

Poland

Marek Czernis and Rafał Czyżyk

Marek Czernis & Co Law Office

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?

First it is necessary to explain that, in accordance with Polish law, the parties are free to draft the contract according to their requirements. On the other hand, at the moment of the signing of the shipbuilding contract the vessel is the subject of the contract and will only exist in the future. Therefore, to transfer the ownership of a vessel the shipbuilder must transfer possession of the vessel to the shipowner (eg, by means of delivery).

In addition, the parties can agree that the title to the vessel under construction will pass from the builder to the buyer during construction, along with everything affixed to the vessel. The earliest stage at which the buyer can obtain the title to the vessel under construction is after the keel has been laid.

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

In general, from the perspective of Polish law a bank guarantee shall be issued in writing under pain of invalidity. Also, the guarantee should be unconditional, irrevocable and paid on first demand, and provide a maximum amount of liability of the refund guarantor. In Poland, usually, even if a shipbuilding contract is to be governed by Polish law, the refund guarantee will not be, as it would most likely be based on English law. Generally, the builder does not require permission to have the refund guarantee issued.

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

Generally, under Polish law, if the shipyard refuses to deliver the vessel the remedies of the shipowner (buyer) would depend on the nature of the contract and its wording. In principle, it is in the nature of sale contract for the seller to be obliged to deliver the goods to the buyer, therefore a claim to do so exists in accordance with the contract along with the possibility of applying for appropriate interim injunctions (eg, to forbid the shipyard to sell the vessel to third party). Also, in all cases the shipowner (buyer) would, in principle, be entitled to claim for damages.

4 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?

As mentioned in question 1, the parties are free to draft the contract in accordance with their requirements. This means that the contract may contain a contractual penalty, but if the provisions of the contract do not provide for such kinds of penalty, the party would be entitled to a claim for damages.

Ship registration and mortgages

5 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?

Only vessels with Polish nationality are authorised to perform shipping under the flag of the Republic of Poland. Vessels under construction obtain a certificate of a ship under construction and are not entitled to hoist the Polish flag.

6 Who may apply to register a ship in your jurisdiction?

Only vessels with Polish nationality are authorised to perform shipping under the flag of the Republic of Poland. Generally, vessels with Polish nationality are under Polish ownership (ie, owned by the State Treasury of the Republic of Poland, a Polish legal person or a Polish citizen with his or her residential address in Poland). In addition, Polish nationality accrues to vessels that are considered as being under Polish ownership.

Vessels considered to be under Polish ownership are those that are:

- no less than half-owned by the State Treasury of the Republic of Poland, a Polish legal person or a Polish citizen with his or her residential address in Poland, if the operator of the vessel has its registered office, branch office or residential address in the territory of the Republic of Poland and, based on the application of all its co-owners, has been entered into the Polish ship register; or
- owned by a company with its registered office abroad, if no less than one of the shareholders of this company is the State Treasury of Republic of Poland, a Polish legal person or a Polish citizen with his or her residential address in Poland, if the operator of the vessel has its registered office, branch office or residential address in the territory of the Republic of Poland and, based on the application of all its co-owners, has been entered into the Polish ship register.

An application to register a ship without Polish nationality with the Polish ship register may be made by a shipowner. Application to register a ship of Polish nationality shall be issued by either (i) the owner or (ii) all of the co-owners. In the case of ships changing nationality from foreign to Polish with a length of 24m or more, there is a requirement to present a decision from the director of the Marine Chamber stating that the ship meets the technical requirement for its registration to the ship register.

7 What are the documentary requirements for registration?

Applications for registration should be made in writing and contain the following information:

- features of the vessel (ie, name, former names and, if necessary, the IMO (International Maritime Organization) number);
- international call sign of the vessel;
- port of registry of the vessel; and
- date of building and information about the builder (shipyard), the main material of the hull, the type of engines and the purpose of the vessel.

