



# ICLG

The International Comparative Legal Guide to:

## Shipping Law 2018

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# Taiwan

Lee and Li, Attorneys-at-Law



Daniel T.H. Tsai



James Chang

## 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

If a collision is caused by the fault of one of the ships involved, the ship at fault shall be liable for the damage. If the colliding ships are all at fault, each ship shall be liable in proportion to the extent of its fault; if it is not possible to ascertain the degree of the respective fault, the liability is apportioned equally among the parties involved. The ships at fault shall also be jointly and severally liable for the loss of life or personal injury caused by the collision. If a collision is caused by *force majeure*, the victim is not entitled to claim for damage. The time limit of a claim arising out of a collision is two years from the date of the collision.

#### (ii) Pollution

A ship owner (including the owner, lessee, agent and operator of a ship) shall be liable for the damage resulting from the pollution of the sea which is caused by a ship. The claimant for compensation for pollution damage may seek compensation directly from the liability insurer or seek to secure the guarantee as compensation.

In the event of damage arising out of a foreign ship's violation of the Marine Pollution Control Act (aka the Ocean Pollution Prevention Act), the port management authority may restrict the foreign ship and related crew from leaving Taiwan if the foreign ship has not fulfilled its obligation of damage compensation or if there is further investigation required. Nonetheless, if a security is provided, in principle such a restriction may be lifted subject to the authority's discretion.

#### (iii) Salvage / general average

A shipmaster should make an effort to render assistance to persons in danger of being lost at sea or in distress, so far as he can do so without serious danger to his ship, crew and passengers thereon. Those who render salvage operations to a ship or the property thereon which have an effective result are entitled to proper reward for the result. The salvage reward is to be determined by the parties; if the parties cannot reach an agreement on the reward, the parties may file for the arbitration award or a court judgment.

#### (iv) Wreck removal

The retrieval or removal of wrecks, materials or floating articles within the commercial port area requires the consent of the

commercial port authority or other relevant authorities. If a ship strands, sinks or becomes malfunctioned and adrift outside the commercial port area due to beaching or other accidents, the commercial port authority should order the master and the ship owner to take necessary contingency measures, and to salvage and remove the ships and cargo to the designated area within a limited time period. The ship owner should be responsible for the fees caused by the measures.

If the sunk ships, objects, flotsam, pollutants and rafts within the fishing port area endanger or could endanger the voyage and anchoring of vessels entering or departing the port, or contaminate or could contaminate the fishing port area, the competent authority may take the following measures: (1) to notify owners of the ships, objects, flotsam, pollutants and rafts to remove them within a limited time period; these items will be deemed as waste and removed without further notification if they are not removed within the limited time period; and (2) in the event of emergency, these items will be removed without a notification. The removal fees should be borne by the owners.

#### (v) Limitation of liability

The liability of a ship owner is limited to an amount equivalent to the value of the ship, plus the freight and other accessories of the particular voyage in respect of the following: (1) claims in respect of the loss of life, personal injury or loss of or damage to property, occurring on board or directly resulting from the operation of the ship or salvage operations; (2) claims in respect of damage resulted from infringement of interests or rights caused by the operation of the ship or salvage operations; provided, however, that the damage resulted from a contractual relationship should be excluded; (3) claims in respect of the removal of a sunk ship or property lost overboard; provided, however, that a reward or payment made under a contract should be excluded; and (4) claims in respect to the obligations incurred for taking measures to avert or minimise the liabilities set out in the preceding (2) or (3).

The term "ship owner" referred to in the preceding paragraph includes the owner, charterer, manager and operator of the ship. The term "this particular voyage" referred to in the preceding paragraph means the voyage covered by the ship from one port to the next port; the term "freight" does not include such freight or ticket fares not collectible under the relevant laws, regulation or contract; the term "other accessories" refers to compensation for the damage to the ship, but not including payments on insurance policies.

