



# Shipping

in 35 jurisdictions worldwide

Contributing editor: Jonathan Lux

# 2011



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### Contributing editor:

Jonathan Lux,  
Ince & Co

### Business development manager

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Sarah Walsh

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### Subscriptions manager

Nadine Radcliffe  
Subscriptions@  
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### Editor-in-chief

Callum Campbell

### Publisher

Richard Davey

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# Iceland

**Einar Baldvin Axelsson**

Logos Legal Services

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## 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?

There are no specific rules regarding shipbuilding contracts in Icelandic legislation and no rule that specifically addresses the above question.

However, as a contract to build a ship is a sales contract the provisions of the Sale of Goods Act No. 50/2000 will in principle apply to such contracts, unless the parties have agreed otherwise as the act is not mandatory. Therefore, the parties can agree on the time when title will pass.

It is not specifically stated in the Sale of Goods Act when the title passes to the buyer and there is no simple answer to this question as many different things have to be taken into consideration. On the other hand, it is clear that, under the Act, the risk will pass to the buyer on delivery.

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

There are no specific formalities applicable in regard to the refund guarantee under Icelandic law.

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

If the buyer can prove with documentary evidence that he has undisputed right to delivery of the ship and the shipyard has illegally prevented delivery the buyer can, under the Act on Attachment No. 90/1989, submit a request to the district court to take the ship by legal authority from the shipyard and deliver to the buyer.

After receiving the request, the court will invite the shipyard to a hearing for submission of its legal arguments. The court will then rule whether the request is accepted. If accepted, the matter has to be submitted to the district magistrate, who will execute the court's ruling.

- 4** Where the vessel is defective and damage results, would a claim lie in product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

Any claim by the shipowner and the purchaser against the shipbuilder as a result of defects and damage is based on the shipbuilding contract and possibly tort. A third party that has sustained personal injury or damage to personal belongings as a result of a defect in the ship can sue the shipbuilder directly under the Act on Product Liability No. 25/1991.

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## 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?

### Icelandic Domestic Ship Register

According to the Act on Registration of Ships No. 115/1985, it is obligatory to register ships on the Icelandic domestic ship register that are more than six metres in length. The Icelandic Maritime Administration carries out the registration.

Ships that can be registered on the Icelandic domestic ship register and as such sail under the Icelandic flag are those that are owned by:

- Icelandic citizens with legal residence in Iceland;
- Icelandic legal entities with residence in Iceland;
- citizens of other states within the European Economic Area (EEA);
- citizens within the European Free Trade Association (EFTA); or
- citizens of the Faroe Islands.

Special registration rules apply to ships intended for fisheries. Such ships are only eligible for registration on the Icelandic domestic ship register if their ownership lies in the hands of:

- Icelandic citizens with legal residence in Iceland,
- Icelandic entities that have residence in Iceland and are owned by Icelandic citizens who have legal residence in the country; or
- Icelandic entities that are predominantly owned by Icelandic entities and no more than 25 per cent owned by foreign entities based on equity or initial capitalisation.

It is also possible to register a ship on the Icelandic bareboat charter register under specific conditions. Such ships have the right to sail under the Icelandic flag.

According to the Act on Registration of Ships No. 115/1985 and the Rules on Temporary Registration of Ships under Construction No. 83/2002 it is possible to register vessels under construction in a special registry. Such registration is temporary and subject to specific permission by the Icelandic Maritime Administration.

### Icelandic International Ship Register

The Act on the Icelandic International Ship Register No. 38/2007 governs registration of merchant ships on the Icelandic International Ship Register. The Icelandic Maritime Administration carries out the registration.

Merchant ships that can be registered on the Icelandic International Ship Register and as such sail under the Icelandic flag are those that are owned by:

- an Icelandic citizen;
- a citizen of other states within the EEA or EFTA or the Faroe Islands; or
- an entity registered in Iceland.

