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Shipping

Israel

Law & Practice

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chambers.com

2020

Law and Practice

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1. Overview

1.1 Regulatory Bodies

The Israel Ministry of Transport has established the Shipping and Ports Administration (SPA) to regulate all activities relating to Israel's maritime activities.

The SPA is responsible for the safety of Israeli shipping, including:

- testing and registering large vessels and small craft;
- licensing foreign vessels;
- training, testing, and licensing maritime personnel and overseeing shipboard discipline;
- ensuring that vessels observe international standards for minimum crew strengths;
- supervision of the mechanical condition and safety of merchant marine vessels;
- developing and licensing harbours;
- the operation and maintenance of lighthouses along the coast;
- preventing marine pollution; and
- providing economic consultancy services to all bodies in the sector with a focus on establishing favourable conditions for the Israeli merchant marine.

Additionally, the SPA is responsible for maritime traffic, moorings and ports.

Port Regulations provide very detailed regulations relating to the conduct of vessels, safety, and order in the Israel ports. The State of Israel implemented the Port State Control (PSC) inspection system in 1997, in accordance with International Maritime Organization (IMO) and International Labor Organization (ILO) resolutions.

PSC inspections are conducted to ensure that foreign vessels calling at Israeli ports comply with international regulations and conventions. The SPA is responsible for all PSC activities, and aims to inspect each and every tanker and passenger ship arriving at Israeli ports, as well as 25% of the container ships and general cargo, with an emphasis on bulk carriers.

Specific documents must be filed in respect of each of the activities governed by the SPA, referred to above.

The SPA does not require periodic filings except in respect of certification following special surveys.

1.2 Competition Laws and Regulation

In 2010, the Israeli Parliament repealed the exemption of liner shipping from the application of competition law, in trades to

and from Israel. Until then, all forms of international sea transportation agreements were immune from antitrust scrutiny, and carriers could engage in all kinds of agreements without a requirement of prior approval by the Israeli Antitrust Authority (as it was then called). Accordingly, subsequent to the repeal, introduced by the Omnibus Law for the State Financial Market (Statutory Amendments for the Fulfilment of the Budget and Economical Policy Targets for the Budget Years 2011–2012) which came into effect on 1 January 2013, agreements between shipping carriers may now be subject to antitrust scrutiny. Following EU precedent, namely, the European Consortia Block Exemption, the amendment to the law stipulates that the existing statutory exemption for all shipping agreements shall be replaced by a block exemption for consortia agreements, adapted to take into account Israeli market conditions, and Israeli competition law, for example in relation to the aggregated market threshold (40%). As a result of the wide definition of restrictive arrangements in the law even simple slot charter agreements will be considered restrictive arrangements unless they are within the boundaries of the Block Exemption, or have been individually exempted by the Israel Competition Authority (ICA) (previously known as the Israel Antitrust Authority (IAA)) or approved by the Competition Tribunal. It should be noted that the Guidelines for the Shipping Sector published by the IAA on 28 July 2013, refer to the EU regulations and decisions when interpreting the new Block Exemption, "subject to" the necessary adjustments to "Israeli law" and the terms and conditions of the shipping sector in Israel.

In 2017, the IAA extended the Block Exemptions for Operational Arrangements in the International Shipping Industry for a period of five years.

In January 2019, competition laws in Israel underwent major reform with the aim of reducing regulation and focusing on the now renamed Israel Competition Authority's activities on maintaining competition.

Under the reform, the deterrent power of the ICA has been increased and steps have been taken to bring Israeli law closer to international antitrust law. One of the principal amendments to the law broadens the definition of a monopoly owner subject to the obligations and prohibitions of the antitrust law, so that it will include anyone with significant market power even if his or her market share is below 50%.

The ICA has the power to prosecute criminal cases and its Director General can impose administrative fines upon certain violations of the Competition Law. A Competition Tribunal, residing within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal regulatory antitrust proceedings.

The Economic Competition Law – 1988 (formerly known as the Restrictive Trade Practices Law), which is the principal law dealing with antitrust issues in Israel, establishes a licensing regime with regard to restrictive arrangements, in which any arrangement that falls within the scope of the broad definition of “restrictive arrangement” set out in Section 2 of the antitrust law must be authorised in advance by the Competition Tribunal or be exempted by the antitrust commissioner. Unless a statutory exemption or block exemption applies, failure to obtain authorisation renders the agreement illegal, unenforceable and a basis for criminal, administrative and civil liability.

1.3 Top Ten Flag States

Israel is not among the top ten flag States.

1.4 Maritime Conventions

The following maritime conventions have been ratified:

- Convention on the International Maritime Organization (IMO Convention);
- International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS);
- International Convention for the Prevention of Pollution from Ships, 1973 as modified by Protocol 1978 (MARPOL 73/78);
- International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
- International Convention on Load Lines 1966, (LL 1966) as amended;
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);
- Placing of Seamen Convention, 1920;
- Paid Vacations (Seafarers) Convention (Revised), 1949 (No 91);
- Accommodation of Crews Convention (Revised), 1949 (No 92);
- Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No 133);
- Prevention of Accidents (Seafarers) Convention, 1970 (No 134);
- International Convention of Standards of Training, Certification and Watch-keeping for Seafarers, as amended (STCW 1995);
- International Convention for Safe Containers, 1972 as amended (CSC 1972);
- Convention on the International Mobile Satellite Organization, as amended (INMARSAT);
- Convention on the International Maritime Satellite Organization, 1976 (IMSO);
- Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL);

- Protocol to the International Convention on Civil Liability for Oil Pollution Damage (CLC PROT 1992);
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 92);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA 88);
- International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 as amended (OPRC 1990);
- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995;
- Merchant Shipping (Minimum Standards) Convention, 1976 (No 147);
- International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924) as amended by the Brussels Amendments (the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading) in 1968;
- International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, and Protocol of Signature; and
- International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926.

