

Vessels can be released from the arrest either by challenging the arrest decision or by depositing the amount of the secured claim plus costs and interests to a deposit within the Court. Of course, when settlement is reached between parties, vessels can always be released from the arrest upon consent of the arresting party.

Last, but not least, it is important that, although the Convention permits a vessel to be arrested for claims against charterers (Art. 3 thereto), the creditor, when so arresting the vessel, should have the claims enforceable also against the owners, i.e. should be able to obtain for the claims a title enforceable also against the owners, and not only against the charterers. Otherwise, the creditor will not be in a position to enforce such title against the vessel. Such claims, enforceable against the charterers as well as against the owners, are *inter alia* maritime liens. The Polish Supreme Court held recently that maritime liens are not *per se* maritime claims and therefore having some maritime liens it will not be possible to arrest a vessel when the liens are not maritime claims.

Apart from the arrest and the mortgage over a vessel entered into the Polish Register of Ships, there are in Polish law general security measures available. They are *inter alia*: (i) seizure of movable properties, funds in a bank account and other claims or rights; (ii) mortgage over a real property; and (iii) compulsory administration over an enterprise. However, the condition for obtaining the said general security is that the assets, claims or rights, against which the security is sought, are within Poland.

4.2 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

The Polish Maritime Code provides numerous securities for maritime claims available to a vessel owners or charterers against another. The most interesting and most frequently dealt with are those available to carriers of cargo or passengers against the cargo or passengers' interests.

Regarding carriage of cargo, it is worth mentioning that by taking delivery of the cargo, the consignee undertakes to pay to the carrier the amount due to the latter by way of freight, demurrage, damages for detention and all other amounts due to the carrier by way of the carriage. Where the cargo is carried under a bill of lading, the consignee is bound to pay only such amounts, which result from the bill of lading or a contract of carriage to which the bill of lading refers in that respect. However, in the bill of lading carriage, the carrier may not claim from the consignee the demurrage or damages for detention at the port of loading, unless the duration of the demurrage or detention has been shown in the bill of lading. Therefore, the carrier may rescind the contract of carriage before commencement of a voyage where the value of the cargo supplied for carriage does not secure the freight and other amounts due to the carrier and the freight has not been paid in full in advance or a security has not been provided.

The carrier may refuse to deliver the cargo and retain it until the consignee has paid or secured the amounts due to the carrier by way of the carriage as well as due by way of contribution of the cargo in general average and salvage remuneration. The carrier loses the rights to pursue claims against the shipper or other person being a party to the contract of carriage, when he has delivered the cargo to the consignee.

Where the consignee does not claim delivery or refuses to take delivery of the cargo, or delays the discharge so that the discharge cannot be completed in due time, the carrier will, at the consignee's risk and expense, discharge the cargo and place it in custody in a warehouse or at some other suitable place. The carrier will proceed with the cargo in the same manner where several bill of lading holders claim delivery thereof. Where, within two months of the day of the vessel's arrival at the port of discharge, the cargo placed in custody has not been collected and all amounts due to the carrier from the consignee in connection with that carriage have not been paid up, the carrier may sell the cargo. The uncollected cargo may be sold also before being placed in custody and before the expiration of the two-month period, where there incurs a risk of deterioration or where the preservation thereof involves costs in excess of the value of the cargo. Out of the proceeds obtained from the sale, the carrier covers the amounts due to him from the consignee in connection to the relevant carriage, and expenses connected with the preservation of the cargo, as well as the costs of effecting the sale, and the balance, if any, is placed in a court deposit at the place of the sale for the purpose of paying the sum to the party entitled thereto.

Creditors, for securing their privileged claims, are entitled to a statutory lien on the cargo, which has priority over other claims, even those secured by a lien arising from a contract or judicial decision. Privileged claims are *inter alia*: (i) amounts due to the carrier in respect of the carriage of the relevant cargo; (ii) compensation for damages caused by the cargo; and (iii) salvage remuneration claims relating to the cargo, as well as general average contributions due from the vessel's cargo and to other cargoes. The statutory lien extends to the indemnity due in relation to damages to the cargo, except for insurance indemnities, as well as to the general average contribution due to the cargo. The statutory liens extinguish on the delivery of the cargo to the party entitled thereto, and liens on the amounts referred to in (i)-(iii) above extinguish on payment of the amounts the party entitled thereto.

Regarding carriage of passengers, the carrier is entitled to a statutory lien over a luggage, as a security of the carrier's claims under a contract of carriage, as long as the luggage has not been delivered to the passenger. The carrier can retain the luggage for as long as the claims have not been satisfied or at least sufficiently secured by other means.

