

Shipping

in Ghana

Report generated on 03 May 2020

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Ghana



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NEWBUILDING CONTRACTS

Transfer of title

When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Generally, title in the ship passes from the shipbuilder to the shipowner whenever the parties intend it to. In practice, the parties to the shipbuilding contract may agree that title passes from the shipbuilder to the shipowner by any of the following means:

- the parties may agree that the vesting of title in the shipowner is a process that continues as the construction of the ship progresses. Therefore, title may finally pass at the completion of construction or upon the achievement of specified and ascertainable milestones by the shipbuilder; or
- where shipbuilding contracts are financed in instalments, the parties may also agree that the shipbuilder will retain title until a substantial portion or the final instalment of the purchase price is paid (in this case, final payment and delivery are simultaneous).

However, where there is no express provision stipulating when title will pass, title passes from the shipbuilder to the shipowner when the ship is delivered to the shipowner.

Refund guarantee

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

First and foremost, every contract of guarantee must be in writing and signed by the guarantor in order to be valid. Second, it is important for the buyer to ensure that the refund guarantee is properly signed by the authorised representative of the bank. In this regard, due consideration must be given to the restrictions and approvals of financial exposure of banks provided for under the Banks and Specialised Deposit Taking Institutions Act 2016 (Act 930) as well as the regulations of the bank itself. Last, for the purposes of enforcement, it is crucial to clearly state all the terms of guarantee, especially the calling-up procedure. This is because the interest of the buyer and the ship builder are not aligned. On the one hand, it is in the interest of the buyer for the refund guarantee to be called up on demand. On the other hand, it is in the interest of the shipbuilder to impose certain preconditions such as the builder's admission of liability or a finding of the builder's liability by an arbitral tribunal or a court.

Court-ordered delivery

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

The court may order specific performance of the contract if the yard refuses to deliver the vessel. This is because 'delivery of a vessel' is a condition of the contract and the builder is contractually bound to deliver the vessel at the date and time agreed by the parties. The court may also order specific performance of the contract without giving the builder the option of retaining the ship on the payment of damages to the buyer.

It is, however, important to note that the order of specific performance is an equitable remedy that is granted at the discretion of the court. So, it is possible for the court to order specific performance where an award of damages will not be an adequate remedy. But it is unlikely to obtain a decree of specific performance to compel a shipbuilder to build and deliver a ship.

Defects

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

In contract, the shipowner may sue the shipbuilder under the Sale of Goods Act 1962 (Act 137) (Sale of Goods Act) if the vessel is defective. This is because, under the Sale of Goods Act 1962, it is an implied condition of a contract of sale that the goods are free from defects that are not declared or known to the buyer before or at the time when the contract is made. This implied condition, however, does not apply where the buyer has examined the goods in respect of defects, which should have been revealed by the examination. This provision applies to shipbuilding contracts because 'goods' are defined broadly under the Sale of Goods Act to include 'movable property'.

In respect of third-party rights, a purchaser from the original shipowner, or other third party, will be able to rely upon the third-party provisions in the Contracts Act 1960 (Act 25) (Contracts Act) in order to bring a claim against the shipbuilder. Similarly, a third party may also bring a claim against the shipbuilder under the general common law tort of negligence.

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

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?

Registration of ships in Ghana and the right to fly the Ghanaian flag are governed by the Ghana Shipping Act 2003 (Act 645) (Ghana Shipping Act). Ships that are eligible to fly the Ghanaian flag are ships that are either registered with, or licensed by, the Ghana Maritime Authority (GMA).

However, ships that are exempt from both registration and licensing may fly the Ghanaian flag in Ghanaian waters. A ship qualifies for registration as a Ghanaian ship if it is a vessel used in navigation and is owned by:

- a Ghanaian;
- a body corporate registered in Ghana;
- a partnership registered in Ghana; or
- a foreign individual or foreign company in registered joint venture with a Ghanaian or a Ghanaian company.

Also, ships owned on a bareboat charter by Ghanaians, body corporates or partnerships registered in Ghana are Ghanaian ships. Canoes and watercraft propelled by oars are not ships under Ghana law. It is mandatory for all Ghanaian ships to be registered, except ships owned by foreign individuals or companies in a registered joint venture with a Ghanaian or a Ghanaian company and ships licensed to operate solely within Ghanaian waters or ships that are exempt from being licensed.

Ghanaian ships less than 24 metres in length, or that have a gross tonnage of 150, or that, irrespective of length or weight, trade or operate solely within the inland waters, are compulsorily required to be licensed. Ships exempt from being licensed are:

- pleasure craft of less than five metres in length and not equipped with propulsion machinery; and
- pleasure crafts of less than three metres in length and equipped with propulsion machinery of not more than 3.75 kilowatts.