1.5 Classification Societies

It should be noted that for the purpose of confirming the safety of containers under the Ports (Container Safety) Regulations – 1982, a recognised association includes, inter alia, the following classification societies (apart from the Israel Standards Institute):

- the American Bureau of Shipping (ABS);
- Bureau Veritas (BV);
- DNV GL;
- Lloyd’s Register of Shipping (LR);
- Nippon Kaiji Kyokai (NKK);
- Registro Italiano Navale (RINA).

1.6 Types of Registrations

The principal law governing the registration of vessels is the Shipping (Vessels) Law – 1960. Other relevant legislation includes the Shipping (Registration and Marks) Law – 1962, the Shipping (Regulations of Building & Measurements) Law – 1961 and the Vessels (Mortgage & Transfer) Ordinance - 1948.

Under Israeli law, all Israeli vessels must be registered, using the same process without distinction as to the size or purpose of the vessel concerned. Nonetheless, in practice, small boats, namely, vessels less than seven metres in length are exempted from registration in the registry and the details of the boat are maintained in a separate small boats’ registry. Vessels under construction in

Israel or abroad may also be registered in certain circumstances. Separate registries are kept for each port.

In accordance with the policy followed by the Registrar, the following types of vessels will not be approved for registration or change of use:

- boats of up to seven metres in length designed for private use and which are more than five years old;
- vessels of between seven metres and 24 metres in length, designed for private use and which are more than ten years old;
- boats of up to seven metres in length designed for commercial use and which are over three years old;
- vessels for commercial use that are over eight years old.

An exceptions committee is authorised to approve a vessel that does not meet the above criteria, provided that the vessel has been maintained in particularly good condition.

As noted, Israel limits registration under its flag by reason of the age of the vessel applying for registration. The goal of these regulations is to maintain the proper level of safety of vessels in Israel and prevent the importation of obsolete and unsafe vessels.

In addition, the Shipping (Foreign Vessel Under Control by Israeli Interests) Law – 2005, provides that any vessel that is not eligible for registration in the Register in accordance with the conditions specified above, but is controlled by Israeli interests (as these terms are defined in the said Law) must be registered in Israel in a registry book, which is customarily referred to as the Secondary Register (or the Grey Register), regardless of its ownership registration in a foreign registry. A vessel so registered shall be subject to the technical supervision of the Israeli Ministry of Transport and to the manning regulations with respect to the employment of Israeli crew members.

Israeli law does not provide for bareboat charter registration of foreign ships under the Israeli flag nor does it provide for the bareboat charter registration of Israeli flag ships under a foreign flag.

1.7 Types of Discounts

Regarding tax in connection with shipping generally, it should be noted that the government has published regular decisions aimed at improving the competitiveness of Israeli shipping. Israeli legislation offers several tax incentives for owners of vessels registered in Israel. These include:

- a special depreciation deduction up to the original cost of the vessel;

- submission of consolidated reports for tax purposes of companies operating the vessels in international transportation;
- tax exemptions for interest paid on financing obtained for the purchase or construction of a vessel and on the charter of a vessel; and
- tax incentives in the re-exchange of a vessel.

In addition, there is a zero VAT rate for various services rendered with regard to transportation of cargo by vessels and for the sale or import of vessels in circumstances specified in the VAT law.

There is no tonnage tax applicable in Israel. A government bill for the imposition of such a tax passed a first reading in the Israeli Knesset in July 2018 and was tabled for a second and third reading in 2019; nonetheless, in view of the volatile political situation this legislation has still not been enacted.

1.8 Citizenship Requirements for Registration

A vessel owned by the State of Israel, an Israeli citizen or a company registered in Israel or owned by a foreign company, where more than 50% of the shares in the vessel are owned by an Israeli citizen, must be registered in the Israeli vessel registry. Israeli law allows the registration of a vessel, less than 50% of which is Israeli-owned, to register in Israel, upon making a special request to the Minister of Transport. Similarly, where more than 50% of a vessel is Israeli-owned, the owner may apply to the Minister of Transport for permission not to register the vessel.

Finally, a non-Israeli may register an interest in an Israeli vessel, provided that their registration does not preclude the vessel from being registered as an Israeli vessel and, as noted, a foreign vessel controlled by Israeli interests must be registered in Israel.

1.9 Cabotage Laws

The relevant law in Israel relating to cabotage is the Coastal Shipping (Permit to Foreign Vessel) Law 5766-2005, and the regulations promulgated thereunder in 2012 regarding applications for permits.

Section 1 of the law defines coastal shipping broadly and includes carriage of goods and passengers originating from and destined for a port, vessel, facility or structure located in coastal or internal waters of Israel, without calling on a foreign port, excluding the carriage of empty containers or empty tows used by the ship-owner to carry goods.

The law provides for permits to engage in cabotage, including the requirement for a permit to perform any other operation in such waters, excluding fishing, oil and natural gas drilling and production, placing of pipes for conducting oil or natural gas on or under the sea bed. In so far as concerns the contiguous

zone, the placing of cables or pipes on or under the sea bed is also excluded.