**6** What are the requirements for company formation?

There are standard procedures in forming a limited liability company in Iceland, which slightly differ when establishing a public limited liability company or a private limited liability company.

There must be at least two incorporators for a public limited company but only one in the case of a private limited company. All individuals and legal entities can be incorporators, but in the case of limited or private limited companies they have to be registered to qualify as incorporators. Legal entities of the EEA have the same right as Icelandic ones.

Icelandic citizenship is not necessary when forming a company. On the other hand, in the case of a public limited company, half of the incorporators must have their domicile in Iceland. In the case of a private limited company, only one is obligated to have residence in Iceland. The criteria of domicile do not apply to citizens of the EEA member states.

A memorandum of association, articles of association, a memorandum of the establishment meeting and a specific form to the Company Register must be prepared and signed by the incorporators.

The amount of the share capital shall be a minimum of 4 million Icelandic kronur for public limited liability companies and the minimum of 500,000 Icelandic kronur for private limited liability companies.

The company's board of directors shall give notice of it for registration within two months of the date of the memorandum of association. A company may not be registered unless the total share capital has been paid, and the payment must be confirmed by the company's auditor.

It is easier to establish a private limited liability company than a public one, especially since the procedure can be quite swift and does not require as many steps to be taken as the formation of a public limited liability company.

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

Dual registration and flagging is prohibited under the Registration Act.

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

The registration of ships and mortgages in Iceland are in two parts.

- the Domestic Ship Register and the International Ship Register is maintained by the Icelandic Maritime Administration. It is a national registration of all ships and contains detailed information about each ship; and
- each district magistrate maintains a ships mortgage registry, which registers mortgages and encumbrances created or granted by the registered owner of the ship. The ships are registered at the district magistrate whereby the owner has determined to be the port of registration. Ships on the International Register are registered with the district magistrate in Reykjavik.

If a mortgage or other encumbrances are to be registered on a ship, such document must be filed in primary and must contain;

- a reference to the mortgaged ship;
- its Icelandic registration marks;
- the priority ranking of the security interest; and
- the amount of the indebtedness secured under the mortgage.

However, if the ship is registered in Iceland on the Bareboat Charter Register, mortgages and encumbrances shall only be registered in the country of primary registration.

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

From 1 January 2009, Iceland has applied the limitation regime under the 1996 Protocol of the 1976 Convention on Limitation of Liability for Maritime Claims.

Until 1 January 2009, the limitation regime of the 1976 Convention applied.

Iceland has made a reservation in respect of article 2(1)(d) and (e) of the 1976 Convention. It is currently under review if and how the reservation will be applied.

According to article 174 of the Icelandic Maritime Act No. 34/1985 (the Maritime Act), the following claims are subject to limitation:

- claims in respect of loss of life or personal injury or loss of or damage to property occurring on board or in direct connection with the operation of the ship or with salvage operation;
- claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operation;
- claims in respect of the raising, removal, destruction or the rendering harmless of a ship that is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship; and
- claims in respect of measures taken in order to avert or minimise loss for which otherwise would have been subject to limitation and further loss caused by such measures.

According to article 173 of the Maritime Act, the operator, shipowner (which is not an operator), charterer, manager, disponent owner and anyone performing services directly connected with salvage, including those who provide services mentioned in items (iv) to (vi) above, can limit their liability. Anyone for whom the above persons are responsible, such as independent contractors as the case may be, have also the right to limit their liability. An insurer of liability for claims that are subject to limitation has the same right to limitation as the insured party.

**10** What is the procedure for establishing limitation?

According to article 182 of the Maritime Act, the limitation of liability does not depend on whether the party entitled to limit establishes a limitation fund equivalent to the amount to which liability can be limited. In such case it is not necessary to provide a cash deposit or other security. The settlement of the claims can, therefore, be arranged amicably out of court or the limitation rules applied by the court if the claimant decided to submit the claim to court. The court will only consider those claims that are brought before it. Therefore, if the party entitled to limit considers that other claims should also be taken into account he must ask the court to make a reservation in its judgment that other claims, which are subject to the same limitation, shall also be taken into account.