Applicants must also enclose the following documents:

- document confirming the name of the ship and, if possible, documents stating the previous names of the ship;

- document proving the international call sign and IMO number of the vessel;
- original certificate of measurement, with a copy of this certificate, authenticated by the issuing authority;
- document proving the year the vessel was built and the shipyard where it was built (if the applicant has such a document);
- extract from the Register of Enterprises (if the shipowner is an enterprise);
- copy of the document that is the basis for purchasing ownership, or a share in the ownership, of the vessel;
- copy of the document containing the acceptance of the owner of the vessel to perform shipping with the usage of the vessel (if the applicant is not the owner of the vessel);
- document proving the registered office, branch office or residence of the applicant in the Republic of Poland (if the co-owner of the vessel is: the State Treasury of the Republic of Poland, a Polish legal person, or a Polish citizen with his or her residential address in Poland);
- evidence of removal of the vessel from the foreign register (if necessary); and
- written declaration of the shipowner of the creation of the maritime mortgage on the vessel.

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

According to Polish law, dual registration is forbidden – a vessel flying the Polish flag must not fly the flag of another state.

Flagging out the vessel from the Polish registry is possible if the vessel:

- sunk or was destroyed;
- disappeared;
- lost Polish nationality; or
- lost the status of a ship.

In addition, a ship may be flagged out based on the application of the maritime authority of the ship's port of origin, if the ship has been held at port by inspection of the state of the port at least twice during past 24-month period for reasons attributable to the shipowner, the master or ship's crew. The procedure requires the consent of the ship's mortgage made in writing.

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

The register of mortgages is maintained by the Marine Chamber. In practice, the information about the mortgages is contained in section 3 of the Polish ship register. The register of mortgages contains information about the amount of the mortgage and its currency, and mentions changes in this information.

Limitation of liability

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

Poland is a party to the Convention on Limitation of Liability for Maritime Claims, concluded in London on 19 November 1976. Poland has also ratified the 1996 Protocol to the Convention as well as an amendment to the 1996 Protocol adopted on 19 April 2012. Based on these regulations, the claims that can be limited by shipowners are:

- claims for death, personal injury or loss of or damage to property, occurring on board or in direct connection with the operation of the ship or rescue actions, and for other damages arising as a consequence;
- claims for damage caused by delay in the carriage of goods, passengers or their luggage by the sea;
- claims for other damages caused by the violation of rights other than contractual rights, arising as a direct result of the operation of the ship or rescue actions;
- claims in respect of the raising, removal, destruction or rendering harmless of a ship that is sunk, wrecked, stranded or abandoned, including anything that is or has been on board;
- claims in respect of the removal, destruction or rendering harmless of the cargo of the ship; and

- 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 or her liability in accordance with this Convention, and further loss caused by such measures.

According to article 8 (9) of the 1996 Protocol, the new limits resulting from amendments to the 1996 Protocol adopted on 19 April 2012, entered into force in Poland on 8 June 2015.

The limit of liability for claims for loss of life or personal injury on ships not exceeding 2,000 GT is 3,02 million SDR. For larger ships, the following additional amounts are used in calculating the limitation amount:

- for each ton from 2,001 to 30,000 GT – 1,208 SDR;
- for each ton from 30,001 to 70,000 GT – 906 SDR; and
- for each ton in excess of 70,000 GT – 604 SDR.

The limit of liability for property claims for ships not exceeding 2,000 GT is 1.51 million SDR.

For larger ships, the following additional amounts are used in calculating the limitation amount:

- for each ton from 2,001 to 30,000 GT – 604 SDR;
- for each ton from 30,001 to 70,000 GT – 453 SDR; and
- for each ton in excess of 70,000 GT – 302 SDR.

11 What is the procedure for establishing limitation?

A limitation fund shall be established in accordance with the procedure provided in article 11 of the Convention on Limitation of Liability. Therefore the fund may be either established by a cash deposit or in guarantee or other type of security issued by a bank or insurer with their main place of business in Poland acknowledged by the court. Other types of security might be accepted with permission of the court. The limitation itself is calculated in SDR as defined and maintained by the International Monetary Fund. A debtor may exercise a right to plead limitation without setting up a limitation fund. Generally a person entitled to limitation can apply to set up a limitation fund and initiation of legal proceedings is not a condition for a possibility to do so.