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Therefore, although the exempt ships are neither registered nor licensed, they are Ghanaian ships and have the right to fly the national flag in Ghanaian waters. Under Ghanaian law, a ship under construction may be registered in a register book designated for ships under construction. Such registration may be done on execution of a contract for construction of the ship. Once the ship is built or construction is complete, the ship may be removed from the register book for construction and then registered as a merchant ship or a fishing ship.

Who may apply to register a ship in your jurisdiction?

Only Ghanaian ships may be registered in Ghana. The application for registration must be made by either the shipowner or the authorised agent of the shipowner. The application for registration is a request to be registered as the owner of the ship. Therefore, the applicant must satisfactorily prove ownership in order for the application to be granted.

Where a ship has multiple owners, one or more of the owners or their authorised agent may apply for registration. Also, where the owner of the ship is a body corporate, then the body corporate or its agent may apply for registration.

With respect to multiple ownership, it is important to note that under Ghanaian law, property in a ship is divided into only 64 shares. Therefore, only 64 people may be registered as owners of a ship at any point in time. However, it is possible for a share in a ship to be registered in the name of multiple persons as joint owners of the share.

Documentary requirements

What are the documentary requirements for registration?

Generally, a person applying for registration of a ship must present the following documents to the GMA:

- an application to register a ship;
- a declaration of ownership;
- the builder's certificate;
- a notice of the name proposed for the Ghanaian ship;
- the allotment of signal letters; and
- a survey application form.

The applicant must also submit a bill of sale, if there has been a sale by virtue of which the ship or shares in the ship have become vested in the applicant. A bill of sale is, however, not required for newly built ships. Note that the application to register a ship, declaration of ownership, notice of name proposed for a Ghanaian ship, survey application form and allotment of signal letters are forms that must be purchased from the GMA.

If the applicant is a body corporate, the applicant must also submit copies of its certificate of incorporation, certificate to commence business including other incorporation documents determined by the GMA. Where the ship sought to be registered is foreign-built, and the applicant cannot provide a builder's certificate, a declaration that the date and place of building the ship are unknown to the applicant, and that the builder's certificate cannot be procured, will suffice. Where the ship has been condemned by a competent authority, the applicant must also submit an official copy of the condemnation document.

Once all the above-mentioned documents have been submitted, a surveyor will be appointed by the GMA to survey and measure the ship. On completion of the survey and measurements by the surveyor, the applicant must obtain:

- a survey certificate; and
- carving and marking notes issued by the surveyor.

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These must also be submitted to the GMA and the applicable registration fees paid, before a certificate of registry will be issued to the applicant.

Dual registration

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

Under the Ghana Shipping Act, dual registration is not permitted. A foreign ship may only be registered in Ghana where that ship is deregistered from the registry of the foreign country. Therefore, the registration of a ship in Ghana may be cancelled in circumstances where it is found that the ship is also registered in another country.

Mortgage register

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

Details of mortgages created over registered ships are recorded by the Registrar of Ships in the register book in which details of the ship's registration are entered.

There is no separate register book kept for mortgages. Therefore, once a mortgage is created or sought to be created over a registered ship, the relevant register will contain the following information:

- on an application by a registered owner to mortgage a ship, the name and address of the person with authority to mortgage the ship, the maximum amount of the mortgage, if any, the place where the ship may be mortgaged, and the time limit within which the authority to mortgage may be exercised;
- on creation of a mortgage, details of the mortgage including the time the mortgage was presented to the Registrar for registration, as well as the names of the parties and the amount secured on the mortgage;
- on discharge of a mortgage, details of discharge of the mortgage;
- particulars of the transfer of mortgage and the transfer instrument, where interest in the mortgage is transmitted by death, bankruptcy or some other lawful means; and
- particulars of a notice revoking the mortgage.

LIMITATION OF LIABILITY

Regime

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

Although Ghana is not a party to the Convention on Limitation of Liability for Maritime Claims 1976, the Ghana Shipping Act provides for a similar limitation regime. The claims subject to limitation under the Ghana Shipping Act are:

1. claims in respect of loss of life and property, personal injury or damage to property, including damage to harbour works, basins and waterways and aids to navigation, that occur on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting from such operations;
2. claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
3. claims in respect of any other loss resulting from infringement of rights other than contractual rights, that occur in direct connection with the operation of the ship or salvage operations;
4. claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board the ship;
5. claims in respect of the removal, destruction or the rendering harmless of the cargo of a ship; and

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- claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit liability in accordance with this part, and further loss caused by those measures.

The claims listed are subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise, except that the claims referred to in (iv), (v) and (vi) are not subject to limitation of liability where the claims relate to remuneration under a contract with the person liable. The parties who can limit their liabilities are shipowners and salvors. 'Shipowner' includes charterer, manager or operator of a ship. An insurer of liability for claims subject to limitation is entitled to the benefit of limitation to the same extent as the assured.

Procedure

What is the procedure for establishing limitation?