According to article 179 of the Maritime Act, a limitation fund can only be established when a petition has been filed in Iceland for an arrest, a suit has been filed or other enforcement proceedings in relation to a claim that can be limited has been instigated. When the fund has been established it is not possible to file a suit in Iceland concerning a claim that is subject to limitation or concerning whether the person in question is entitled to limitation.

The fund is established by payment of the amount to which limitation is limited together with interests from the date of the incident

until the date of the establishment of the fund or submitting a security for that amount to the Icelandic Central Bank or other bank in Reykjavik as decided by the Central Bank. It is necessary to explain the reasons for constituting the fund and to give information on all those likely to present claims against the fund. A decision to constitute the fund is made in the form of a ruling by the court. The court will appoint an executor, who shall apply the rules of the Icelandic Bankruptcy Act on recovery from the fund, as applicable.

The amount of the limitation fund is fixed in special drawing rights (SDR). It is calculated with reference to the number of total passengers allowed on board the ship in the case of death and personal injury claims by passenger and to the tonnage of the ship in the case of other claims.

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**11** In what circumstances can the limit be broken?

According to article 176 of the Maritime Act, a liable person cannot limit his liability if it is proved that he has himself caused the loss deliberately or through gross negligence and with knowledge that such loss would probably result.

It is not clear how Icelandic courts will construe the words 'he has himself' in this provision, as similar words in a provision of a package limitation has been applied by the Supreme Court of Iceland to the acts and omissions of the crew and an employee of the carrier's warehouse where cargo had been stored after discharge from the ship. There has been much debate about those decisions.

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**Port state control**

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

The Icelandic Maritime Administration executes all port state control and vessel inspections in Iceland according to Act No. 47/2003 on Vessel Control. The Administration operates under the authority of the Icelandic Ministry of Transportation.

The Administration shall inspect foreign vessels that call at Icelandic ports according to the Paris Memorandum of Understanding on Port State Control (MOU) and obligations under the provisions of the EEA Agreement. This inspection is further regulated by the Ministry of Transportation Regulation No. 589/2003.

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**13** What sanctions may the port state control inspector impose?

The Icelandic Maritime Administration (the Administration) has the right to demand that ships are repaired and brought up to required standards before they leave port if they do not meet the conditions set out in Regulation No. 589/2003, which are more or less based on international conventions concerning safety of ships and crew.

If a ship is about to leave port without valid international certificates or valid certificate of seaworthiness or the ship is in any other way unseaworthy or the employees of the Administration are prevented from inspecting the ship, the Administration can issue a detention order on the ship in order to prevent her leaving the port.

The Administration can also deny gas and chemical ships, bulk ships, oil ships and passenger ships access to Icelandic ports if:

- the ship is sailing under a flag of a state that is on the blacklist in the MOU's annual report and the ship has been given a travel sanction more than twice in the past 24 months in a port of a state that is a member of the MOU; or
- the ship is sailing under a flag of a state that has the description 'grave danger' or 'much danger' on the blacklist of the MOU's annual report and the ship has been given a travel sanction more than once in the past 36 months in a port of a state that is a member of the MOU.

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

The shipowner, the master or the agent of the ship in Iceland can appeal the detention order to a detention committee, which is appointed by the Icelandic Ministry of Transportation. The committee has the final say on the detention order and its decision cannot be appealed. The appeal does not revoke the detention order. The same applies to the denial decision of the Administration, but such appeal can most likely be appealed to the Icelandic Ministry of Transportation.

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**Classification societies**

**15** Which are the approved classification societies?

According to the Administration, the following classification societies are approved in Iceland:

- the International Association of Classification Societies (IACS);
- the American Bureau of Shipping;
- Bureau Veritas;
- Class NK;
- Det Norske Veritas;
- Germanischer Lloyd; and
- Lloyd's Register of Shipping.