The policy considerations guiding the grant of a permit are:

- promoting coastal shipping by Israeli vessels;
- maintaining proper level of ship and crew safety and preventing marine pollution;
- ensuring Israel's compliance with international maritime treaties;
- ensuring payment of compensation by ship-owners for damage caused by coastal shipping, including third-party damage, environmental damage and damage as a result of sinking;
- preserving state security and ensuring public order.

The Coastal Shipping Regulations 2012 provide for the process for applying for a permit, technical preconditions, the number of crew members, crew qualifications and terms of the permit. According to Section 13 of the Regulations where a foreign coastal vessel has received a cabotage permit, it must employ at minimum two Israeli crew members and, where officers are employed on board the vessel, at least one must be an Israeli national.

It should be noted that as a matter of practice, foreign vessels are permitted to operate in Israeli coastal waters under a 30-day temporary permit. The vessel will be subject to testing by the Chief Marine Engineer of the SPA prior to being given a full permit.

Finally, in order to resolve problems concerning the carriage of containers between Israeli ports, in December 2014 the Minister of Transportation and Infrastructure published the Coastal Shipping (Permit to Foreign Vessel) (Exemption from the Provisions of the Law) Regulations 5775-2014. The new Regulations provide that most of the provisions and requirements contained in the original 2012 Regulations shall be excluded and will not apply to a foreign container vessel carrying containers between Israeli ports on an exceptional basis (ie, where the vessel is not employed in a regular published liner service between Israeli ports).

While the Coastal Shipping Law does not expressly define the relevant coastal area, it seems likely that the regulations would apply to Israel's territorial waters (12 nautical miles), contiguous zone (24 nautical miles) and arguably the exclusive economic zone (200 nautical miles).

The fee currently due for a foreign vessel cabotage permit is NIS578 upon submitting the application and NIS3,384 for a ship or NIS2,075 for a vessel which is not a ship, payable upon

submission of the technical documents to the Chief Marine Engineer of the SPA.

2. Ship Finance and Securities

2.1 Ship Finance Centre

Mortgage-backed loans are commonly used to finance the purchase costs of Israeli vessels.

2.2 Document Registration

The process for registration of a mortgage before the Registrar of Vessels is a simple commercial financing procedure. The agreement, setting out the degree of the mortgage and conditions for repayment, must be drafted in writing and one copy thereof delivered to the Registrar, and entered into the vessel's file, as the basis for the registration of the mortgage as described here.

After co-ordinating an appropriate meeting, the mortgagor and mortgagee appear before the Registrar, with the original agreement or a "faithful copy" thereof, as attested to by the signature of a lawyer or an accountant on the copy of the agreement. Both parties must appear personally before the Registrar at the same time, complete a mortgage deed and sign it before the Registrar. This, after the Registrar has assigned a suitable mortgage number, which is subsequently recognised as the mortgage on a vessel (this number will appear on the mortgage deed and all other deeds relating to this mortgage). A party may appoint a representative to act on his or her behalf pursuant to a notarised power of attorney. If the vessel-owner is a company or corporation, the company or its representatives must also provide the Registrar with the minutes of the corporate management meeting stating explicitly that a legal quorum of members had resolved to register the lien or mortgage in the Mortgage Register. The minutes must be duly attested to by a lawyer or accountant.

When both parties have signed the mortgage deed before the Registrar, the Registrar approves the deed and registers it in the Register on the page corresponding to the vessel in question.

The same procedure is followed when the owner of the vessel wishes to "increase the mortgage amount", "transfer the mortgage", "change the terms of the mortgage", or "delete the mortgage" from the Register of Vessels.

If a lien is imposed on a vessel by virtue of a competent court decision, and a written order is produced to the Registrar, the Registrar will record the court's order in the Register of Vessels, without being under an obligation to notify the vessel-owner that such an entry has been made.

Finally, it should be noted that if the grantor of the mortgage (the mortgagor) is a company, the mortgage must also be registered as a charge with the Registrar of Companies.

All documents submitted to the Registrar may be drawn up in English or Hebrew.

2.3 Preferred Modes of Ship Finance Registrations

The mortgage procedure described in 2.2 Document Registration is the preferred mode of registering ship finance in Israel.

2.4 Collateral Guarantees

The collateral guarantees commonly used in Israel, apart from ship mortgages, are personal guarantees (usually issued by shareholders in the borrowing company), guarantees issued by associated or related companies and guarantees issued by holding companies or members of the group to which the borrowing company belongs.

2.5 Public Registry

According to Section 109 of the Shipping (Vessels) Law – 1960, the Vessels Registry and all documents filed with the Registrar in connection with the registration, cancellation of registration or other transaction in connection with a vessel shall be open for inspection by any person. Additionally, under the Freedom of Information Law – 1999, every Israeli citizen or resident has the right to obtain information from a public authority in accordance with the provisions of the law. The public authority is not under an obligation to provide information, inter alia, that is a commercial or professional secret or which has economic value as well as information on commercial or professional matters connected with a person's business or information which may infringe a person's privacy.

In practice, the Registrar will provide access to all entries (registrations, mortgages, charges, pledges); however, access will not be provided to the underlying documents. The Registrar will respond by email with details of the information required.

The fee for an application to the SPA to inspect or verify any entry in the Registry of Vessels currently stands at NIS472.

2.6 Certified Information

All ship certificates are issued both in Hebrew and English and normally will be issued on the day of request, subject to prior arrangement.