12 In what circumstances can the limit be broken?

The debtor may invoke the limitation of liability, regardless of the establishment of a liability limitation fund, as defined in article 11 of the Convention on Limitation of Liability.

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

Poland is party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974.

Port state control

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

Generally, the Director of the Marine Board is the body of the port state control, but it must be noted that inspection activities are performed by the Inspectorate of the Port State, which acts in the name and on behalf of the Director of the Marine Board.

The Director of the Marine Board is under the authority of the minister responsible for maritime affairs.

15 What sanctions may the port state control inspector impose?

The Inspectorate of the Port State (acting in the name and on behalf of the Director of the Marine Board) may render an immediately enforceable decision on detention of a ship. If the deficiencies found during the inspection cannot be repaired in the port of detention, the Inspectorate of the Port State may decide to allow the ship to leave the port for repairs in the nearest repair yard, with the agreement of the captain or shipowner. The voyage from the port to the shipyard should be agreed with the competent authorities of the flag state and it should be guaranteed that the ship will not pose a threat to maritime safety or other vessels, its occupants or the marine environment.

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

The shipowner or master of the vessel has the right to appeal against a detention decision, the suspension of operations, restrictions on the use of the ship or the prohibition of entry into port. Under Polish law, a party may only bring an appeal against a decision given at first instance at one further instance. The proper body for dealing with an appeal is a higher-level public administration body, except where a different appeal body is provided for by law (ie, the minister responsible for maritime affairs). It is not necessary to provide a detailed justification with an appeal; evidence from the appeal that the party is dissatisfied with the decision issued is sufficient.

Classification societies**17 Which are the approved classification societies?**

The Polish Ship Registry is the approved classification society in Poland.

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

The issue of the liability of the Polish Ship Registry has not yet been regulated in Polish law. In our opinion, the general rules of law shall be applicable.

Collision, salvage, wreck removal and pollution**19 Can the state or local authority order wreck removal?**

The owner of a ship, cargo or other object that has sunk within Polish waters or its territorial sea shall, within six months from the date of the sinking, report the intention to remove the shipwreck, cargo or other object to the Director of the Marine Board and set a date by which he or she intends to complete the extraction.

The Director of the Marine Board may request a change of the date of removal or notify the owner of the date by which removal must be completed. The above-mentioned request shall be directed to the owner within three months from the date of reporting the intention to remove the shipwreck by the owner. The date of removal changed by the Director of the Marine Board should be set for at least one year following the delivery of the request of the Director of the Marine Board to the owner.

If, within a period of six months, the owner of the ship, cargo or other object has not reported his or her intention to extract the ship, cargo or other object, or the extraction is not completed within the period specified by the owner or designated by the Director of the Marine Board, the director may order the extraction at the expense of the owner.

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

Poland is, a party to the following conventions, in particular:

- the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910 (the Brussels Collision Convention);
- the International Convention on Civil Liability for Oil Pollution Damage (the CLC Convention), 1969;
- the International Convention for the Prevention of Pollution from Ships, 1973 (the MARPOL Convention);
- the United Nations Convention on the Law of the Sea, 1982 (the UNCLOS Convention);
- the International Convention for the Safety of Life at Sea, 1974 (the SOLAS Convention);
- the International Convention on Maritime Search and Rescue, 1979 (the SAR Convention), 1979;
- the International Convention on Salvage, 1989 (the Salvage Convention);
- the Convention on Limitation of Liability for Maritime Claims, 1976 (the LLMC Convention);
- the Convention on the International Regulations for Preventing Collisions at Sea (the COLREG Convention), 1972;
- the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972; and
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, (the Bunker Convention), 2001.

Poland has not yet adopted the Nairobi International Convention on the Removal of Wrecks 2007.