If the sum of limitation of liability under the first paragraph is less than the following, the ship owner shall be liable for the deficit: (1) regarding property claims, an aggregate amount of 54 Special Drawing Rights ("SDR") as defined by the International Monetary Fund for each tonne of the ship's gross registered tonnage ("GRT");

(2) regarding loss of life or personal injury claims, an aggregate amount of 162 SDR for each GRT; (3) where the claims in the preceding (1) and (2) occur concurrently, an aggregate amount of 162 SDR for each GRT, of which a first portion amounting to 108 SDR for each GRT shall be exclusively appropriated to the payment of personal claims in respect of loss of life or personal injury, and of which a second portion amounting to 54 SDR for each GRT shall be appropriated to the payment of property claims; provided, however, that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund; and (4) the GRT of a ship of less than 300 tonnes shall be deemed to be 300 tonnes.

The aforementioned limitation of liability does not apply to: (1) obligations arising out of an intentional act or negligence of the ship owner; (2) obligations arising from the contract of employment with the shipmaster, seafarers or any other personnel serving the ship; (3) reward for salvage or contribution in general average; (4) damage arising out of carrying toxic chemical substances or oil pollution; (5) damage arising out of nuclear incidents caused by nuclear substances or nuclear waste being carried on ships; or (6) claims for nuclear damage caused by nuclear ships.

#### (vi) The limitation fund

In Taiwan, it is unclear whether the limitation fund will work. However, if it works, based on the practice of security form in the past, cash, a letter of undertaking or guarantee issued by an appropriate bank or insurance company may be acceptable, but still subject to the discretion of the applicable court or government authorities.

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

A master shall prepare a sea protest and submit it to the competent authority; this should contain details regarding the accident of sinking, stranding, collision, forced docking, or other accidents, and extraordinary occurrences to cargo, seamen or passengers. The sea protest is effective only after having been authenticated by the seamen or passengers, unless the sea protest is made in the event that the master is the sole survivor of the accident.

The Committee for Investigation of Marine Casualties under the port authority is, in principle, in charge of investigation and assessment of maritime casualty liabilities. However, the authority sometimes investigates by itself.

## 2 Cargo Claims

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

The Maritime Act is the main legislation regulating marine cargo claims in Taiwan. Certain rules relevant to marine cargo claims were substantially changed in the amendment to the Maritime Act in 1999. Many of the current provisions are essentially based on the Hague-Visby Rules, while some other provisions are based on the Hamburg Rules. Please refer to questions 2.2 and 2.3 below for details.

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

The following are some of the key provisions of the Maritime Act ("MA") relevant to marine cargo claims:

- Where a contract of carriage, which is for the purpose of carrying individual cargo or a bill of lading, contains a clause, covenant or an agreement diminishing or relieving the carrier or the ship owner from liability for damage to, loss of or delay to the cargo resulting from negligence or a failure to fulfil the obligations provided in this chapter, such clause, covenant or agreement shall be null and void. (MA Article 61.)
- The carrier or ship owner shall be bound, before and at the time of the commencement of the voyage, to exercise due diligence to ensure that: (1) the ship is capable of navigating safely; (2) the proper crew, equipment and supplies on the ship exist; and (3) the holds, refrigeration and cooling chambers, and all other parts of the ship, are suitable for carrying the cargo, and are fit and safe for reception, carriage and preservation. The burden of proof shall be on the carrier or ship owner asserting the exemption. (MA Article 62.)
- The carrier shall properly and carefully load, discharge, handle, stow, care for, carry and keep the cargo. (MA Article 63.)
- Neither the carrier nor the ship owner shall be liable for loss or damage arising from: (1) neglect of the shipmaster, mariner, pilot or the employee of the carrier in navigation or in the management of the ship; (2) perils, dangers and accidents of the sea or of routing; (3) fire, unless caused by the carrier's own intentional or negligent acts; (4) acts of God; (5) acts of war; (6) riots; (7) acts by public enemies; (8) arrests, restraints of the authority, or seizures under legal process; (9) quarantine restrictions; (10) strikes or other labour incidents; (11) saving or attempting to save life or property at sea; (12) insufficiency of packing; (13) insufficiency or inadequacy of marks; (14) wastage or any other damage or loss due to inherent defects, quality or vice of the cargo; (15) act or omission of the shipper or owner of the cargo, his agent or representative; (16) latent defects of the ship not discoverable by due diligence; and (17) any other cause arising without the carrier's own intentional or negligent acts or without the fault or the neglect of the agent or employee of the carrier or the ship owner. (MA Article 69.)
- Where the nature or value of the cargo is fraudulently declared by the shipper at the time of shipment, neither the carrier nor the ship owner shall be liable for any damage to or loss of the cargo. Unless the nature and value of the cargo have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship owner shall be liable for any damage to or loss of the cargo in an amount exceeding 666.67 SDR per package or 2 SDR per kilogram, whichever is the higher. Neither the carrier nor the ship owner shall be entitled to the benefit of the limitation of liability if the damage or loss resulted from an intentional act or gross negligence of the carrier or the ship owner. (MA Article 70.)
- Any deviation in saving or attempting to save life or property at sea or for other reasonable cause shall not be deemed to be breach of the contract of carriage, and neither the carrier nor the ship owner shall be liable for the damage or loss which resulted therefrom. (MA Article 71.)
- Where the cargo was loaded without the consent of the shipmaster or carrier, neither the carrier nor the ship owner shall be liable for the damage to or loss of the cargo. (MA Article 72.)
- If the carrier or the shipmaster loads cargo on deck and the cargo consequently suffers loss or damage, the carrier shall be liable therefor, unless with the shipper's consent and being stated in the contract of carriage, or allowed by the particular kind of ocean carriage or the trade practice. (MA Article 73.)
- The issuer of a bill of lading shall be responsible for all acts which should be done as stated in the bill of lading. (MA Article 74.)