The procedure for establishing limitation is to initiate limitation proceedings. A party that anticipates that a liability claim is likely to be made against it may apply to the High Court for a determination of whether its liability can be limited under the Ghana Shipping Act. The application must be served on persons who may have maritime claims against the applicant in respect of which the applicant seeks to limit its liability. Where the court establishes that the applicant is entitled to a limitation of its liability, the court may determine the limit of the liability, and order the applicant to deposit into court the limited amount in the form of a security or guarantee.

The limit of liability for claims that arises on a distinct occasion is calculated as follows:

- in respect of claims for loss of life or personal injury, 333,000 units of account for a ship with a tonnage not exceeding 500 tonnes; for a ship with a tonnage exceeding 500 tonnes, the following amounts in addition to the 333,000 units of account:
- any other claim, 167,000 units of account for a ship with a tonnage not exceeding 500 tonnes; for a ship with a tonnage exceeding 500 tonnes the following amount in addition to the 167,000 units of account:

The owners of a dock, canal, harbour or port are not liable for a loss or damage caused to:

- a vessel; or
- goods, merchandise or other things whether on board a vessel or not, in excess of an aggregate amount equivalent to 70 units of account for each tonne of the tonnage of the largest ship which has visited that dock, canal, harbour or port within five years to the occurrence of the loss or damage. It is not necessary to provide a cash deposit.

Break of limitation

In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

A person is not entitled to limit their liability if it is proven that the loss resulted from that person's personal act or omission with the intent to cause the loss, or from that person's recklessness and with knowledge that the loss would probably be the result. There is however no reported court decision on this limit being broken in practice.

A limitation of liability security or guarantee deposited into court is available only for the payment of claims in respect of which limitation of liability can be invoked.

Passenger and luggage claims

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

The applicable limitation regime for passenger claims is the statutory regime provided in the Ghana Shipping Act. Ghana is not a party to the Athens Convention 1974.

The limitation of the liability of a shipowner in respect of claims on a distinct occasion for loss of life or personal injury to passengers of a ship is an amount of 46,666 units of account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million units of account. For purposes of the passenger limitation of liability regime, claims for loss of life or personal injury to passengers of a ship means a claim brought by or on behalf of a person carried in that ship:

- under a contract of passenger carriage; or
- who, with the consent of the carrier, is accompanying a vehicle or live animals that are covered by a contract for the carriage of goods.

PORT STATE CONTROL

Authorities

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

The port state control agency in Ghana is the GMA. The GMA was established by the Ghana Maritime Authority Act 2002 (Act 630) to, among others, implement the provisions of the Ghana Shipping Act and fulfil flag state and port state responsibilities in an effective and efficient manner, having due regard to international maritime conventions, instruments and codes.

Sanctions

What sanctions may the port state control inspector impose?

Detention of unseaworthy ships, and imposition of fines or a term of imprisonment upon summary conviction by a court.

Appeal

What is the appeal process against detention orders or fines?

Where the Director-General of the GMA is satisfied that a ship is unseaworthy, he or she may cause the ship to be detained until he or she is satisfied that the ship is fit to proceed to sea. The master or owner of the ship may appeal to the High Court (sitting as the Court of Survey). The Court of Survey (the Court) comprises a High Court judge and two assessors. The judge and each assessor may survey the ship and go on board the ship for inspection.

The Court may also appoint a competent person to survey the ship and report to the Court. The Court may order the ship to be released or finally detained, but unless one of the assessors agrees with an order for the detention of the ship, the ship shall be released wherever it is detained. The Court may also make orders with respect to the costs of an inquiry or investigation, and the costs are recoverable in the same manner as a judgment debt. The master or shipowner may appeal against the decision of the Court to the Court of Appeal.

CLASSIFICATION SOCIETIES

Approved classification societies

Which are the approved classification societies?

The GMA has agreements with three classification societies as recognised organisations authorised to conduct statutory surveys and certification. These are:

- American Bureau of Shipping;
- Korean Register of Ships; and
- Lloyd's Register.

Liability

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

There is no reported local court decision on the potential liability of classification societies. But it is possible that a classification society may be liable in contract (if liability is not expressly excluded) or in tort if the claimant can establish a duty of care, breach of that duty and resultant injury from that breach of duty by the classification society.

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

Can the state or local authority order wreck removal?

Yes. Where a vessel is wrecked in a port, harbour, lake, river, waterway or water course in the country under the control of a public authority in a manner that, in the opinion of the authority, is likely to be an obstruction or danger to navigation or to life boats engaged in life boat service in that port, harbour, lake, river, waterway or watercourse, the relevant authority shall serve notice on the owner of the vessel to remove the vessel within 30 days of receipt of the notice and if the owner fails to remove the vessel within the specified period, the relevant authority may:

- take possession of, and raise, remove or destroy the whole or a part of the vessel;
- lift or buoy the vessel or part of the vessel until it is raised, removed or destroyed; and
- sell in a manner that it thinks fit the vessel or the part raised or removed, and also any other property recovered, and out of the proceeds of the sale reimburse itself for the expenses incurred, and hold the remainder in trust for the persons entitled to it.