21 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?

The regulations of the Salvage Convention shall apply to the issue of the salvage agreements as well as to carrying out salvage operations. Every master of a vessel is bound, insofar as he or she can do so without serious danger to the vessel and the persons thereon, to render assistance to any person in danger of being lost at sea.

Ship arrest**22 Which international convention regarding the arrest of ships is in force in your jurisdiction?**

Poland is a party to the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels on 10 May 1952 (acceded to the Convention in 1976).

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

Poland is a party to the 1952 Arrest Convention. As a consequence, vessels flying flags of states parties to the Convention can only be arrested in Poland under maritime claims that fall within the scope the Convention. Other vessels can be arrested in respect of maritime claims and any other claims. Moreover, sister ship arrest is also permissible under the provisions of the Convention.

24 What is the test for wrongful arrest?

The arrested party is entitled to claim from the arresting party redress of damages caused by the enforcement of arrest if: the arresting party did not file the first pleading within a determined time limit or withdrew a complaint or petition; if its complaint or petition was returned or rejected; if an action or petition was dismissed, or proceedings were terminated; in the case of cancellation of security, if it was granted before the commencement of proceedings; and if the arresting party did not pursue the entire claim or pursued a claim other than the claim which was secured. A claim for damages expires if it is not pursued within one year from the date it arose.

25 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?

It is unlikely that this will be possible.

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

The court may make the enforcement of a ship arrest conditional on the arresting party providing bail to secure the claims arising from the enforcement of ship arrest. The arrested party's claims shall be satisfied from this bail after settlement of the costs of enforcement but before settlement of other amounts due. The court may require a bail ex officio as well as at the request of the arrested party. The court should order the bail if there is a real danger that the arrested party may be exposed to the potential damage suffered by ship arrest and there are serious doubts as to the possibility of obtaining compensation from the arresting party due to its financial situation. The decision of the court regarding bail (as well as its amount) shall also depend on the credibility of the claim. However, bail in connection with ship arrest is not a frequent occurrence.

27 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?

If a vessel is arrested following a court decision and there is no amicable agreement as to alternative security between the parties, the only security for which the court will consider releasing the vessel is a cash deposit to the court's bank account, in the amount of the claim.

If the amount of the claim is higher than the value of the vessel, the amount of security provided to effect release of the vessel can exceed the value of the vessel.

28 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?

First, it must be stressed that under Polish law, which is very formal, the authorisation to act in any civil procedure matters requires a written power of attorney, which should be in existence on the date when the particular act of the authorised attorney of the particular party is executed. The power of attorney should be signed and notarised (with the notary certifying that the persons signing it are authorised to act so in the name of principal). Poland is a party to the Apostille Convention, therefore the document of the power of attorney shall be apostilled by the authorities of the relevant country. A party referencing a document in his pleading shall submit the original of that document to the court. Nevertheless, instead of an original of a document, a party may provide a copy thereof certified for compliance with the original by a public notary or by the party's court agent in the case concerned, if that court agent is an attorney or legal adviser. Regarding translations, the power of attorney shall be translated by a Polish sworn public translator.

If there is insufficient time available before filing the arrest application to comply with all the required formalities, it is possible to file the motion regarding arrest procedure which does not comply with all formalities. If a proceedings cannot be duly processed owing to a party's failure to comply with the formal conditions, the presiding judge will order the party to correct or supplement it within one week. That way the principal will obtain a few more days to lodge all the documents stipulated by Polish law. Nevertheless, the court will not take any actions following a pleading if a party fails to comply with the established time limit.

At the time of writing in the case of ship arrest the documents regarding the power of attorney cannot be filed electronically, as Polish Law requires them to be filed in a written form. On the last point, it is very hard to estimate how many days' notice is required to prepare an arrest application as every matter is different, but currently it can be estimated that two days' notice will be required. Generally, this depends on how long the Polish sworn public translator will take to translate the documents providing a basis for the arrest.