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

There are no specific rules in Icelandic legislation on a classification society's liability. Therefore, the general law of tort will apply to its acts and omissions.

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**Collision, salvage, wreck removal and pollution**

**17** Can the state or local authority order wreck removal?

According to the Act on Prevention of Pollution of the Seas and Coast No. 33/2004, the shipowner is obliged to remove a stranded ship as soon as possible or no later than six months after the incident.

The shipowner is also obliged to remove a sunken ship if so required by Iceland's Environmental Agency.

The Environmental Agency can impose a fine of up to 500,000 Icelandic kronur per day upon the shipowner if he does not comply with the above obligations. Icelandic authorities can also remove the ship at the shipowner's cost if he does not comply with the same. The cost of removal is provisionally paid by the authorities and then reclaimed from the shipowner.

The fine and cost of removal is secured by a statutory lien in the vessel for one year after the claim is submitted to the shipowner.

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

**Collision**

Iceland is not a party to the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910. However, chapter VII of the Icelandic Maritime Act on liability in relation to collisions is based on this Convention.

**Salvage**

Iceland is a party to the International Convention of Salvage 1989. Chapter VIII of the Icelandic Maritime Act is based on this Convention.

**Pollution**

The following Conventions concerning pollution are applicable in Iceland:

- the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating

thereto (MARPOL 73/78). Protocols I, II, III and V apply but not Protocols IV and VI;

- the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), 1954 and Protocols 1962 and 1969;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LDC/London Convention), 1972 and Protocol 1996;
- the International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties (INTERVENTION), 1969. Protocol 1973 does not apply;
- the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969. The 1969 Convention is not in force but Protocols 1976 and 1992 apply;
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971. The 1971 Convention is not in force but Protocols 1976 and 1992 apply. Iceland is not a party to 2003 Protocol; and
- the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990.

- 19** Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory local form of salvage agreements in force. The Lloyd's standard form of salvage agreement is acceptable. If no form is used or salvage is subject to Icelandic law, chapter VIII of the Icelandic Maritime Act will apply.

The provisions of this chapter are more or less in line with the International Convention of Salvage 1989. However, it must be noted that there is a special rule, which is not part of the Convention, on the criteria that shall be used when fixing a salvage reward in cases where the ship was not in imminent danger but could still not get to harbour by her own engine power. In such cases the salvage reward shall mainly be fixed according to other items than the value of the ship. It must be noted that the word 'mainly' might allow the court to fix the reward with reference to the value of the ship, but this should probably only apply in exceptional cases. The purpose of this exception is to decrease the weight of the value of the salvaged property when the amount of the reward is being determined in cases of no imminent danger.

Anyone can carry out salvage operation under chapter VIII, including ships owned by the Icelandic government, ships owned by the same person as the salvaged ship and Icelandic public authorities acting under legal power. However, the provisions of chapter VIII do not apply to warships or other non-commercial vessels owned or operated by a foreign state and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that state decides otherwise.

### Ship arrest

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

Iceland is not a party to the International Convention Relating to the Arrest of Sea-Going Ships 1952 or the International Convention on the Arrest of Ships 1999. There are no specific rules in Icelandic legislation on arrest of ships. Therefore, the arrest of ships is regulated by Act No. 31/1990 on general arrest of properties.

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

As a general principle a ship can be arrested in respect of a monetary claim against the defendant, either if the ship belongs to an Icelandic

owner and is registered in Iceland or if the ship is situated in Iceland at the time of the arrest irrespective of ownership or registration. The unpaid claim must be due for payment and it must be such as to allow an immediate execution.

If, however, the claim in question is secured by a maritime lien over the ship, the ship may be arrested despite the fact that a third party may be the rightful owner of the ship. Accordingly, claims that are secured by a maritime lien under article 197 of the Icelandic Maritime Act (see below) are the only types of claims that may be pursued in rem by way of an arrest irrespective of the identity of the owner of the ship.