The remainder of the proceeds of the sale shall be paid to the relevant authority unless it is claimed by a person entitled to it within one year of the sale.

International conventions

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

There are no international conventions or protocols in relation to wreck removal in force in Ghana. The conventions and protocols relating to collision, salvage and pollution in force in Ghana are the following:

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- the International Convention on Salvage 1989;
- the International Convention for the Safety of Life at Sea 1974 (and its Protocol of 1978);
- the International Regulations for Preventing Collisions at Sea 1972;
- the International Convention on Civil Liability for Oil Pollution Damage 1992;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990;
- the 1992 Fund Convention;
- the International Convention on Maritime Search and Rescue 1979;
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969;
- the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978); and
- the 1996 Protocol to the International Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matters 1972 (MARPOL).

Salvage

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, and Lloyd's standard form of salvage agreement is acceptable. The master of a Ghanaian vessel may, with the owner's consent, conclude contracts for salvage operations on behalf of the owner of the vessel and the master and the owner of a Ghanaian vessel shall have the authority to conclude contracts on behalf of the owner of the property on board the vessel. It is important to note that salvage operations that are performed within the coastal and inland waters of Ghana must be performed by Ghanaian vessels.

SHIP ARREST

International conventions

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

Neither the International Convention Relating to the Arrest of Sea-Going Ships 1952 nor the International Convention on the Arrest of Ships 1999 is in force in Ghana. However, ship arrest in Ghana is regulated by the Courts Act 1993 (Act 459), the High Court (Civil Procedure) Rules 2004 (CI 47) and the Ghana Shipping Act.

Claims

In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Generally, a vessel may be arrested in respect of the following claims:

- a claim for the ownership of a ship or for the proceeds of the sale of a ship arising in actions relating to possession, salvage, damage, necessities, wages or bottomry;
- a claim between co-owners of a ship registered in Ghana over the possession, ownership, employment or earnings of a ship;
- a claim for damage done to or by a ship;
- a claim for salvage for services rendered to a ship;

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- a claim in the nature of towage;
- a claim for necessaries supplied to a foreign ship and a claim for necessaries supplied to a ship elsewhere than in the port to which the ship belongs;
- a claim by a seaman or ship master for wages or salary earned on board the ship;
- a claim in respect of the mortgage of a ship;
- a claim for building, equipping or repairing a ship; and
- a claim arising out of an agreement relating to the use of hire of a ship, or the carriage of goods or persons in a ship, or in a tort in respect of goods or persons carried in a ship.

A ship may be arrested irrespective of the ship's flag or the law governing the claim, so far as the ship is found in Ghana after a claim is made against it or another ship wholly or beneficially owned by the person, who would be liable on the claim. In cases where the claim is made for damages caused by a foreign ship, the Ghana Shipping Act 2003 (Act 645) provides that, either the ship in question or any other ship wholly and beneficially owned by the same owner may be detained if found in Ghana.

A bareboat chartered vessel can be arrested for a claim against the bareboat charterer. But a time-chartered vessel cannot be arrested for a claim against a time-charterer.

Maritime liens

Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Ghana recognises the concept of maritime liens. The following claims against an owner, demise charterer, manager or operator of a vessel would give rise to a maritime lien:

- claims for wages and any other sums due to the master, officers and the other members of the vessel's complement in respect of their employment on the vessel including costs of repatriation and social insurance contributions payable on their behalf;
- claims in respect of loss of life or personal injury in direct connection with the operation of the vessel;
- claims for reward for salvage of the vessel;
- claims for ports, canal and other waterway dues and pilotage dues; and
- claims based on tort arising out of physical loss or damage caused by the operations of the vessels other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

Wrongful arrest

What is the test for wrongful arrest?

An arrest is wrongful if the warrant for arrest was issued against a ship with respect to which a caveat against arrest is in force and the person procuring the arrest did not have good and sufficient reasons for doing so. A caveat against arrest may be entered in a caveat book maintained by the High Court Registry, pursuant to an order made by the High Court, on application by a person who wants to prevent the arrest of the ship.

A person at whose instance a caveat against arrest is entered, may apply to the High Court for an order discharging the warrant of arrest or for the payment of damages in respect of the loss suffered as a result of the arrest. It is at the hearing of such an application that the court will determine whether the arresting party had a good and sufficient reason for procuring the arrest of the vessel in spite of the caveat against arrest.

Bunker suppliers

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?

Yes. A person making a claim for necessaries supplied to a foreign ship or a claim for necessaries supplied to a ship elsewhere than in the port to which the ship belongs, may apply to the High Court for the arrest of the ship in question. Since the application is against the ship, it does not matter that the bunkers were supplied pursuant to a contract with the charterer rather than with the owner of the ship.