Luggage, which has not been collected by the passenger or other authorised receiver shall be treated in the same manner as the cargo, delivery of which has not been taken by the consignee.

4.3 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

Generally, each form of security, which has been amicably agreed by all interested (involved) in such claims parties, is acceptable. Therefore, for instance, it could be cash deposit, bank or insurance guarantee, mortgage, P&I LOU.

However, if a vessel is arrested upon the Court decision, and there is no amicable agreement as to the alternative security between the parties, the only security, which the Court accepts in consideration of releasing the vessel and upon which releases the vessel, is a cash deposit, in the amount of the secured over the vessel claim, made to the Court's bank account.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

If there is a risk that the production of evidence may become impossible or excessively difficult, or where it is necessary to determine the current state of affairs for other reasons, it is possible to secure the evidence. The security procedure is conducted by the Court.

Before the commencement of a litigation, the evidence may be secured only if petitioned by a party.

Once the litigation has been commenced, the Court may secure the evidence *ex officio*.

Security procedure refers to every possible piece of evidence, *inter alia* examination of witnesses, as well as documents and other physical evidence possessed by a party to the litigation, including opponents or a third party.

Apart from the aforesaid security procedure, before the commencement of the litigation it is impossible to force the opponents or the third party to disclose the evidence in their possession.

5.2 What are the general disclosure obligations in court proceedings?

Each party to a litigation proceeding is bound to produce evidences, including documents, for facts to be established and from which legal effects are taken. Failure to produce evidence may result in facts remaining unproven.

The Court has the power of admitting evidence *ex officio*, however it is only exercised exceptionally.

Each of the parties may also request the Court to oblige opponents to produce a document in their possession. Failure to comply usually results in the Court finding facts unfavourable to the refusing party.

If a document, which is also evidence, is possessed by a third party, then the Court will instruct the third party to produce the document, unless it contains privileged information. A third party may also avoid the obligation in a situation which entitles it to decline to testify as a witness.

A party, similarly to a third party, may object to producing a document if it would expose him to criminal responsibility, disgrace or severe and direct damage. The said damage, however, must not come down to losing a case only.

Neither a party nor a third party may refuse to produce a document if the holder of it is bound to produce it at least to one of the parties or, if the document has been issued in the interest of the party which requires the document to be considered by the Court (e.g. a contract involving that party).

It is noteworthy that Poland does not operate the general disclosure procedure, a well known procedure from English and US procedures.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

There are commercial divisions appointed in District and Regional Courts, which are the first instance courts and, in some smaller claims (up to 75,000 PLN), the Regional Courts act as appeal courts in respect of judgments of the District Courts, which would be competent for most of maritime claims. The primary criterion for ascertaining the jurisdiction of the given Court is the defendant's domicile. The first instance courts consider claims by a panel of 1 judge, whereas the appeal courts have a panel consisting of 3 judges.

Litigation commences as the lawsuit is delivered to the Court. The claimant is bound to produce all of the evidences and statements therein, as producing the evidence later on is highly restricted. The defendant is to proceed accordingly with the points of defence. Once the lawsuit and the points of defence are submitted to the Court, the parties may propose to the Court further written submissions on the merits, however they may be submitted only upon the Court's prior consent. The Court decides on its national jurisdiction *ex officio*. If the lack of jurisdiction is found out, the Court is bound to strike the lawsuit out on that ground. The Court shall, however, recognise the arbitration clause, if any, and decline its jurisdiction only if the defendant's request is made before stepping into a dispute as to the merits of the lawsuit.

Interest for delay may be awarded separately or together with the main claim. In any case, interest is not awarded automatically but upon a demand to the Court. At present, the rate of statutory interest for delay is 13% *per annum*. The maximum delay interest rate, which parties may agree on, currently stands at 16% *per annum*.

The costs of litigation comprise expenses and fees made as the litigation goes on, in particular the Court's fees and lawyers' fees. Prior to and in the course of the litigation each party covers the costs relating to its demands and requests, unless a party is exempted from the costs in whole or partially. The Court awards the costs in its decision that closes the litigation at the given instance. The primary rule governing award of the costs is that they are chargeable to the losing party (follow the result). If each of the parties won the litigation partly, then the costs are chargeable *pro rata*. Only exceptionally the winning party may be charged with the costs or the charging of the costs to the losing party may be waived.