There is no specific provision in the Icelandic Maritime Act on arrest of a sister ship.

- 22** What is the test for wrongful arrest?

If the claim for which the arrest was granted is found not to exist or is in any other way unjustified, the claimant must compensate the shipowner for all his loss suffered, including damages for loss of amenities, and for the injury done to the shipowner's professional reputation. The basis of liability in such cases seems to be strict and, therefore, not dependant upon proof of negligence or other omission on his part. It is possible for the court to decide compensation based on the facts of the case if the shipowner has suffered loss but cannot prove the quantum of his claim.

If the arrest turns out to be wrongful for reasons that occurred after the completion of the arrest, the claimant has to compensate the shipowner only if it is presumed that he did not own the claim for which the arrest was granted.

- 23** Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

An arrest under Icelandic law can only be made in properties owned by the debtor. Therefore, a bunker supplier cannot arrest a vessel in connection with a claim against the charterer as the vessel is not owned by the charterer.

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

Usually a security has to be submitted by the claimant before the arrest. It is up to the district magistrate handling the arrest application whether a security is needed or not and the form and amount of such security.

When determining the amount of a guarantee, the district magistrate shall mainly take into account to what extent the arrest affects the functions of the defendant in terms of doing him harm, whether it is likely that the arrest or request for the arrest will harm his credit status or his business interests and whether he has a chance to make remarks about the validity of the claimant's claim and the arrest. The cost that the defendant might later have to endure through court procedures due to the arrest should also be taken into account.

The district magistrate can, by demand of the claimant, arrest the ship without any security being submitted if one of the following conditions is fulfilled:

- the arrest is demanded pursuant to a debenture, a draft or a cheque and the defendant does not protest the claim;
- the defendant waives his right for a security in front of the magistrate;
- the defendant acknowledges the claim as being valid in front of the magistrate or court and that conditions for an arrest are prevailing;
- a judgment has been rendered regarding the claimant's claim, but the enforcement period has not yet come to an end; or

- the claimant's claim is in other terms so that the magistrate considers both it and the arrest undoubtedly valid given the conditions prevailing.

If a security is required it should be in the form of money or in a comparable form. A bank guarantee from an Icelandic bank is usually required.

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

In practice, the district magistrate will usually go on board the ship and grant an order for the arrest by obtaining the certificate of registry, certificate of seaworthiness and other ship's certificates from the master, which the magistrate will keep in his possession during the arrest procedure.

The shipowner will usually on the other hand keep the possession of the ship during the arrest procedure and bear the costs for the maintenance of the vessel during the same time.

**26** 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?

Icelandic courts will always have jurisdiction over the confirmation of the arrest. Such confirmation must be submitted to the Icelandic courts within one week from the arrest together with the claim itself if it is subject to Icelandic law. However, if the claim is subject to foreign jurisdiction, the claimant must within three weeks from the arrest pursue proceedings on the merits in that jurisdiction and within the same three weeks pursue proceedings in Icelandic courts for the confirmation for the arrest. Otherwise, the defendant can request that the arrest is set aside.

#### Judicial sale of vessels

**27** Who can apply for judicial sale of an arrested vessel?

The general rule is that only a claimant having an enforceable claim can apply for judicial sale.

**28** 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?

Judicial sale of a vessel is subject to article 6 of Act No. 90/1991 on judicial sale, which provides that the claimant can apply for such sale to the relevant district magistrate if he has an enforceable claim. An arrest under Icelandic law does not give an automatic right to initiate judicial sale proceedings of the vessel.

The judicial sale takes place at the relevant district magistrate's court in three stages, a first hearing, the beginning of the judicial sale and continued judicial sale.

#### First hearing

When a request for judicial sale has been submitted in writing to the relevant district magistrate, the district magistrate will invite all parties to the first hearing of the case. The request must contain detailed information about the facts of the case and be supported by the documents on which the claimant relies. At this hearing the district magistrate will decide when the beginning of the judicial sale will take place. The debtor can negotiate with the claimant on postponement of the beginning of the auction for up to 12 months.