Security

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

The arresting party is not required to provide security before securing the arrest of the ship. The arresting party would however have to undertake in writing to pay the fees and expenses of the bailiff who will execute the warrant of arrest.

How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

The conditions precedent to the issue of a caveat against arrest include an undertaking to provide bail within 14 days after receiving notice that an action has commenced. Bail is security provided by the party who seeks to avoid the arrest and is required to be a sum not exceeding an amount specified in the request for a caveat.

However, it is important to note that, the caveat against arrest does not prevent the ship from being arrested. Therefore, upon the arrest of a ship, the High Court may exercise any of its powers to make just and equitable orders and prescribe the amount of security to be paid by the arrested party, in the event that the arresting party is successful in his claim. The amount of money to be paid is likely to be such an amount that would be sufficient to satisfy the claim of the arresting party.

Formalities

What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

There are no special formalities required for the appointment of a lawyer to make the arrest application. Accordingly, there is no need to execute a power of attorney or other document in favour of the lawyer that must be provided to the court.

Ship maintenance

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

Generally, the Registrar of the High Court is responsible for the maintenance of the vessel while it is under arrest.

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However, in circumstances where a foreign ship is detained under the Ghana Shipping Act in respect of damage or personal injury caused, the ship may be detained by an authorised officer of the following institutions:

- the Ghana Armed Forces;
- the Customs Excise and Preventive Service; or
- the GMA.

Proceedings on the merits

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?

The arresting party must pursue the claim on its merits in the courts of Ghana. The power of the High Court to issue a warrant of arrest against a ship is based on the existence of a maritime action in the Court. Therefore, an application for the arrest of a vessel can only be made in circumstances where a writ has been issued.

Injunctions and other forms of attachment

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

Generally, the High Court has the jurisdiction to give such reliefs that are just and equitable in the circumstances. Such just and equitable reliefs may include injunctions ordered by the court. Therefore, an arresting party in respect of an action in personam may apply for a Mareva injunction against a defendant, seeking the orders of the court to prevent the defendant from taking the ship out of Ghana.

It is noteworthy that in order to succeed in such an application, the applicant will generally have to satisfy the elements of an interlocutory injunction. This includes proving to the court that the applicant has a right or interest (not remediable by payment of damages) that would be lost if the injunction is not granted. Furthermore, if a shipowner is a judgment debtor in a suit unrelated to the ship, the ship may still be attached in the process of execution in satisfaction of the judgment debt.

Delivery up and preservation orders

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

In hearing a maritime claim, the High Court has the power to make orders that are just and equitable in the circumstances. Accordingly, where it is necessary during the pendency of a suit, the High Court may make such orders, including orders for the delivery up or preservation of evidence or property, in order to ensure that justice is done between the parties.

Bunker arrest and attachment

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

Yes. Parties to a maritime action may apply for an arrest warrant to be issued against any property against which the

claim or counterclaim is brought. A party to a maritime action may also apply for a freezing injunction with respect to bunkers, after issuing a writ of summons.

JUDICIAL SALE OF VESSELS

Eligible applicants

Who can apply for judicial sale of an arrested vessel?

A party at whose instance an arrest warrant is issued may apply for the judicial sale of the ship, in order to satisfy the claim in respect of which the ship was arrested. Such persons may include mortgagees or persons holding a maritime lien over the vessel.

Procedure

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?

Generally, to initiate the judicial sale of a vessel, the party seeking to sell the arrested vessel must apply for a commission for appraisal and sale of property in the High Court.

Such a party would be required to undertake in writing to pay the fees and expenses of the Registrar (being the costs and expenses arising out of the arrest, seizure, management and subsequent sale of the vessel) on demand. After the undertaking has been lodged at the registry of the court, the Registrar shall sell the vessel and pay into court the gross proceeds of the sale of the vessel.

The Registrar shall make account of the sale to the court and then the court shall hear any party who claims to be interested in the proceeds of the sale with regard to the accounts of the Registrar. In the case of maritime liens over a vessel, the party seeking the judicial sale of the vessel is first required to give notice to:

- the authority in charge of the register of the state of registration;
- holders of registered mortgages, which have not been issued to the bearer;
- holders of registered mortgages issued to the bearer and all holders of maritime liens; and
- the registered owner of the vessel.

Claim priority

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

After the judicial sale, the first payment made out of the proceeds of the sale are the costs awarded by a court and arising out of the arrest and subsequent sale of ship. The balance shall be distributed with first priority to persons who hold a maritime lien under the Ghana Shipping Act. After that, the holders of preferential rights with relation to shipbuilding and ship repairing come next. Last, the holders of the mortgages and any other preferential rights registered under the Ghana Shipping Act.