2.7 Reflagging

In practice, issues of reflagging must be handled by the parties concerned; the registry will not usually be actively involved in this process.

2.8 Costs of Registering a Ship Mortgage

The following fees must be pre-paid as a condition for receiving the Registrar's services:

- registration of a mortgage deed on the vessel or its deletion - NIS836;
- registration of a mortgage deed in the total amount of the unpaid balances of two or more mortgages between the same parties, on the date of redemption - NIS836;
- Mortgage Transfer or Conversion Deed - NIS836;
- Mortgage Amendment Deed – NIS836;
- Mortgage Increase Deed – NIS-836.

These Shipping and Port Administration fees are correct for the period 1 January 2019 to 30 December 2019.

NIS-836 is currently equivalent to about – GBP180 sterling/USD240.

The SPA does not operate a containers register; however, like all chattels, containers may be made the subject of an attachment order (temporary lien) by a competent court in civil proceedings. The procedure is set out in Part 1 of Chapter 28 of the Rules of Civil Procedure, 1984. Additionally, like other company assets, containers may be made the subject of a pledge (*mashkon*) or fixed charge (*shiabud*). Security interests over assets of companies are registered with the Registrar of Companies under the Companies Ordinance, and, in the case of pledges, with the Registrar of Pledges.

2.9 Multiple Mortgages

Several mortgages may be registered in respect of the same vessel. The consent of a higher preferred recorded mortgage is not required for the registration of a mortgage ranked lower in the order of priorities, and normally the Registrar will not notify the holder of a preferred mortgage of the registration of a new lower mortgage.

Issues of multiple mortgages are dealt with in Section 65 of the Vessels (Shipping) Law – 1960, which states:

- if more than one mortgage is registered on one vessel, the mortgage priority will be as of the date of receipt of applications for registration in the Registrar's office;
- if more than one mortgage application is received on the same day, the mortgage priority will be in accordance with the time at which each of the applications for registration were duly received in the Registrar's office;
- if an applicant has applied for registration of a mortgage, the Registrar shall notify the applicant, at his or her request, if other mortgages are registered on the vessel in question and

whether he or she has already received a request to register another mortgage;

- the mortgagor and the mortgagee may determine in a mortgage deed or other deed signed before the Registrar or his or her representative thereafter a different order of priorities regarding mortgages on the vessel, provided that the other mortgagee who may be injured by the determination, has consented thereto in a deed signed before the Registrar or his or her representative and that this has been approved by the person before whom it has been signed;
- two or more mortgages of equal priority may be registered on one vessel, provided that this is agreed in all the mortgage deeds or in a separate deed signed before the Registrar or his or her representative by the vessel-owner and all mortgagees whose rights are equal as aforesaid;
- the transfer of a mortgage or its endorsement, in full or in part, shall not prejudice the order of priority of the mortgage.

2.10 Pledge Agreements

Pursuant to the Pledges Law, 1967, any act that is defined as a pledge must be registered at the Registrar of Pledges, in order to ensure the rights of the creditor in the asset and in order to permit a third party to peruse and examine whether a certain asset is pledged. A pledge (*mashkon*) is defined as a charge over an asset to secure repayment of a debt. It should be noted that the Registrar of Pledges is only a database. Registration therein is declaratory, and based on the agreement of the parties alone; the Registrar of Pledges does not examine the validity of the pledge.

2.11 Maritime Liens

Israeli law recognises maritime liens for the following debts:

- expenses incurred in judicial sale and distribution of proceeds;
- port dues, fees and other payments;
- expenses of guarding and maintaining the vessel from her entry into the last port until her sale;
- Master, crew, and other employed persons' claims for wages, damages and otherwise;
- salvage and general average;
- death and personal injuries on board;
- collision and certain other property-damage claims; and
- payments in connection with necessities - supplies or services provided to the vessel.

All of these (except "necessaries") rank higher in terms of priority than the statutory right in rem granted by a mortgage.

2.12 Duly Recorded Mortgages

According to Section 70 of the Shipping (Vessels) Law – 1960, the sale of a vessel or part thereof will not impair the validity

of a mortgage attaching thereto at the time of the sale, and it is permissible to transfer all or part of a vessel subject to a mortgage unless otherwise stipulated in the mortgage. Normally, of course, the mortgage deed will require the prior written consent of the mortgagee to any sale or deletion.

According to Section 67 of the above law, redemption of a mortgage must be performed by way of deed signed by the mortgagee and registered in the Registry.

Apart from redemption by way of payment of the mortgage, a mortgage will expire or be transferred upon a court order. Thus, according to Section 69 of the Shipping (Vessels) Law – 1960, where a vessel has been requisitioned and compensation has been paid, the mortgage will be transferred to the compensation fund (unless the court finds that the mortgagee was a co-offender in the event that the vessel was requisitioned by virtue of the commission of an offence and in such a case the mortgage will also expire). Further, Section 71 of the Law provides for the judicial sale of a mortgaged vessel or its sale within the framework of execution of judgment proceedings; in such a case, the balance of the sale price, following payment of court and enforcement costs and preservation and maintenance costs, will be deemed to replace the vessel.

Interestingly, the issue of the augmented duty owed by a mortgage bank towards a third party (for example, a supplier or other creditor of a ship-owning company) to act in good faith and not increase the risk faced by these parties has arisen in litigation in Israel – although the suits have been settled before reaching final judgment. The rationale for the mortgage bank's increased responsibility towards third parties has been set out in Israeli case law not related to shipping matters, and is based on the mortgage bank's special business knowledge, the broad trust placed in it, its deep pockets, and increased ability to minimise third-party risks which confer upon the bank the special status of a "social agency". Arguably, where there is strong evidence that a bank has acted in contravention of its duty of good faith, by paying itself and depriving other creditors, the priority of its security will be undermined. This argument is in line with the UK decision in *The Pickaninny* [1960] 1 Lloyd's Rep. 533.