The civil procedure involves two instances. A party is entitled to appeal against a judgment of the first instance court, without any leave to appeal being necessary. The appeal may rely on allegations of the material law or procedural provisions having been breached. Appeals against judgments of the District Court and the Regional Courts are considered by the Regional Courts and the Appeal Courts respectively. A judgment of the second instance court is the final one and an enforceable title. Its overruling may take place in an extraordinary mode only, particularly by filing a cassation complaint within the Supreme Court.

The time of the first instance proceedings is usually between 3 and 12 months. In the second instance courts, proceedings last for 6 months on average.

Mediation is voluntary. Once the lawsuit has been filed, the Court may advise the parties to mediate, but only subject to their consent. Resorting to mediation in civil cases and commercial matters is infrequent, and the Courts do not exert pressure on the parties in that respect. Allegations and statements made in the mediation cannot be effectively relied upon in the litigation.

There are not any special arbitration panels for maritime claims, although some arbitrators may be familiar with maritime law. The arbitration procedure is subject to the arbitration rules set forth by the arbitration tribunal. The parties may agree that the arbitration will consist of more than one instance. Irrespective of the above, and in accordance with the law, a party may, by way of a complaint, seek that the final award of the tribunal is considered by the Court and annulled, when necessary. Such a complaint to the Court may be brought on very restricted grounds and cannot be seen as an appeal from the tribunal award.

6.2 Highlight any notable pros and cons related to Poland that any potential party should bear in mind.

There are professional, commercial divisions in the District and Regional Courts. Most of maritime claims fall within the competence of the divisions.

The procedure in civil and commercial matters is contradictory. The Court has power to admit evidence *ex officio*, but it is a rather extraordinarily exercised prerogative, as the burden of proof lies with the parties to the litigation. There is no general disclosure obligation in line with the English and US proceedings.

Furthermore, the procedure is a two-instances one, which means that appeal is always available against the first instance judgments, without a leave to appeal or other similar permission being first required. There is also an extraordinary measure to control judgments of the second instances, which is the cassation to the Supreme Court, which, however, operates a kind of a prior permission to commence the cassation procedure.

Costs of the litigation are relatively low. Usual Courts' fees amount to 5% of the pursued claim's value, however their cap is at the level of approx. 25,000 EUR. Lawyers' fees are still comparatively low.

Regarding lawyers' fees, generally not all such fees incurred can be retrieved from the losing party. It is because the law operates limits up to which the fees can be awarded by the Courts from the losers.

In some of the Courts, due to large volumes of cases handled therein, as well as detailed and formal civil procedure, litigations may take slightly longer than in others.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Poland is a party to numerous bilateral and multilateral international agreements and conventions which regulate recognition and enforcement of foreign judgments in Poland. Amongst others, worth noting are: 1905 and 1954 Hague Conventions on Civil Procedure, 2007 Lugano Convention (which substituted the previous of the 2000).

Since 1 May, 2004, Poland has been a Member State of the European Union. The most significant act in EU law, which governs recognition and enforcement of foreign judgments, is the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation covers relations between all EU Member States save Denmark, which is covered by a separate agreement between Denmark and the EU.

As already said, international law is more or less known, we shall not expand on it, but instead concentrate on Polish law and practice.

In Poland, recognition and enforcement of foreign judgments is regulated by the Civil Procedure Code. The Code applies where there is no international law in place, otherwise the latter takes priority over the domestic law.

According to the Code, judgments of foreign courts issued in civil matters are recognised by virtue of law unless there exists the following obstacles preventing recognition: (i) the judgment is not non-appealable in the state where it was issued; (ii) the judgment was issued in a case which falls under the exclusive jurisdiction of the Polish Courts; (iii) a defendant who did not defend on the merits of the case was not duly served an initial pleading in due time to enable him to defend himself; (iv) a party was deprived of the possibility to defend himself in the course of proceedings; (v) a case involving the same claim between the same parties had been brought before a Court in Poland before it was brought before a foreign court; (vi) the judgment is contrary to a previous non-appealable judgment of a Polish Court or a previous non-appealable judgment of a foreign court recognised in Poland, issued in a case involving the same claim between the same parties; and (vii) recognition of the judgment would be contrary to the basic principles of the legal order of Poland (the public order clause). A person who claims recognition of a judgment of a foreign court is obliged to present: (a) an official copy of the judgment; (b) a document certifying that the judgment is non-appealable unless it is evident from the content of the judgment that it is non-appealable; and (c) a certified translation into Polish of the documents referred to above in (a) and (b). Moreover, if the judgment was issued in proceedings in which the defendant did not defend on the merits of the case, a document must be presented to confirm that the initial pleading has been served on the defendant.