Legal effects

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

Upon the judicial sale of a vessel in Ghana, the registered mortgages, except those assumed by the purchaser with the consent of the holders, and the liens and any other encumbrances of whatever nature, shall cease to attach to the vessel provided that:

- at the time of the sale, the vessel is within the jurisdiction of Ghana; and
- the sale was effected in accordance with the provisions of the Ghana Shipping Act.

Foreign sales

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

Yes. A valid judicial sale of a vessel in a foreign jurisdiction is likely to be recognised in Ghana.

International conventions

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

No. Ghana is not a signatory to the International Convention on Maritime Liens and Mortgages 1993.

However, the Ghana Shipping Act provides that where a vessel registered in a state party to the International Convention on Maritime Liens and Mortgages 1993 is the subject of a forced sale in any state party, the GMA shall, at the request of the purchaser, issue a certificate to the effect that the vessel is free of all registered mortgages, except those assumed by the purchaser, and of all liens and encumbrances, provided that:

- at the time of the sale the vessel is within the jurisdiction of Ghana; and
- the sale was effected in accordance with the Ghana Shipping Act.

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

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?

The Hague Rules have been ratified and incorporated in Ghanaian law by section 1 of the Bills of Lading Act 1961 (Act 42). Ghana has signed but not ratified the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008.

For purposes of the Bills of Lading Act (incorporating The Hague Rules), the contract of carriage by sea covers the period from the time when the goods are loaded on board to the time they are discharged from the ship. In the

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Supreme Court case of *Delmas America Africa Line Inc v Kisko Products Ghana Ltd* [2005-06] SCGLR 75, Atuguba JSC reiterated at page 104 that: 'from the moment the defendants so received the goods, the contract of carriage began.'

Multimodal carriage

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?

Apart from the Ghana Civil Aviation Act 2004 (Act 678) (Ghana Civil Aviation Act), there is no comprehensive domestic legislation on multimodal transport. The Ghana Civil Aviation Act incorporates the Montreal and Warsaw Conventions.

Title to sue

Who has title to sue on a bill of lading?

The shipper, consignee or endorsee of the bill of lading may sue on the bill of lading. In *Delmas America Africa Line Inc v Kisko Products Ghana Ltd* [2005-06] SCGLR 75, the Supreme Court of Ghana confirmed the decision of the High Court and Court of Appeal that the real owners not mentioned in the bill of lading could sue directly on a contract for the carriage of goods.

Charter parties

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?

A bill of lading may contain an incorporation clause which expressly incorporates specific terms of a charter party. Once incorporated into the bill of lading, the terms of the charter party will be binding on a third-party holder or endorsee of the bill of lading. So, a jurisdiction arbitration clause in a charter party will be binding on a third-party holder or endorsee of the bill of lading once it is expressly referred to in the incorporation clause.

Demise and identity of carrier clauses

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

There are no reported local court decisions on the validity of 'demise' clause or identity of carrier clause under Ghanaian law. But it is unlikely that the 'demise' clause or identity clause will be recognised and enforced in Ghana for two main reasons.

First, by virtue of the incorporation of the Hague Rules into the Bills of Lading Act, it may be argued that article 3(8) of the Hague Rules has outlawed 'demise' clause or identity of carrier clause in Ghana. Second, Ghanaian courts do not appear to give an inflexible adherence to the notion of privity of contract and will most likely not recognise a 'demise' clause or identity of carrier clause.

For example, in the case of *Relish Company Limited v Maritime Agencies* [unreported] of 20 April 2004, the defendant shipping agent argued that he was not liable for damage to the plaintiff's car because he was merely a 'discharging' agent for the carrier at the port of discharge. The court found that the defendant was in fact an agent of the carrier. But

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the court examined all the options available to the plaintiff to pursue the defendant's principal who had no place of business in Ghana, and concluded:

The court found the defendant liable as agents of the carrier for the loss the plaintiff suffered. The practice is to name the vessel, the owner, the charterer and the ostensible carrier on the writ and then obtain orders against the party the court finds to be liable after investigation of the facts at trial.

Shipowner liability and defences

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?

Generally, shipowners will not be liable for cargo damage where they are not the contractual carrier. But a shipowner's ability to disclaim liability under a charterer's bill of lading will depend on the facts of each case. If the bill of lading names the shipowner as a co-carrier or after investigating the facts the court finds that the shipowner is in fact the carrier, he or she may be liable in tort for damage to the cargo. In theory, the shipowner may be able to rely on the terms of a bill of lading where it is able to rely on the Himalaya clause in a bill of lading, although there is no reported case of enforcement of a Himalaya clause in Ghana.

Deviation from route

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

Generally, a deviation from a vessel's route as agreed by the parties will be a breach of the contract and the carrier will be liable for the resulting losses or damage. However, the Hague Rules (incorporated in the Bills of Lading Act) permits any deviation in saving or attempting to save life or property at sea or any reasonable deviation. A deviation in such circumstances will not be deemed to be an infringement or breach of the contract of carriage, and the carrier will not be liable for any loss or damage resulting from the deviation.