3. Government Requisition of Vessels

3.1 Authority to Requisition Vessels

The Government has authority to requisition vessels in accordance with the Naval Prize Act 1864. This Act was considered by the Haifa Admiralty Court in two principal cases –A.F. 26861-08-13 *The Estelle* in 2014, and more recently in the case of A.F. 7961-07-15 *The Marianne* in 2016. Both cases related to the Israeli navy's seizure of vessels sent by political activists

to breach the blockade of Gaza. After analysing the relevant legislation the Admiralty Court held that it had the authority to act as a Naval Prize Court and order the requisition of vessels by virtue of the above Act, as well as by virtue of customary international law which recognises a state's right to seize foreign vessels which breach the rules of war at sea. The Court held that, in the event of such a government seizure, the vessel must be brought promptly before the competent court for adjudication regarding the legality of the seizure, protection of the rights of the ship-owner and orders as to the manner for dealing with the vessel. In the case of *The Estelle*, the Court returned the vessel to the owner in view of the delay in bringing her before the Court for adjudication. In the case of *The Marianne*, the Court confirmed its authority, and in view of the vessel's character as a protest vessel – as opposed to a commercial vessel carrying humanitarian goods - ordered the sale of the vessel. In 2019, the Court reconfirmed this jurisdiction in 19424-10-16 *The Zaytouna-Oliva*, where it ordered the judicial auction of the vessel.

It should be noted that the Court also has power to confiscate vessels where used, inter alia, in the commission of an offence or as remuneration for an offence, by virtue of the Criminal Law Procedure (Arrest and Search) Ordinance [New Version] – 1969; the Dangerous Drugs Ordinance [New Version] – 1973, and the Prohibition on Money Laundering Law – 2000.

Finally, under the Law Extending the Emergency (Supervision of Vessels) Regulations [Combined Version] – 1973, the State has power to determine the manner in which an Israeli vessel or vessel eligible to be registered in Israel shall be operated (Section 2) for the purpose, inter alia, of state security or the supply of essential services in times of emergency (Section 3).

4. Capital Markets

4.1 Typical Means of Raising Capital

Mortgage-secured bank loans are the most typical means of raising capital for ship finance in Israel.

4.2 Fleet Mortgages and Syndicated Loans

It is relatively rare to see fleet mortgages and syndicated loans in the Israeli shipping market.

4.3 Role of the Flag of the Vessel

Local banks normally confine themselves to financing the acquisition of vessels registered in the Israeli ship registry in order to avoid potential realisation procedures outside the Israeli jurisdiction.

4.4 Securitisation

As far as is known, no securitisation has taken place in respect of vessels registered in Israel's ship registry in recent years.

4.5 Participation of Capital Markets in Shipping Transactions

See 4.4 Securitisation.

5. Maritime Labour

5.1 Labour Laws and Conventions

As of 2019, Israel has ratified 49 International Labor Organization Conventions and one Protocol, among them all eight Fundamental Conventions. The Technical Conventions include the Placing of Seamen Convention, 1920 (No 9); Paid Vacations (Seafarers) Convention (Revised), 1949 (No 91); C092 - Accommodation of Crews Convention (Revised), 1949 (No 92); C133 - Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No 133); C134 - Prevention of Accidents (Seafarers) Convention, 1970 (No 134); C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No 147).

Israel is not a member of the Maritime Labor Convention, 2006.

Local labour legislation includes Basic Law: Freedom of Occupation – 1992, Enhanced Enforcement of the Labor Law - 2011 and the Settlement of Labor Disputes Law, as well as various collective agreements. More specifically, the rights of seafarers are governed by the Shipping (Seamen) Law – 1973.

5.2 Local Seafarers

The rights of Israeli seafarers are regulated by the Shipping (Seamen) Law - 1973 and the regulations promulgated thereunder, most recently amended in 2016. The law provides that, in so far as possible, an Israeli vessel must be crewed by an Israeli Master and seafarers. A permit may, however, be obtained for a foreign Master, albeit this will only be granted in rare situations. Under the Shipping (Seamen) (Israeli Crewmen of Vessel and Tugs) Regulations – 2016, vessels over 24 metres and tows as defined in the Regulations, regularly visiting Israel, must be manned by an Israeli Master and at least six Israeli seafarers of specific rank. Officers on tugs must be Israeli.

Where the ship does not regularly visit Israeli ports, and the safety regulations require Israeli crew, the Master and one deck officer must be Israeli.

Under the Coastal Shipping (Permit to Foreign Vessel) Law 5766-2005, grant of a permit is contingent upon the employment of two Israeli crew members on each vessel. In the event that officers serve on board the above vessel, at least one of

the two Israeli crew members must hold the rank of an officer (Regulation 13(a) of the Coastal Shipping (Permit to Foreign Vessel) (Application for a Permit) Law – 2012.

Temporary exemptions may be made in respect of all the above requirements.

Currently, about 200 Israeli officers are employed in international shipping and about 70 officers and seamen and women in cabotage. Approximately eight-11 new cadets undergo training each year. There has been a clear decline in the number of Israeli officers employed in Israeli vessels over the past two decades by virtue of the drop in government investment in the education and training of seamen and women, and the lack of incentives for new officers to enter the labour market.