Regarding enforcement, the Code requires that a procedure of declaring the judgment enforceability is carried out before a competent Court. Judgments of foreign courts in civil matters which may be enforced by execution become enforceable titles when their enforcement is confirmed by a Polish Court. Enforcement is confirmed, if the judgment is enforceable in the state of issue and is not blocked by the obstacles referred to above in (i)-(vii). Enforcement is confirmed on the creditor's petition by issuing a writ of execution for the judgment. The petition should be accompanied by the same documents as in case of recognition (see: (a)-(b) above) and a document confirming that the judgment is enforceable in the state of issue, unless its enforceability is evident from the content of the judgment or the law of that state.

Last, but not least, it is worth noting that since 1 July 2009 Polish law resigned from the reciprocity as a condition of recognition and enforcement of foreign judgments in Poland. It is of great convenience for recognition and enforcement, as the condition quite often prevented recognitions and enforcement or caused serious difficulties during the process.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Poland is a party to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards.

Procedure on the recognition or enforcement of foreign arbitration awards is set out in the Civil Procedure Code.

The Code provides that the recognition and enforcement of awards in Poland is declared by the competent Courts. The Court makes the declaration upon application of the interested party. The application is to be accompanied *inter alia* with the original award or its copy certified by the arbitration tribunal and with the original of arbitration agreement or its copy officially certified as well as their certified translations into Polish, if they were made in a foreign language. The Court hearing is mandatory for the purpose of the recognition and enforcement. The recognition and enforcement shall be declared if the obstacles provided for in the Convention occur.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

In 2007, the Prime Minister of the Polish Government established the Codification Committee on Maritime Law.

The purpose of the Committee is the thorough reconsideration and reform of Polish maritime law in general and the Maritime Code in particular.

In connection with the above, the Committee prepared the first draft of new Title VI (Contracts) Chapter I (Carriage of goods by sea) of the Code. The new draft is based on the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) of 2008. The members of the Committee are of the opinion that the Rotterdam Rules will enter into force in the near future (Poland signed the Rotterdam Rules), accordingly it is necessary to rewrite from the very beginning the entire chapter of the Code concerning the carriage of goods by sea which is now wholly based on the Hague-Visby Rules, which, in case of entering into force of the Rotterdam Rules, must be, anyway, in accordance with Art. 89 of the Rotterdam Rules, denounced. The process of adaptation of the Rotterdam Rules to Polish maritime law encompassed in the Code intends to absorb the full text of the Rotterdam Rules. For that purpose, *inter alia*, it will be necessary, from one side, to abandon traditional classification of contracts of carriage under Polish law in favour of the uniform formula of the contract (Art. 1 (1) of the Rotterdam Rules). From the other side, it is necessary to redevelop the concept of three types of transport documents applied by the Rotterdam Rules into two types of documents (transferable document of title and non transferable transport document) provided in the Polish legal system.

Other changes of that part of the Code strictly follow provision of the Rotterdam Rules and will, in substantial way, change the current status quo of that part of the Polish legal system.

Acknowledgment

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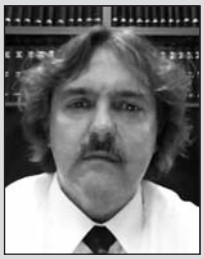

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MCLO is located in Szczecin and has a branch in Gdynia. Szczecin and Gdynia are the two largest sea ports in Poland.

MCLO is one of the biggest law firms in Szczecin. The firm comprises 16 lawyers, 4 of whom are Partners. There are also paralegals and supporting staff. MCLO is the biggest maritime and shipping law firm in Poland.

MCLO practises, among others, in the areas of civil, commercial, construction, corporate, energy, finance, insurance, transport and trade areas, including advising, consultancy and dispute resolutions, and is a specialist in Poland on maritime law and shipping as well as on international, contractual and non-contractual relationships. We are the biggest law firm in Poland specialising in maritime law and shipping.

MCLO works for domestic and foreign clients, on a day-to-day and *ad hoc* basis. We are lawyers to the biggest Polish shipowner (Polsteam) and the biggest Polish ferries operator (Unity Line). MCLO works for governmental and non-governmental institutions (state and municipal), administration and other public entities, ports and terminals in Poland, rail operators, oil traders, banks and insurers. Our Clients are also international corporations doing business in Poland and foreign entities having business affairs in Poland or involved in matters having connections to Poland.

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