Liens

What liens can be exercised?

A carrier may be able to exercise a shipowner or carrier's possessory lien on the cargo for unpaid freight both at common law and in contract. In addition, there are statutory liens prescribed in the Ghana Shipping Act for a maritime claim against the vessel, where the party personally liable on the claim is, both at the time the cause of action arose and at the time the action is brought, the owner or demise charterer in possession and in control of the vessel. A lien on the vessel is exercisable by an action in rem commenced by arresting the vessel.

Delivery without bill of lading

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

The obligation of the carrier is to deliver the cargo to the consignee or other lawful holder of the bill of lading. Where the carrier delivers the cargo without production of the bill of lading, the carrier will be liable in damages for the value of the cargo to the holder of the bill of lading entitled to immediate possession of the cargo. The practice is for the carrier

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to take indemnity by way of a letter of indemnity from the recipient of the cargo if for some reason it was contemplated that the bill of lading will not be available at the time of delivery.

Shipper responsibilities and liabilities

What are the responsibilities and liabilities of the shipper?

The shipper is responsible for providing the carrier with accurate information and particulars such as the marks, number, quantity and cargo weight.

Under article 3(5) of the Hague Rules (incorporated into Ghanaian law), the shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of such particulars, and the shipper will indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in the particulars he provides the carriers. The responsibility of the shipper is also to appropriately label as dangerous, inflammable, explosive or other nature of the danger and to obtain the carrier's consent to carry.

Goods of an inflammable, explosive or dangerous nature to which the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods will be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment (article 4(6) of the Hague Rules).

SHIPPING EMISSIONS

Emission control areas

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

No. There is no emission control area in force in Ghana's domestic territorial waters.

Sulphur cap

What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

The maximum sulphur content of fuel oil used in Ghana's domestic territorial waters is 3.5 per cent m/m. This is in accordance with the specifications of the International Maritime Organization, under Regulation 14 of MARPOL, as revised in 2010. The Maritime Pollution Act 2016 (Act 932) incorporates the provisions of MARPOL and its amendments, and does not establish a regime for enforcement of MARPOL specifications.

SHIP RECYCLING

Regulation and facilities

What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

There is no specific international ship recycling regulation in force in Ghana. The general international ship recycling regulations that apply in Ghana are MARPOL 73/78 (International Convention on Prevention of Pollution from Ships), Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, the Bamako Convention and the

UNCLOS.

The domestic regulation on ship recycling in Ghana is not extensive. The Ghana Shipping Act provides that a written permission of a receiver is required for the breaking up of a vessel prior to its removal from Ghana. The Environmental Protection Act 1994 (Act 490) regulates the protection of the environment from various forms of pollution, and the Hazardous and Electronic Waste Control and Management Act 2016 (Act 917) regulates the control, management and disposal of hazardous waste, electrical and electronic waste.

There is no ship recycling facility in Ghana. However, the Ghana Maritime Authority currently pursues a membership policy under which companies desirous of engaging in ship recycling activities apply to be registered with the authority.

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

Which courts exercise jurisdiction over maritime disputes?

The High Court of Ghana is the court of first instance for all maritime disputes. A party aggrieved by the decision of the High Court, that party has a right to appeal to the Court of Appeal. An appeal against the decision of the Court of Appeal is heard by the Supreme Court of Ghana, which is the apex court of the land.

Service of proceedings

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

Where a plaintiff intends to issue a writ of summons on a defendant outside Ghanaian territorial jurisdiction, the plaintiff would have to seek leave of the High Court to serve notice of the writ of summons on the defendant. If leave is granted, the High Court will indicate on the notice the time limit within which the defendant must enter appearance.

Service of notice of a writ of summons and other court proceedings may be effected by either the government of the country in which the defendant resides, the judicial authorities of that country or through the Ghanaian consul in that country. Once service has been effected on the defendant, the High Court will accept as proof of service on the defendant, a certificate issued by either the government or judicial authority of that country or by a Ghanaian consul in that country, stating that the defendant was either served personally or in accordance with the laws of that country.

Arbitration

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

The domestic arbitral institution is called the Ghana Arbitration Centre, and it has a list of arbitrators with varying specialisations. However, there are no recognisable arbitrators who specialise in maritime arbitration. There is no publicly available information on the number and frequency of arbitrations at the Ghana Arbitration Centre. However, there is an increasing use of the Centre as the preferred forum for arbitration in Ghana.

Foreign judgments and arbitral awards

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

Foreign arbitral awards are enforceable in the High Court, if the court is satisfied that:

- the award was made by a competent authority under the laws of the country in which the award was made;
- a reciprocal arrangement exists between the Republic of Ghana and the country in which the award was made; or
- the award was made under the New York Convention for the enforcement of foreign arbitral awards or under any other international convention on arbitration ratified by the parliament of Ghana.