#### The beginning of the judicial sale

The beginning of the judicial sale takes place four to six weeks after the first hearing. The vessel is auctioned for the first time by the district magistrate, who then decides when the continued and final judicial sale will take place.

#### The continued judicial sale

The continued judicial sale is the final stage of this procedure. Continued sale must take place within four weeks from the beginning of the judicial sale. Auctions are open to all and therefore anybody can show up and make a bid. The district magistrate asks three times for bids on the vessel and, usually, it goes to the highest bidder. The district magistrate can request that the bidder provides a security for the amount that was offered. It is not possible to postpone the continued judicial sale.

It is impossible to advise on the average time it takes for the judicial sale to be concluded. It depends on each case.

The official fee for filing an application for judicial sale to the district magistrate is 1 per cent of the total debt, including interest and costs, but never less than 17,100 Icelandic kronur or more than 58,000 Icelandic kronur.

Usually, security for the costs of the judicial sale has to be submitted by the claimant before the sale takes place. It is up to the district magistrate whether security is needed or not and the form and amount of such security.

**29** What is the order of priority of claims against the proceeds of sale?

The general rule is that the proceeds from a sale will be divided between claimants in accordance with certain rules of priority under Act No. 90/1991 on judicial sale and chapter XI(1) of the Icelandic Maritime Act. Claims secured with a maritime lien or a mortgage in the vessel will be paid first when all costs in connection with the arrest, enforcement of the claim and sale proceedings have been paid. Any balance thereafter will be divided between other claimants in accordance with the priority they have obtained for their respective claims.

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

According to chapter XI(1) of the Icelandic Maritime Act, the judicial sale will extinguish all prior liens and encumbrances on the vessel, including maritime liens, and thereby give the purchaser clean title.

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

Judicial sale of an Icelandic vessel in a foreign jurisdiction is recognised under article 202 of the Icelandic Maritime Act if the vessel is in the country where the sale takes place at the time of the sale and the sale is conducted in accordance with applicable law of that country. Such foreign judicial sale will extinguish all prior liens and encumbrances on the vessel, including maritime liens, and thereby give the purchaser clean title.

**32** 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**

**33** 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?

Iceland has not ratified the Hague Rules, Hague-Visby Rules or Hamburg Rules and has not incorporated those rules directly into Icelandic law. However, the relevant provisions in the Maritime Act are based on the Hague-Visby Rules and the SDR Protocol 1979. Those provisions are mandatory. Therefore, the Hague-Visby Rules and the SDR Protocol 1979 have been implemented into Icelandic legislation.

No decision has been made in respect of ratification, acceptance or approval of the Rotterdam Rules.

The general rule is that the carriage at sea begins when the goods come into the custody of the carrier on board or ashore and ends when the carrier delivers the goods to the consignee at the port of discharge. However, the carrier can limit this period by inserting a clause in the contract of carriage that exempts him from liability in respect of the time prior to the beginning of the loading and subsequent to the completion of discharge.

**34** 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?

**Road transport**

Act No. 40/2010 on carriage by road applies to domestic road transport. The act applies mandatorily for all carriage and will therefore apply to all domestic road transport under a combined transport or multimodal bill of lading. The Convention on the Contract for the International Carriage of Goods by Road (CMR) does not apply in Iceland.

**Rail transport**

No domestic legislation or convention is in place in Iceland for rail transport.

**Air transport**

Act No. 60/1998 on air transport applies to domestic air transport. The act applies mandatorily and will therefore apply to all domestic air transport under a combined transport or multimodal bill of lading. The relevant provisions of the act are based on the Montreal Convention, which has been ratified by Iceland by Act No. 41/1949 (as amended by Act No. 52/2004).

