



The Legal 500 & The In-House Lawyer

Comparative Legal Guide

Taiwan: Shipping

This country-specific Q&A provides an overview of the legal framework and key issues surrounding Shipping in **Taiwan**.

This Q&A is part of the global guide to Shipping.

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1. **What system of port state control applies in your jurisdiction?**

What are their powers?

The Maritime and Port Bureau of the Ministry of Transportation and Communications ("MPB") is the main port state control agency.

The powers of the MPB includes but not limited to the following:

1. The planning of the policies, businesses and laws and regulations in respect of the shipping industry, vessels, sailors and ports;
2. The planning, executing and supervising of the shipping industries, classification societies, bodies for the training for the shipmasters and sailors, as well as the businesses of the commercial ports;

3. The planning, executing and supervising of the international cooperation and joint operation of the shipping industry, as well as the management of the navigation order;
4. The planning, executing and supervising of the measurement, register and safety of the navigation for vessels;
5. The planning, executing and supervising of the training, licensing and evaluations for the sailors and shipmasters.
6. The planning, executing and supervising of the businesses with respect to maritime and pilotage matters;
7. The supervising of the commercial ports and the free trade zone thereof, as well as the construction and management of the public infrastructure;
8. The planning, establishing, maintaining and supervising of the aids to navigation, as well as the improvement of the safety of the navigation for vessels;
9. The researching, compiling, translating and enforcing of the international conventions, protocols, agreements, treaties, regulations and norms; and
10. The planning, executing and supervising of other maritime matters.

2. **Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?**

Due to international politics, Taiwan is not a party to international conventions in respect of wreck removal or pollution. Nevertheless, as a practice in Taiwan, where there is a lack of clear and applicable provisions under current Taiwanese laws, the governmental authorities and courts often refer to the relevant international conventions.

3. **Are there any applicable international conventions covering collision and salvage? If not what laws apply?**

Due to international politics, Taiwan is not a party to international conventions in respect of collision and salvage. Nevertheless, as a practice in Taiwan, where there is a lack of clear and applicable provisions under Taiwanese laws, governmental authorities and courts often refer to the relevant international conventions.

4. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Due to international politics, Taiwan is not a party to the 1976 Convention on Limitation of Liability for Maritime Claims. Taiwan has its own maritime legislation (the Maritime Act, "MA"), which contains the similar spirit in the relevant international conventions.

The liability of a ship owner (including the owner, charterer, manager and operator of the ship) is limited to an amount equal to the value of the ship, the freight and other accessories of the particular voyage in respect of the following claims:

1. Claims in respect of loss of life, personal injury or damage to or loss of property, occurring on board or directly resulted from the operation of the ship or salvage operations;
2. Claims arising from the operation of the ship or salvage operations; provided, however, that such claims resulting from a contractual relationship should be excluded;
3. Claims arising from the removal of wreck or property lost overboard; provided, however, that the reward or payment made under a contractual relationship should be excluded; and
4. Claims for the debts incurred in order to avert or minimize the liabilities set out in the above (ii) and (iii).

If the sum of limitation of liability under 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 ton of the ship's registered gross tonnage (GT);
2. Regarding loss of life or personal injury claims, an aggregate amount of 162 SDR for each GT;
3. Where the claims in the above (ii) and (iii) occur concurrently, an aggregate amount of 162 SDR for each GT, of which a first portion amounting to 108 SDR for each GT 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 GT 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, according to rate, with the property claims for payment against the second portion of the fund; and

4. The GT of a ship weighing less than 300 tons shall be deemed to be 300 tons.

However, the limitation of liability does not apply under any of the following:

1. Claims arising out of an intentional act or negligence of the ship owner itself;
 2. Claims arising from the employment contracts for the shipmasters, seafarers and other members of the ship crew;
 3. Claims for salvage rewards or general average contribution;
 4. Claims arising from the carriage of toxic chemical substances or from the oil pollution;
 5. Claims arising from nuclear incidents due to the carriage of nuclear substances or nuclear waste; or
 6. Claims for nuclear damage caused by a nuclear ship.
5. **If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?**

Due to international politics, Taiwan is neither a party to the 1952 Arrest Convention nor a party to the 1999 International Convention on Arrest of Ships. Nevertheless, as a practice in Taiwan, where there is a lack of clear and applicable provisions under current Taiwanese laws, the governmental authorities and courts often refer to the relevant international conventions. However, there is no action *in rem* in Taiwan. Therefore, the debtor of the claim must be the ship owner no matter what the nature of the claim is. If the debtor is not the ship owner, the ship arrest will, in principle, unlikely be proceeded in Taiwan.

It is possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration provided always that the debtor of the claim is the ship owner. For the arrest of ship, in addition to other requirements, the arresting party has to deposit the bond in the amount decided by the court; while the ship owner may deposit the counter bond in the amount equivalent to the claimed amount to lift the arrest.

6. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

An original power of attorney (POA) is required for the appointed lawyer to file the application for ship arrest. And if the POA is issued by a foreign entity, the POA needs to be notarised by a notary public in the country of that entity and further legalised by the Taiwan representative office near that country. If the POA is made in a language other than Chinese, a translation would also be required. However, subject to the judge's discretion, the judge may allow a copy or PDF of the POA be submitted first but the original POA shall be supplemented within a period of time decided by the judge.

7. What maritime liens are recognised?

Pursuant to Article 24 of the MA, the claims listed hereunder may be secured by maritime liens and are entitled to a preferential right of compensation:

1. Claims arising from the employment contracts for the shipmasters, seafarers and other members of the ship crew;
2. Claims against the ship owner in respect of loss of life or personal injury directly arising from the operation of the vessel;
3. Claims for salvage rewards, wreck removal expenses and general average contribution;

4. Tort claims against the ship owner, in respect of damage to or loss of property occurring, whether on land or on water, in direct connection with the operation of the vessel; and
5. Harbour charges, canal and other waterway dues and pilotage dues.

8. **Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?**

In principle, if the debtor is not the ship owner, it will be difficult to arrest the vessel. However, if the bunkers are ordered by a charterer and if the charterer is considered by the court as an agent of the ship owner, or the bunker supplier's claim against the charterer is secured by the maritime liens with regard to the vessel, it is possible for the bunker supplier to apply for the arrest on that vessel.

9. **Are sister ship or associated ship arrests possible?**

It depends on who is the registered owner of the sister ship or associated ship. If their registered owners are the same one and are the debtors, these vessels can be arrested. However, if the registered owners are different, these vessels in principle cannot be arrested.

10. **Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?**

In the event of a ship arrest in Taiwan, the court would normally order the arresting party to provide the security in the amount decided by the judge (usually will be equivalent to one-third to 100% of the claim).

The arresting party (i.e., the creditor) should compensate the damage or loss suffered by the arrested party arising from the arrest in any of the following circumstances:

- The application for the ship arrest is improper *ab initio*;
- Upon the arrested party's motion, the creditor failed to pursue the claim on its merit within a specified period of time ordered by the court; or

- The creditor itself moves for revocation of the application for the ship arrest.

11. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

In the event of a ship arrest, the court would usually order the owner to provide the full amount of the claim as counter security to release the ship. Cash is preferred. The court usually will not accept a Club LOU. A letter of undertaking issued by a local bank or the local branch of a foreign bank may be accepted by the judge under the judge's discretion, but the review procedure thereof may take a long time. Nevertheless, it is often in Taiwan for the arresting party to agree with the release of vessel under a Club LOU since this is the quickest to obtain the security and the arresting party can take back its own bond deposited with the court.

**12. Describe the procedure for the judicial sale of arrested ships.
What is the priority ranking of claims?**

The court would first ask the appropriate surveyor to evaluate the value of the ship in order to determine the basic price. The court would then publicize the relevant information on the auction of the ship, and inform the relevant parties of the auction. The auction date should be at least 14 days after the public announcement date. The auction is usually carried out through a bidding process.

It might take several months or even longer for the judicial sale to be concluded. If the ship is not sold in the first auction and thus a second is necessary, the court should reasonably reduce, within 20 percent, the basic price for the second auction. In addition, the second auction date should be at least 10 days but no more than 30 days after the public second auction announcement date.

The proceeds of the sale are first used to pay the fees in relation to the compulsory enforcement. The remainder of the proceeds will then be paid to, in sequence, claims secured by the maritime liens, by rights of retention (the claims in relation to the building or repairing the ship), by ship mortgages, and other creditors whose claims are not secured. (However, where the ship is a foreign vessel, the priority ranking of the claims should be subject to the law of the flag.)

13. **Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

Article 53 of the MA rules that, "*the carrier or the shipmaster, upon the request of the shipper, shall issue a bill of lading after the cargo is loaded.*" If the B/L itself fails to indicate who the carrier is, Taiwanese courts usually would examine, among other factors, who signed the bill of lading (B/L) and who gave the authority to sign it in order to determine the identity of the carrier. If the shipmaster signed the B/L, the court usually will consider the one who gave authority to the shipmaster to issue the B/L shall be liable for the B/L.

14. **Is the proper law of the bill of lading relevant? If so, how is it determined?**

It is not clear in Taiwan. However, according to Article 43(1) of the Act Governing the Choice of Law in Civil Matters Involving Foreign Element, the proper law of the B/L can be decided by mutual consent of the parties. If there is in lack of mutual consent, the law of the place most closely connected with the B/L shall be the proper law.