5.3 Minimum Wage Requirements and Overtime

Minimum wage requirements are set by the Shipping (Seamen) Law – 1973, and other labour legislation such as the Protection of Wages Law – 1958 as amended. The current minimum statutory wage for seamen and women is about NIS5,300 (equivalent to about USD1,500) per month, that is, for 182 hours. Overtime is payable at 1.25 times the rate of a regular hour. From the third hour of overtime, it is payable at the rate of 1.5 times a regular hour. Additionally, seamen and women are entitled to social benefits, holiday pay, sickness pay and the like. Various collective agreements set out tables of wages and overtime, in respect of officers and provide for salaries which are considerable higher than the minimum statutory wage.

Additionally, Israel has ratified international conventions governing labour rights, working hours and shifts (the domestic Hours of Work and Rest Law – 1951 does not apply to seamen and women). The seafarer's wages are paid monthly on board, or with his or her consent, directly into his or her bank account. If a seaman or woman is employed for a particular voyage, and the voyage extends beyond the agreed period, they will continue to be employed under the same conditions for the length of the voyage.

5.4 Justified Dismissal

Under Section 149 of the Shipping (Seamen) Law – 1973, a Disciplinary Tribunal may order the dismissal of a seaman or woman who has committed a disciplinary offence. The disciplinary offences are listed in Section 118 and include, inter alia;

- negligence in the performance of the seaman or woman's duties or endangering the health or life of persons in the vessel, the vessel itself or cargo therein;
- performing duties while drunk or drugged, knowingly wasting or mishandling fuel, water, food;

- negligence in maintaining or handling, damaging or destroying equipment, installations, fittings, luggage or baggage of passengers in the vessel;
- permitting a person to board the vessel when such boarding is prohibited, or concealing or assisting in concealing stowaways;
- bringing goods into a vessel liable for customs duty in Israel without paying;
- participating in banned gambling games;
- harassing or harming the vessel's owner or captain in their relations with the authorities of the State of Israel or a foreign state or causing the vessel to be delayed;
- abusing his or her authority against a subordinate staff member;
- exceeding any authority;
- knowingly violating a prohibition imposed on his or her service in the craft;
- refusing to comply with a lawfully given order;
- behaving in a manner inappropriate to his or her job or practice, including good sailing rules;
- failing to comply with the law and regulations, whether or not the offence is a criminal offence; and
- being convicted in a final judgment in a court of law or a competent court for an offence which carries with it calumny, related to his or her job as a seaman or woman.

5.5 Occupational Injuries and Insurance

Seamen and women's compensation and social security rights are governed by the relevant labour legislation described above, as well as a variety of collective agreements.

Additionally, by virtue of statute, the Israeli National Institute of Insurance creates a sophisticated mechanism for providing compensation for the occupational injuries of seamen and women.

5.6 Maritime Disputes

Israeli crew members of vessels subject to Israeli law, including those of foreign registry, are covered by collective agreements applicable to their sector of industry. Chapter 12 of the Shipping (Seamen) Law – 1973 provides for the resolution of labour disputes arising outside any Israeli port, between a ship-owner or captain and all or some of the crew, except for individual disputes. In the absence of agreement through an agreed process, the law provides for the intervention of a "representative" defined as the diplomatic or consular representative of the State of Israel within the meaning of Section 29 of the Evidence Ordinance - 1971.

It should also be noted that Israel operates five regional labour tribunals with an automatic right of appeal to the National Labour Court. The panel in the labour tribunals consists of

judges and representatives of the public. Their jurisdiction covers, inter alia, actions between an employee and an employer; negotiations for an employment relationship; conditions of employment; salary and social conditions in the workplace; the existence of an employee-employer relationship; discrimination in the workplace; statutory severance of the employee-employer relationship and more. Additionally, pursuant to the Labour Tribunal Law - 1969, the labour tribunals are also competent to hear matters between employee organisations and employer organisations or employee and employer organisations inter se.

5.7 Repatriation

It should be noted that Israel has ratified the Merchant Shipping (Minimum Standards) Convention, 1976 (No 147). Accordingly, it is bound to provide local legislation substantially equivalent to the Repatriation of Seamen Convention, 1926 (No 23). No such local legislation has yet been put in place, although various collective agreements provide for repatriation in specified circumstances.

Under these agreements, in the event that a vessel does not visit Israeli ports and the period of employment exceeds 95 days, the shipping company is required to arrange, at its own expense, repatriation of Israeli seamen and women no later than 110 days from the date of departure. Additionally, the shipping company is responsible for repatriation in the event of sickness or an accident.

5.8 International Bargaining Forum (ITF) Agreements

Collective bargaining agreements are commonly used in the Israeli shipping sector and, inter alia, govern wages, employment conditions and the social rights of seafarers.

6. Maritime Courts

6.1 Courts of First Instance and Appeal

The District Court of Haifa sitting as an Admiralty Court handles all cases in rem and cases in personam in accordance with its jurisdiction under the Mandatory Admiralty Courts Acts 1840 and 1861. Appeals against decisions of the Admiralty Court are made to the Supreme Court of Israel. Other civil maritime disputes can fall within the jurisdiction of other competent courts in the country in accordance with the amount claimed.