- The carrier and the ship owner shall be discharged from all liability in respect of the damage or loss, either totally or partly, of the cargo unless a lawsuit is brought within one year of cargo delivery or of the date when cargo should have been delivered. (MA Article 56, Section 2.)

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

- The shipper shall guarantee to the carrier the accuracy of the notifications of the name, quantity, the kind of packing, and the number of packages of the cargo to be delivered, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The carrier is not entitled to such a defence against any holders of the bill of lading other than the shipper itself. (MA Article 55.)
- The carrier shall refuse to carry cargo of a contraband nature or cargo being declared fraudulently with the knowledge of the carrier; the same rule applies where the nature of the cargo tends to cause damage to the ship or endanger the health of the personnel on board the ship, provided that those allowable under a custom of shipping or commercial trade are exempted. In the event that cargo of an inflammable, explosive or dangerous nature, where the carrier has consented with knowledge of their nature, becomes a danger to the ship or cargo, the cargo may at any time be landed at any place, or destroyed or rendered innocuous by the carrier without compensation except to general average, if any. (MA Article 64.)
- If the carrier or shipmaster finds any cargo without declaration, he may unload it at the loading port, or charge the freight at the highest rate on the same kind of cargo under the same voyage, and may also claim damages, if any. If the cargo is found during the voyage and is contraband or of a dangerous nature, the shipmaster may jettison the cargo. (MA Article 65.)

## 3 Passenger Claims

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

The Maritime Act (“MA”) and the Civil Code (“CC”) are the main pieces of legislation regulating marine passenger claims in Taiwan. Here are some of the key provisions:

- Where the ship is unable to continue the voyage due to *force majeure*, the carrier or shipmaster shall still endeavour to carry passengers to the port of destination. (MA Article 88.)
- Where the ship is unable to enter the port of destination for disembarking passengers due to an act of God, war, or disturbances, epidemic or any extraordinary events at that port, the carrier or shipmaster shall be liable, at the option of passenger, to send the passenger to the nearest port or back to the original port of embarkation. (MA Article 89.)
- If the ship has to be repaired during the voyage, the carrier or shipmaster shall still complete the voyage with another ship of the same class, and furnish adequate lodging and provisions for passengers during the period of waiting without extra payment. (MA Article 90.)
- The carrier of passengers shall be liable for any injury suffered by the passenger in consequence of the transportation, and for the delay in the transportation, except if the injury or the delay is due to the negligence of such passenger or the injury is due to *force majeure*. If the delay of the transportation is due to *force majeure*, unless otherwise provided by the trade custom, the liability of the carrier of passengers shall be limited to the

increased necessary expenses paid by the passenger due to the delay of the transportation. (CC Article 654.)

- A statement in a ticket, receipt or other document delivered by the carrier to the passenger, excluding or limiting the liability of the carrier, is ineffective, unless it can be proved that the passenger expressly agreed to such exclusion or limitation of liability. (CC Article 659.)
- Claims for damages for injury or delay in the transportation of passengers are extinguished by prescription if not exercised within two years from the date of the ending of the transportation, or from the date when the ending of the transportation ought to have taken place. (CC Article 623.)