15. **Are jurisdiction clauses recognised and enforced?**

In principle, the Taiwanese courts seldom recognize the jurisdiction clause since the carrier usually cannot provide the solid evidence to prove the express consent of the B/L holder on the jurisdiction clause. The B/L itself is insufficient. Article 78 of the MA further provides that, "*Any disputes arising under a Bill of Lading, which port of loading or port of discharge is in R.O.C.(Taiwan), may be filed in the court of the said R.O.C. port of loading or port of discharge or any competent court according to the law or regulations.*" Accordingly, the Taiwanese court of the port of loading or discharge has the jurisdiction over the disputes arising from the B/L despite the jurisdiction clause.

16. **What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

Even if the B/L states the incorporation of the terms of a charter party, many of the Taiwanese courts would still consider that the terms of a charter party are not necessarily applicable. That is, it is hard to prove the B/L holder had agreed on a charter party, especially when the B/L holder did not see the charter party at all.

Similarly, the key is whether the B/L holder agreed on the arbitration clause. Besides, according to Article 22(2) of the 1978 Hamburg Rules, the carrier may not invoke the arbitration clause pursuant to the charter party against a holder having acquired the B/L in good faith. Accordingly, unless otherwise explicitly stipulated in the B/L issued pursuant to a charter party, the holder having acquired the B/L in good faith is not bound by such arbitration clause. It is advisable to specially state the arbitration clause on the face of the B/L, which may convince the judge that the B/L holder did see it and agree.

17. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Due to international politics, Taiwan is not a party to any international conventions concerning B/L, for example, the Hague Rules, Hague-Visby Rules, Hamburg Rules, or the Rotterdam Rules. Nevertheless, the content of the MA is partly based on these Rules, mostly the Hague-Visby Rules. And in practice, Taiwanese courts would refer to these Rules (even Hamburg Rules, or the Rotterdam Rules) if there is a lack of clear provisions in the MA.

18. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Due to international politics, Taiwan is not a party to the 1958 New York Convention. The Arbitration Law of Taiwan applies with regard to the recognition and enforcement of a foreign arbitral award. A foreign arbitral award usually will be recognized and enforced in Taiwan provided that there is no rejection case in that foreign country when a Taiwanese arbitral award seeking the recognition and enforcement in that foreign country.

A Taiwanese court will refuse to recognise a foreign arbitral award under any of the following grounds:

1. The recognition or enforcement of the arbitration award is contrary to the public order or good morals of Taiwan;
2. The dispute cannot be subject to the arbitration under the law of Taiwan.

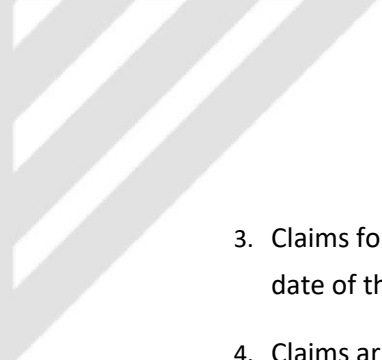
In addition, a party may request the court to dismiss the application for the recognition of a foreign arbitral award under the following circumstances within 20 days from the receipt of the notice of such application:

1. The arbitration agreement is invalid as a result of the incapacity of a party according to the applicable law of the arbitration agreement;
2. The arbitration agreement is null and void according to the applicable law of the arbitration agreement, or in the absence of such applicable law, the law of where the arbitral award was made;
3. A party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or under the circumstances where there is a lack of due process;
4. The arbitral award is different from or beyond the scope of the dispute arising from the arbitration agreement, unless otherwise the decision on the subject matters submitted to arbitration can be separated;
5. The composition of the arbitral tribunal or the arbitration procedure was not in accordance with the agreement of the parties, or in the absence of such agreement, the law of the country where the arbitration took place; and,
6. The arbitral award has not yet become binding on the parties, or has been set aside or suspended by a competent authority.

19. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

The time limits depend on the nature of the claims:

1. Claims for loss, damage or delay of cargo are extinguished if not exercised within 1 year from the date of the delivery, or when the delivery ought to have taken place;
2. Claims for injury or delay in the transportation of passengers are extinguished, if not exercised within 2 years from the date of the end of the transportation, or when the end of the transportation ought to have taken place.

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3. Claims for salvage rewards are extinguished, if not duly exercised within 2 years from the date of the completion of the salvage operation;
 4. Claims arising out of a collision are extinguished, if not duly exercised within 2 years from the date of the collision; and
 5. Claims arising from wrongful acts (product liability is considered as torts) are extinguished, if not duly exercised within 2 years from the date when the damage and the person responsible for the damage are known, or if ten years has elapsed from the date of the commitment of the wrongful act.

The time limits may not be extended or reduced by mutual agreement of the parties.

Additionally, the time limits may not be waived in advance either.