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

Generally, the arresting party is responsible for the maintenance of the vessel under arrest, but afterwards has the right to demand compensation.

30 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?

There is no obligation to pursue a claim on its merits in Polish courts. It is possible to pursue court proceedings in another jurisdiction. Lack of domestic jurisdiction for a claim does not preclude the recognition of an application for ship arrest.

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

Generally, any form of security that has been amicably agreed by all parties involved in such claims is acceptable. Aside from arrest, there is the possibility of establishing a mortgage over a vessel entered into the Polish ship register. Moreover, in Polish law more general security measures are available, inter alia: seizure of moveable properties, funds in a bank account and other claims or rights; mortgage over a real property; and compulsory administration of an enterprise. The condition for obtaining these general security measures is that the assets, claims or rights against which the security is sought are under Polish jurisdiction. However, if a vessel is arrested following a court decision and there is no amicable agreement as to alternative security between the parties, cash is the only security that the court will accept to consider releasing or release the vessel.

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

Evidence may be secured if requested before the commencement of proceedings or ex officio in the course of proceedings, where there is a risk that obtaining evidence may become impossible or excessively difficult, or where it is necessary to determine the current state of affairs for other reasons. Moreover, whenever possible, given the nature of the object of inspection and provided that this would not involve excessive costs, an object of inspection should be delivered to the court.

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

No.

Judicial sale of vessels

34 Who can apply for judicial sale of an arrested vessel?

The judicial sale of vessels shall be initiated in accordance with general principles: ex officio, at the request of a competent authority and, above all, at the request of the creditor.

35 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?

The enforcement officer of the court in whose area a vessel is located upon commencement of execution is generally competent to conduct the judicial sale of the vessel. The enforcement officer shall order that the vessel be detained and appoint a custodian while serving a request for payment on the debtor. An announcement of the judicial sale of the vessel shall be displayed and, upon expiry of the time limit determined for the debtor to repay his or her debt, the enforcement officer shall promptly, without the creditor's request, describe and evaluate an attached foreign vessel. Additionally, there is an obligation to notify a competent foreign registration authority of the attachment of a vessel. Moreover, it is necessary to make an announcement prior to conducting the auction of the ship.

The costs of judicial sale of a vessel are 15 per cent of the value of an enforced contribution, but not less than one-tenth and not more than 30 times the average monthly salary. Other costs will include, among others, fixed costs that depend on the type of actions undertaken and the reimbursement of expenses incurred during the judicial sale of the vessel.

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

According to article 1025 of the Polish Code of Civil Procedure, money generated from the judicial sale of a vessel shall be used to satisfy the following claims, in the order in which they are listed:

- (i) the costs of judicial sale of the vessel;
- (ii) maintenance obligations;
- (iii) compensation due for three months of work, up to the minimum value of remuneration for work specified in separate regulations, and pension due as compensation for illness, inability to work, disability or death, and the costs of the debtor's regular funeral;
- (iv) receivables secured with a marine mortgage or privilege related to a seagoing vessel;
- (v) receivables secured with a mortgage, pledge, registered pledge or tax pledge, or receivables with statutory priority and rights incumbent on immovable property before the commencement of execution was reported in the land and mortgage registry or before a creditor applies for reporting of the commencement of execution in the land and mortgage registry or pledge registry;
- (vi) compensation for work not covered by (iii);
- (vii) receivables to which the provisions of section III of the Tax Ordinance Act apply, unless they are satisfied under (v);
- (viii) receivables due to creditors who conducted the judicial sale of vessel; and
- (ix) other receivables.

After all the receivables have been satisfied, financial penalties and court and administrative fines are satisfied. Interest and costs of proceedings are satisfied on a par with receivables.

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

A final and non-appealable decision to award ownership transfers ownership to the purchaser and forms a basis for reporting the purchaser's right of ownership. It also constitutes an enforceable title enabling the purchaser to take possession of the vessel. Moreover, generally as soon as the decision to award ownership becomes non-appealable, any rights and the effects of reporting those rights and personal claims to a vessel expire. Those rights are replaced by the right to be satisfied from the purchase price, according to the priority provided for in the provisions regulating the allocation of the price obtained in execution.