## 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?

A party seeking to obtain security for a maritime claim against a vessel owner may file with an applicable court for provisional attachment (arrest) on the vessel in accordance with the Code of Civil Procedure. After obtaining the court’s approval, the party may further file for exercise of the provisional attachment in accordance with the Compulsory Enforcement Act. A security (normally in the form of cash or negotiable bank deposit certificates or other securities acceptable to court) is usually required for exercise of the provisional attachment (the amount of security shall be decided by the court). However, provisional attachment may not be exercised on a ship during the period from the time the ship has completed preparations for commencing a voyage until arrival at her next port of call; provided that this restriction shall not apply in respect of obligations incurred for the purpose of making preparations for commencing the voyage or damage arising from a collision of ships.

Where a collision occurs within the territorial waters of Taiwan, its inland waters, port, harbour or river, the court may arrest the ship at fault. Where the collision does not occur within the territorial waters of Taiwan, its inland waters, port, harbour or river, but the injured party or the ship is of Taiwanese nationality, the court may arrest the ship at fault upon her entry to the territorial waters of Taiwan. The arrested ship may apply for release by furnishing the court with a guarantee. The guarantee may be substituted with a letter of undertaking issued by an appropriate bank or protection and indemnity insurer (“P&I”) acceptable to the court.

### 4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Taiwan law itself is not very clear on this issue. Essentially, only creditors of the ship owner can arrest the ship. In the event that bunkers are ordered by a charterer, and if the charterer is deemed an agent of the vessel owner in respect of the liabilities or the bunker supplier’s claim against the charterer is secured by the maritime lien on the vessel, it is possible for the bunker supplier to arrest the vessel.

### 4.3 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 carrier is entitled to retain such portion of the goods as may be necessary to secure payment of freight and other expenses. In Taiwan, there is no “Action *in Rem*”; therefore the provisional

attachment can only be imposed upon the debtor's property. If the cargo on the ship is under the name of the debtor, it is possible for the creditor to apply for the provisional attachment on the cargo.

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

Normally cash, a letter of undertaking or guarantee issued by an appropriate bank or P&I may be acceptable, but still subject to the discretion of the competent court or government authorities.

## 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?

Where it is likely that evidence may be destroyed or its use in court may be difficult, or with the consent of the opposing party, a party may move the court for perpetuation of such evidence subject to the court's discretion. Where necessary, the party who has legal interests in ascertaining the *status quo* of a matter or an object may move for expert testimony, inspection or perpetuation of documentary evidence. A motion for perpetuation of evidence may be made before or after initiating a lawsuit but, in both cases, subject to the court's discretion.

### 5.2 What are the general disclosure obligations in court proceedings?

In order to elucidate or ascertain relations involved in a lawsuit, the court may take the following measures: (1) order the parties or their statutory agents to appear in person; (2) order the parties to produce drawings/illustrations, schedules/lists, translations of documents written in a foreign language, or other documents and objects; (3) temporarily retain in the court the documents and objects produced by a party or a third party; and (4) conduct inspections, order expert testimony, or request an agency or organisation to conduct an investigation.

A party has the duty to produce the following documents: (1) documents to which such party has made reference in the course of the litigation proceeding; (2) documents whose delivery or inspection the opposing party may require, pursuant to the applicable laws; (3) documents which are created in the interests of the opposing party; (4) commercial accounting books; and (5) documents which are created regarding matters relating to the action.

## 6 Procedure

### 6.1 Describe the typical procedure and timescale 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.

#### National courts

- In matters relating to a ship or its voyage, a lawsuit may be initiated against the owner or user of the ship in the court with the jurisdiction.

- In matters relating to a debt arising from or secured by a ship, a lawsuit may be initiated in the court for the location of the ship.
- Any disputes arising under a bill of lading with one of the ports of loading or ports of discharge in Taiwan may be adjudicated by the court of the said Taiwan port of loading or port of discharge.
- Usually: the court of first instance takes less than one year to adjudicate a case; the court of second instance takes less than two years; and the court of third instance takes less than one year. However, for maritime claims, it could take more time than usual.
- The court fee for the first instance is roughly 1.1% of the value of the claim; the court fee for the second instance is roughly 1.65% of the value of the claim; and the court fee for the third instance is roughly 1.65% of the value of the claim.