6.2 Determining a Maritime Dispute

Procedure in the Admiralty Court is governed by the Vice Admiralty Rules 1883, whereas procedure in the civil courts is governed by the Rules of Civil Procedure - 1984. In rem cases may only be heard in the Admiralty Court. In personam cases may be heard by all civil courts, subject to local jurisdiction

competence. The Admiralty Court is very effective and an ex parte order of arrest can usually be obtained in a matter of hours, with a judicial hearing following swiftly. Trial cases are normally concluded in judgments rendered within 18 months of the date of commencement of the action.

6.3 Arbitration and Mediation

Arbitration and mediation are both widely accepted and encouraged in Israel, with the goal of saving court time. Arbitrations are governed by the Arbitration Law - 1968.

6.4 Judicial Sale of Vessels

The Admiralty Court will usually appoint a receiver to handle the sale of a vessel. The receiver may apply to the Court for directions and orders in the event of any unusual developments and the Court will usually respond swiftly to such applications. Receivers are commonly required to provide personal guarantees in connection with the performance of their duties. The Court has discretion to order an arresting party to furnish security to the ship-owner; however, this discretion is rarely exercised. Commonly, the ship-owner will furnish security to lift the arrest, by way of a P&I letter of undertaking, a bank guarantee or a deposit into court.

6.5 Execution of Foreign Resolutions

Foreign judgments are enforced in accordance with the Enforcement of Foreign Judgments Law - 1958. This law applies to civil matters (it does not apply to criminal matters or matters within public law). One of the material conditions for enforcement is reciprocity, another is that the foreign judgment was given less than five years before the date of application of enforcement (unless special circumstances apply). Additionally, the Israeli Court will consider whether the original judgment was given by a court which - under its own laws - was competent to give the judgment, and whether the judgment is final and no longer appealable, the obligation imposed by the judgment is enforceable according to the laws regarding the enforcement of judgments in Israel, and the tenor of the judgment is not repugnant to public policy (ie, is not illegal or immoral), as well as whether the judgment is executory in the State in which it was given.

Defences to enforcement include that the original judgment was given as a result of deceit; if the defendant was not given a reasonable opportunity to argue his or her case; the judgment contradicts another judgment given between the same parties in respect of the same matter; or an action is pending on the same matter before the Israeli Court.

A foreign judgment which has been declared enforceable will, for the purposes of execution, have the effect of a judgment validly given in Israel.

6.6 Order of Priority of Maritime Claims

Priority of claims is determined in accordance with the Vessels (Shipping Law) – 1960. For the order of priorities, including the rank of mortgages, see 2.9 Multiple Mortgages.

6.7 Sister Ships or Vessels Owned by Affiliates

For historical reasons, the jurisdiction of the Israeli Admiralty Court is founded on the provisions of the High Courts of Admiralty Acts 1840 and 1861. Under these provisions, the Admiralty Court has no jurisdiction to order the arrest of a sister ship or associate ship. This was recently reconfirmed in the case of *M/V Huriye Ana*.

Nonetheless, within the context of a civil suit against the shipowner as opposed to admiralty proceedings, the Court could order the “corporate veil” to be lifted and consequently the attachment of sister ships or vessels owned by affiliated companies; it should be noted that attachment orders in civil proceedings are comparable to arrest orders except in so far as concerns collateral security.

6.8 Limitations of Liability

The Israeli Shipping Law (Limitation on a Shipowner’s Liability) - 1965 adopts the International Convention relating to the liability of Owners of Sea-Going Ships (Brussels, 10 October 1957).

As Israel has not ratified the LLMC 1976, no limitation is available for those claims introduced by the LLMC 1976 and not found in the 1957 Convention.

Accordingly, the types of claims subject to limitation of liability are those set out in Articles 1(a), 1(b) and 1(c) of the 1957 Convention, namely:

- loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;
- loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible. Provided, however, that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his or her liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; and
- any obligation or liability imposed by any law relating to the removal of a wreck and arising from or in connection

with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such a ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

The claims which are not subject to limitation of liability are as set out in Article 1(4) of the 1957 Convention, namely:

- claims for salvage or claims for contribution in general average; and
- claims by the Master, by members of the crew, by any servants of the owner on board the ship or by servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependants, if under the law governing the contract of service between the owner and such servants the owner is not entitled to limit his or her liability in respect of such claims.

The Israel Shipping (Limitation on a Shipowner’s Liability) (Amendment) Law 1987, amended the 1965 Law referred to above by adopting the 1979 Protocol and replacing Gold Francs with Special Drawing Rights (SDR), which are maintained by the IMF. Pursuant to the 1979 Protocol, the limitations of liability applicable in Israel are SDR66.67 per tonne for cargo claims and SDR206.67 per tonne for personal claims.

6.9 Exceptional Actions for Ending a Maritime Claim

Maritime claims will usually be settled by way of court judgment determining the validity of the claim following an action in rem or in personam. Nonetheless, there may be cases where the maritime claim is barred by limitation periods prescribed by law. For example, Section 48 of the Vessels (Shipping) Law – 1960 provides that a maritime lien will expire at the end of one year after the occurrence of certain events, such as the date of termination of salvage services, damage from collisions, or the date on which the cause of action arose creating a lien. Additionally, maritime liens may be barred by contract, for example provisions in an underlying charterparty or bill of lading.

7. Legislation on Corporations and Tax System

7.1 New Corporate or Tax Legislation

Israeli shipping companies are subject to the same corporate tax regimes as other companies in Israel, and are not subject to any special regulation or legislation. Incentives are, however, provided to shipping companies in terms of amortisation, and seafarers are provided incentives in terms of income tax deductions.