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

Generally, yes.

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

No.

Carriage of goods by sea and bills of lading

40 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?

Only the Hague-Visby Rules are in force in Poland. The carrier is bound to take care of the cargo from its reception to delivery and to take care of the interests of persons interested in the cargo.

41 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?

Poland is a party to the Convention on the Contract for the International Carriage of Goods by Road (Geneva, 1956), the Convention concerning International Carriage by Rail (Berne, 1980) and the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention). There are also domestic laws such as the Carriage Law, the Road Transport Law and the Rail Transport Law.

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

The bill of lading constitutes evidence of the receipt on board, for carriage, of the cargo specified therein, and is a document of title for disposing of the cargo and for taking delivery thereof. Every legitimate holder of the bill of lading has title to sue on the bill of lading and is entitled to dispose and take delivery of the cargo. At the same time, the carrier is bound to follow his or her instructions only upon surrender of all copies of the bill of lading issued.

43 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?

In general, it is possible to incorporate the terms of a charter party into a bill of lading, including jurisdiction and arbitration clauses. Legal doctrine suggests that these clauses can also be binding on a third party or endorsee of the bill. However, it is better to indicate these clauses directly and clearly.

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

Yes, both are recognised and binding under Polish law.

45 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?

If the carrier has not been named on the bill of lading, it is assumed that the shipowner is the carrier. If the carrier has been named inaccurately or falsely, the shipowner is liable to the consignee of the cargo for losses resulting therefrom. However, in such a situation the shipowner has a recourse claim against the carrier.

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

The vessel should perform the carriage with due dispatch, by the contractually determined route or, in the absence of an agreement, by the usual route. However, deviation from the route in order to save or attempt to save a life or property at sea or for any other justified reason does not constitute a breach of the contract of carriage. The carrier is not liable for resulting damage. Parties may also freely agree on different terms regarding permissible deviation. Moreover, if the vessel cannot reach the port of destination due to insurmountable obstacles, which cannot be expected within a reasonable time, the carrier shall direct the vessel to the nearest safe port.

47 What liens can be exercised?

Generally, in accordance with article 90 of the Maritime Code, creditors have the benefit of a statutory lien against a vessel to secure privileged claims. Moreover, the carrier may refuse to deliver the cargo and retain it until the consignee has paid or secured the amounts resulting from carriage of the cargo as well as the contribution of the cargo in general average and salvage remuneration. The carrier who has delivered the cargo to the consignee loses the right to pursue any aforesaid claims against the affreighter. At the same time, no freight is due on cargo lost during carriage through any accident and freight paid in advance is subject to refund.

48 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 bound to deliver the cargo at the port of destination to a legitimate holder of even a single copy of the bill of lading. However, if no bill of lading has been issued, the cargo is delivered at the place of destination to the person indicated by the affreighter or a person authorised by him or her. Otherwise, the carrier acts on his own responsibility.

49 What are the responsibilities and liabilities of the shipper?

Generally, the shipper is responsible for damages resulting from the loss of or damage to cargo if this is a result of his or her act or omission (depending on the specifics of each individual case). The shipper is liable to the carrier for damages and expenses resulting from inaccuracies or misrepresentation in the declaration of the measure, volume, number of pieces and weight of the cargo and its main marks. On the other hand, the shipper is entitled to request from the carrier the bill of lading in as many copies as are demanded. Furthermore, placing the cargo on board the vessel generally requires the consent of the shipper (with exceptions).

Shipping emissions

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

Yes, the Baltic Sea is designated an ECA.

51 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?

On 1 January 2015 the cap on the sulphur content of fuel oil was reduced from 1 per cent to 0.1 per cent (according to Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels).