**35** Who has title to sue on a bill of lading?

There is nothing in the Maritime Act on who has the title to sue on a bill of lading. The general rule is that the bill of lading holder has title to sue. The persons who are considered parties to the contract of carriage, that is the shipper and the consignee mentioned in the bill of lading, might also have title to sue, but that will depend on whether they have a real interest in receiving legal protection in the case in question.

The right of the cargo underwriter to sue is based on article 22 of the Tort Damages Act No. 50/1993, but he will acquire the injured party's claim against the liable party to the extent that he has paid damages.

**36** 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?

There is no specific provision in the Maritime Act on such incorporation and whether they are binding on a third-party holder or endorsee of the bill of lading. However, according to article 110 of the Maritime Act, provisions of the contract of carriage that are not included in the bill of lading are not valid against the consignee unless the bill of lading contains a reference thereto. Therefore, in order to incorporate a jurisdiction clause or arbitration clause in a charter party into the bill of lading a specific reference to these clauses will most likely have to be made.

It must also be noted that, according to the Arbitration Act No. 53/1989, an arbitration agreement has to be in writing. As Icelandic courts will interpret this requirement strictly, an arbitration clause in a charter party whose terms are incorporated into the bill of lading will most likely not bind the third-party bill of lading holder or endorsee unless they are specifically referred to in the bill of lading.

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

The 'demise' clause or identity of carrier clause is not recognised and binding under Icelandic law as this contradicts the mandatory rule of article 73 of the Maritime Act.

**38** 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 carriage is performed by the shipowner he shall, under article 73 of the Maritime Act, be jointly liable with the contractual carrier according to the same rules as the latter, in respect of his part of the carriage. If an action is brought against the shipowner he shall be entitled to rely on the same defences and limits of liability as the contracting carrier. He can, therefore, rely on the terms of the bill of lading even though he is not a contractual carrier.

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

According to article 48 of the Maritime Act the carrier is not liable for cargo damage as a result of deviation caused by measures to save persons, salvage vessels and other properties at sea. Otherwise, there are no provisions in the Maritime Act on the effect of deviation from a vessel's contractual route. Even though this question has not been answered by the Icelandic courts it is more than likely that such deviation will be considered a serious breach of contract making the carrier strictly liable for cargo damage suffered during an illegitimate deviation and excluding his contractual defences.

**40** What liens can be exercised?

The following claims are under article 197 of the Maritime Act secured by maritime liens in the ship:

- wages or other payments due to the master, crew and other persons employed on board;
- claims for damages due to loss of life or personal injury in so far as such claims have arisen in direct connection with the use of the ship;
- claims for damages due to damage properties in so far as the claim has arisen in a direct connection with the use of the ship and provided that such claim is not based on contract;

- salvage, compensation for removal of wrecks and general average contributions; and
- ship charges (according to parliamentary comments on this item, it refers mainly to claims for port, canal and waterway dues and pilotage).

The following claims are, under article 204 of the Maritime Act, secured by maritime liens in the cargo:

- claims in respect of salvage reward and general average contribution;
- claims arising in consequence of the fact that the carrier or the master in accordance with his statutory authority has entered into a contract, taken action or incurred expenses on the account of the cargo owner and a cargo owner's claim for compensation for goods sold for the benefit of other cargo owners; and
- claims by the carrier for freight, compensation for loss of freight and other loss caused by discharging the cargo in port of discharge or during the voyage, and compensation for demurrage and other delay in the loading or discharging operation or during the voyage.

A shipyard has a right to retain the ship under article 200 of the Maritime Act to secure a claim in respect of the building or repair, so long as the shipyard has possession of the ship.

The carrier has, under article 63 of the Maritime Act, a right of retention (possessory lien), that is, the right to retain the cargo until the consignee has paid freight, other charges the carrier can claim under the bill of lading or other transport document or other claims to which the goods may be subject.

There is currently a debate going on in Iceland regarding whether the carrier can exercise a contractual lien on the cargo for any other sum due from the shipper, consignee or owner of the cargo to the carrier under any other contract than the relevant bill of lading, whether connected with the carriage of the cargo in question or not. An Icelandic arbitration has concluded that such contractual lien is valid. However, the Icelandic courts have not dealt with this contractual lien and, therefore, it is not clear under Icelandic law whether it is valid or not.