Likewise, the accounting procedure used by Israeli shipping companies is the same as that used by companies engaged in all other business in Israel. Moreover, the Israeli Companies Law – 1999 which governs matters related to bearer and nominative shares draws no distinction between shipping companies and any other company registered or operating in Israel.

In terms of reform, it should be noted that in 2018, the Income Tax (Taxation of Income from Vessel Activity by Tonnage), 5768 - 2018 was published.

This Government bill proposed to establish provisions regarding the calculation of the taxable income of Israeli shipping companies engaged in the international carriage of goods, in accordance with the “tonnage tax” method, namely, the calculation of the company’s taxable income according to the tonnage of the vessel being operated. The explanatory notes of the bill explain that this reform is vital to safeguard and encourage Israeli shipping companies and their international competitiveness. The tonnage tax benefit is designed to be applied to companies where at least 80% of their revenues are derived from eligible activity. Eligible activity is defined as either operating an eligible vessel or chartering an eligible vessel otherwise than under a bareboat charterparty. The eligible activity refers to carriage of goods port to port outside Israel, in view of the fact that the benefit is intended to encourage international shipping, and the desire not to create a preference for coastal shipping in Israel over transport of goods by land.

This bill has not yet been enacted.

7.2 Tax System

The tax system applied in Israel is personal in nature and accordingly only Israeli companies will be subject to tax. According to Section 1 of the Income Tax Ordinance [New Version] – 1961, a company will be regarded as an Israeli company if it was incorporated in Israel and the control or the management of its business is conducted from Israel. A company registered outside Israel, will not, of course be, considered a company incorporated in Israel. As to residence, the test is factual and based on the degree to which the actual decision-making and daily management of the company are conducted either in Israel or abroad.

7.3 Settling Matters Once a Company Ceases to Exist

As a matter of Israeli practice, a ship-owning or other company must settle its business, file suits, etc, while it retains its legal personality. Usually, all business is taken care of prior to or during the process of dissolution of the company and not after it has ceased to exist.

Israeli Company Law provides for a number of options for the dissolution of a company and the subsequent settlement of its business. The relevant Israeli legislation is as follows: the Companies Ordinance (New Version) 5743-1983, the Companies Regulations (Liquidation) 5477-1987, the Bankruptcy Ordinance 1980, and certain provisions of the Companies Law 5759-1999. In principle, the Israeli system tends to favour creditors over the debtor and its shareholders, although third party-rights are also considered.

Where the company seeking to wind up is solvent, it might choose to undertake voluntary liquidation without court intervention. There are, however, cases where voluntary liquidation is supervised by the court, for example, where there are disputes between shareholders or creditors. This process is not subject to any statutory timeframe.

Where the company has encountered financial difficulties but wishes to reorganise, it may choose to seek court protection. The latter process is appropriate when the company wishes to enter into a settlement with its creditors and attempt recovery. Court-ordered protection against creditors may not exceed nine months; however, the court may extend this period for successive three-month periods in the appropriate circumstances. During this term, the court-appointed trustee will convene creditors’ meetings and otherwise act in accordance with the court’s instructions.

In insolvency proceedings, which can be initiated, inter alia, by a special resolution of the debtor, creditor, employees, another interested party, or the court, the court will appoint an Official Receiver – who is the executive arm of the Ministry of Justice – to serve as temporary liquidator until the creditors’ meeting, at which time a permanent liquidator is appointed. The liquidator is deemed an organ of the company and is subject to court instructions. His or her function is to realise all the company’s assets, examine the creditors’ claims and distribute the company’s assets in accordance with priorities as determined by Israeli law. The Official Receiver oversees the liquidator and represents the company’s creditors. There are no statutory time limits on this process and its duration will depend on the complexity of the proceedings.

It should be noted that, following the issuance of the liquidation order, any transaction in the debtor’s assets or any purported transfer of shares is void unless approved by the court. The debtor effectively loses rights of control over its assets and the liquidator becomes responsible for the equitable distribution of the proceeds obtained from the sale or disposition of the assets.

7.4 International Tax Treaties

Israel has tax treaties with about 60 countries. The text of each of the treaties may be found on the Israeli Ministry of Finance website. The treaties function to prevent double taxation by either determining exclusive right of taxation or providing for a tax credit for tax which has been paid in the country where the tax was generated or granting an exemption in respect thereof.

ISRAEL LAW AND PRACTICE

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J.SPRINZAK was founded in 2003 and is located in the centre of Tel Aviv, with offices in one of the most prestigious buildings in the city. It enjoys strong contacts throughout the shipping sector and has gained an international reputation in the specialised fields of shipping and maritime law, international transport, insurance, international trade and related matters. The firm represents Israeli and foreign insurers, ship-owners, operators and managers, charterers, port agents, ports and terminals, freight forwarders and customs clearance brokers, exporters and importers, commodity traders and corporate

clients in all three court instances. Moreover, with English-trained lawyers specialising in international arbitration law and procedure, the firm offers clients the benefit of its broad international experience, particularly in the arbitration hub of London. Its close working relations with expert counsel abroad also enable swift action to be taken to obtain security for clients' claims, whether by arresting vessels, freight or cargo, or procuring other attachments or garnishee orders on funds, bank accounts or property around the world.

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Joseph S. Sprinzak has wide experience in both commercial and litigation aspects in the fields of shipping, multi-modal transport, marine insurance and aviation law. He is experienced in litigating in all types of marine and shore based disputes involving personal injury, charterparty

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