If the Director of the Marine Board determines that the vessel does not comply with the standards for marine fuel, it will oblige the shipmaster to take suitable actions in order to comply the marine fuel with certain standards or to provide the proof of attempt to obtain the proper fuel when obtaining such fuel was not possible. Furthermore, the public authorities are entitled to impose a fine on shipowner who does not comply with the requirements relating to low-sulphur fuel. The maximum amount of the fine is 50,000 SDR.

Jurisdiction and dispute resolution

52 Which courts exercise jurisdiction over maritime disputes?

The Maritime Chambers are considered a quasi-judicial body and deal with matters of maritime accidents and other cases provided for in separate regulations. The district courts and regional courts are generally the first instance courts for smaller claims of up to 75,000 zlotys. In cases involving claims for pollution damages, the Regional Court in Gdańsk has exclusive jurisdiction.

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

If the defendant is located out of the jurisdiction, provisions of the Polish Code of Civil Procedure are applied, with special provisions relating to, inter alia, legal aid and securing of evidence.

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

The International Court of Arbitration at the National Chamber of Maritime Commerce is a permanent court of arbitration established in Gdynia. However, there is also the possibility of organising trials at a place agreed by the parties. The jurisdiction of the Court includes disputes of civil law arising in connection with international trade, maritime economy and shipping. Jurisdiction occurs when the parties agree in writing or if the defendant, at the request of the court, gives written consent.

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

Poland is a party to numerous bilateral and multilateral international agreements and conventions that regulate the recognition and enforcement of foreign judgments and arbitral awards in Poland, including the 1905 and 1954 Hague Conventions on Civil Procedure, and the 2007 Lugano Convention (which replaced the 2000 Lugano Convention) as well as 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, the most significant act in EU law that governs the recognition and enforcement of foreign judgments is Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In Poland, recognition and enforcement of foreign judgments is regulated by the Polish Code of Civil Procedure.

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

Domestic jurisdiction that applied upon commencement of proceedings shall continue to apply even if the grounds for jurisdiction cease to exist during the course of proceedings. However, the court may not decide that domestic jurisdiction does not apply if grounds for that jurisdiction arose in the course of proceedings. Moreover, cases involving property rights may also be subjected to the jurisdiction of Polish courts by defending on the merits of the case if the defendant does not claim lack of domestic jurisdiction, although this shall not apply in cases that, according to the Polish legislation, fall under the exclusive jurisdiction of a foreign state.

57 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?

There is a possibility of a plea of lack of jurisdiction by a party. The court takes into consideration the lack of jurisdiction ex officio and is obliged to act on its own initiative. The court also takes into consideration the lack of jurisdiction in each state of the case (ie, from the initiation of proceedings to their final completion). Lack of domestic jurisdiction constitutes grounds for the nullity of proceedings.

Limitation periods for liability

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

The general rule is that, unless a specific provision provides otherwise, the period of limitation shall amount to 10 years, and three years for periodical payment claims and claims connected with conducting economic activity. At the same time, claims for redress of damage inflicted by a delict shall be subject to limitation upon the lapse of three years from the day when the injured party learned about the damage and about the person liable to redress it. Such a time limit may not be longer than 10 years from the day when the event causing the damage occurred. However, there are special rules that determine the other terms of limitation of liabilities. Moreover, time limits applicable to the claims regulated by the Polish Maritime Code may be extended by means of agreement of the parties made in writing after the event from which the claim took place (claims confirmed by a judgment or arbitration award excluded). Apart from that, and in principle, periods of limitation may not be shortened or prolonged by agreement.

59 May courts or arbitral tribunals extend the time limits?

No, courts or arbitral tribunals have no right to extend the time limits.

Miscellaneous

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

Poland has ratified the Maritime Labour Convention 2006 and is obliged to apply its provisions.



Marek Czernis
Rafał Czyżyk

Plac Rodła 8
70-419 Szczecin
Poland

kancelaria@czernis.pl
r.czyzyk@czernis.pl

Tel: +48 91 359 44 30
Fax: +48 91 359 44 32
www.czernis.pl