#### Arbitration

- Where a bill of lading (with one of the ports of loading or ports of discharge being in Taiwan) contains an arbitration clause, any disputes arising therefrom, if so agreed by the contracting parties, may be submitted to arbitration in Taiwan, regardless of the arbitration place or arbitration rules stated in the said arbitration clause. This provision is deemed as a part of an arbitration agreement. However, nothing in this provision will affect the validity of an agreement relating to arbitration made by the parties after the dispute has arisen.
- The arbitral tribunal shall render an arbitral award within six months of commencement of the arbitration. However, the arbitral tribunal may extend the decision period for an additional three months if the circumstances so require.
- Generally, the cost of arbitration is lower than the whole of the court fees.

#### Mediation/ADR

- Maritime disputes may be resolved through mediation in court, arbitral tribunal or certain institutions in Taiwan. Such a resolution mechanism will usually take several months and the result thereof depends on the parties' attitude, and thus it is difficult to say what the timescale would be.

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

- The losing party of the lawsuit shall bear the court expenses. However, the attorney fee, in principle, should be borne by the party itself no matter whether it wins or loses the lawsuit.
- Unless the parties have agreed otherwise, the interest payable on claims is generally calculated at a rate of 5% *per annum*.
- A foreign plaintiff who has no assets in Taiwan may be required by the court to deposit the court fee bond if the defendant so requests.

## 7 Foreign Judgments and Awards

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

A final and binding judgment rendered by a foreign court may be recognised in Taiwan, Republic of China ("R.O.C."), except in case of any of the following circumstances: (1) where the foreign court lacks jurisdiction pursuant to the R.O.C. laws; (2) where a default judgment is rendered against the losing defendant, except in the case where the notice or summons of the initiation of a lawsuit had been

legally served in a reasonable time in the foreign country or had been served through judicial assistance provided under the R.O.C. laws; (3) where the performance ordered by such judgment or its litigation procedure is contrary to R.O.C. public policy or morals; or (4) where there exists no mutual recognition between the foreign country and the R.O.C.

Regarding the preceding (4), since Taiwan currently is not a member of the New York Convention, a Taiwan court will tend to consider that obstacle (4) will not exist if there is no court case in that foreign country in which the recognition of a Taiwan court judgment was rejected.

A foreign judgment may be enforced in Taiwan if none of the foregoing circumstances exists and the enforcement of the foreign judgment is approved by an R.O.C. court.

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

A foreign arbitration award is enforceable in Taiwan if recognised by an R.O.C. court ruling first. An R.O.C. court will refuse to recognise the award on any of the following grounds: (1) recognition or enforcement of the arbitration award violates the public order or good morals of R.O.C.; (2) under the R.O.C. laws, the subject matter of the arbitration award lacks arbitrability; (3) the arbitration agreement is invalid due to the parties' incapacity in accordance with applicable laws; (4) the arbitration agreement is invalid in

accordance with applicable laws agreed upon by the parties or, in the absence of agreed laws, in accordance with the laws of the place of arbitration; (5) one of the parties was not served with a notice of appointment of arbitrators or with the arbitration procedures, or other matters giving rise to a lack of due process; (6) the arbitration award is irrelevant to the subject matter of the arbitration agreement, or beyond the scope of the arbitration agreement, unless the offending portion can be severed from the remainder of the arbitration award without affecting the remainder; (7) the composition of the arbitral tribunal or the arbitration procedures are contrary to the parties' agreement or, in the absence of an agreement, contrary to the law of the place of arbitration; and (8) the arbitration award has no binding force upon the parties or the award has been set aside or suspended by a competent court.

## 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.

The maritime legislation in Taiwan is deeply influenced by international conventions (e.g., the Hague-Visby Rules). Where there is a lack of applicable provisions under Taiwan laws, courts might refer to the relevant international conventions.



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As one of the leading maritime law practices in the world, Lee and Li has been recognised as the leading advisor of maritime law practice in Taiwan. Lee and Li has a practice that focuses on maritime law, with expertise and extensive experience in handling cargo claims, collision, ship financing, charter party, ship construction, etc. We provide effective representation and strategic advice and have successfully represented local and international clients in most of the landmark cases in Taiwan.

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