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

Delivery of cargo without production of the bill of lading is considered by Icelandic courts a serious and intentional breach of contract making the carrier strictly liable. The carrier cannot limit his liability in such cases.

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- 42** What are the responsibilities and liabilities of the shipper?

The following provisions in the Maritime Act apply to the main responsibilities and liabilities of the shipper and consignee:

- the shipper shall deliver the cargo to the ship in such order and manner that it can be conveniently taken on board, stowed and discharged;
- if the cargo needs to be handled with special care the shipper is under the duty to state what measures are needed to protect it and, if possible, mark the cargo accordingly;
- cargo of an inflammable, explosive or otherwise dangerous nature shall be delivered to the ship marked as dangerous and the shipper shall furnish all information necessary to obviate damage. If to the knowledge of the shipper the cargo is otherwise such that its carriage involves danger to persons, ship and cargo, the carrier shall be notified;
- the shipper is responsible to the carrier for the accuracy of the statement in the bill of lading relating to the cargo that has been inserted in the bill of lading at his request;

- the shipper is liable to pay the freight on loading unless otherwise agreed;
- if the cargo has caused damage to the carrier or to the ship, the shipper shall be liable for compensation if the damage is due to fault or neglect on his part or the part of anyone for whom he is responsible. If inflammable, explosive or otherwise dangerous general cargo has been loaded without the carrier having notice of its nature, the shipper shall be liable for any damage and expense directly or indirectly caused by the loading of the goods, even in the absence of fault or neglect;
- the carrier shall deliver and the consignee shall receive the cargo alongside the ship; and
- reception of the goods entails a duty for the consignee of paying freight and whatever amount the carrier may otherwise be entitled according to the bill of lading or other document under which the goods are carried.

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### Jurisdiction and dispute resolution

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- 43** Which courts exercise jurisdiction over maritime disputes?

All district courts of Iceland. The judgments of the district courts can be appealed to the Supreme Court of Iceland.

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

If the defendant has a known domicile in another state, the service of proceedings before Icelandic courts shall be made according to the laws of that state if the service cannot be made in Iceland under the provisions of the Icelandic Court Procedure Act No. 91/1991.

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

No.

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

Iceland is a party to the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters as of 16 September 1988. This Convention has been implemented into Icelandic law by Act No. 68/1995.

Iceland is also a party to an agreement between Iceland, Denmark, Finland, Norway and Sweden on acknowledgement of judgments and enforcement of the same. This agreement has been implemented into Icelandic law by Act No. 30/1932.

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

There are no such remedies in Icelandic law.

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- 48** What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

The defendant would have to appear in court on the date of submission and demand dismissal of the case due to the fact that the court does not have jurisdiction over the claim. This demand would have to be supported by relevant evidence.

**Limitation periods for liability**

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

The general time limit under the Act on Time Limits No. 150/2007 is four years. The Act applies unless the parties have agreed otherwise or if there are other specific provisions in other Acts on time limits. Therefore, it is possible to extend the time limit by agreement.

**50** May courts or arbitral tribunals extend the time limits?

No.

**Miscellaneous**

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

Arrest and injunction in respect of bunkers is regulated by Act No. 31/1990 on general arrest and injunctions of properties. If it can be

proved that the debtor is the owner of the bunkers it is possible to arrest or obtain injunction in respect of bunkers. The same applies to an attachment, but attachments are regulated by Act No. 90/1989 on attachments.

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

No.

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

No.

**LOGOS**  
LEGAL SERVICES  
SINCE 1907

**Einar Baldvin Axelsson**

**einarbaldvin@logos.is**

Efstaleiti 5  
103 Reykjavik  
Iceland

Tel: +354 5 400 300  
Fax: +354 5 400 301  
www.logos.is

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