The party seeking to enforce the award must produce as evidence of the arbitral award, the original copy of the award or an authenticated copy and the agreement pursuant to which the award was made. A foreign arbitral award may not be enforced where:

- there is an appeal pending against the award in any court under the law applicable to the arbitration;
- the award has been annulled in the country in which it was made;
- the party against whom the award is invoked was not given sufficient notice to enable the party present the party's case;
- a party, lacking legal capacity, was not properly represented;
- the award does not deal with the issues submitted to arbitration; or
- the award contains a decision beyond the scope of the matters submitted for arbitration.

With respect to the enforcement of foreign judgments, a judgment creditor may apply to the High Court to have a foreign judgment enforced. A foreign judgment may only be enforced in Ghana, if it is a judgment of a superior court of a country, in respect of which there is in force in Ghana a legislative instrument of reciprocity of treatment of judgments.

A person seeking to enforce a foreign judgment from a country that is not covered by a legislative instrument of reciprocity of treatment of judgments is required to commence a fresh action to enforce the judgment.

A party seeking to enforce a foreign judgment must first register the judgment in the High Court. When the judgment is registered, it is considered as a decision of the registering court, and the judgment creditor may levy execution against the judgment debtor provided that:

- the judgment is final and conclusive between the parties; and
- there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty.

Asymmetric agreements

Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

In Ghana, arbitration agreements are generally subject to the agreement of the parties involved. Choice of forum is generally subject to the agreement of the parties, but where they are unable to agree on a common forum, the arbitral tribunal determines the forum for the parties.

Breach of jurisdiction clause

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

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A party may bring an application under common law to issue an anti-suit injunction. Considering the nature of the rules of Court on injunctions generally, an anti-suit injunction has to be based on an existing claim. For instance, breach of contract.

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?

Where a party institutes domestic proceedings in breach of a contractual provision for a foreign court or arbitral tribunal to have jurisdiction, the defendant may apply to the Court for a stay of the proceedings of the court. In considering the application for stay of proceedings, the Court may consider issues such as the jurisdiction that has the closest connection to the dispute.

LIMITATION PERIODS FOR LIABILITY

Time limits

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

Under the Limitation Act, 1972 (NRCD 54) (Limitation Act), the time limit for actions founded on tort or contracts including quasi contracts, is six years from the date on which the cause of action accrued. This limitation period applies to an action to recover seamen's wages.

However, the limitation period does not apply to maritime claims, which are enforceable in rem. Where the claim is for damages for personal injury the limitation period is three years from the date of the act or omission that caused the personal injury, or knowledge if later. It is important to note that, the limitation periods stated above do not apply to any proceedings in respect of the forfeiture of a ship or of an interest in a ship under any enactment relating to merchant shipping.

Further, under the Shipping Act, the time limit for instituting an action in respect of salvage services is two years after the date of completion of the salvage operations. The person against whom the claim is made in respect of salvage services may at any time during the period of two years extend the period by a declaration to the claimant. Parties cannot by agreement extend the limitation period provided by the statutes, unless the statute specifically confers that right on the parties.

Under the Bill of Lading Act (incorporating the Hague Rules), the carrier and the ship shall be discharged from all liability in respect of loss of damage unless the suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Also, under the Ghana Ports and Harbour Authority Act, 1986 (PNDC 160), a civil action against the Ghana Ports and Harbour Authority or its employees for acts done or intended to be done pursuant to a duty shall abate unless the action is commenced within 12 months after the act, neglect or default complained of occurred, or where the injury or damage continues, within 12 months after it ceases.

Court-ordered extension

May courts or arbitral tribunals extend the time limits?

Generally, the court has no power to extend the limitation period stated under the Limitation Act, unless there is a basis for the extension under a statute. There are a number of situations in which a special application may be made to initiate an action out of time or in which time does not begin to run. These include cases of a legal disability of the person to whom the cause of action accrued, cases in which the action is based on the fraud of the defendant, and

cases where material facts relative to the cause of action and of a decisive character were outside the knowledge of the plaintiff until two years or more after the commencement of the three-year limitation period.

Under section 403 of the Shipping Act, the court has a discretion to extend the limitation period for instituting an action in respect of salvage service on justifiable grounds and on the conditions that it considers fit.

Also, the court has the power to extend procedural time limits in maritime claims. For instance, the court has the power to grant the claimant an extension of time to serve proceedings on the defendant in certain circumstances. An arbitral tribunal is likely to extend the time limits if the parties agree.

MISCELLANEOUS

Maritime Labour Convention

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

Ghana ratified the Maritime Labour Convention on 16 August 2013, and passed the Ghana Shipping (Maritime Labour) Regulations 2015 (LI 2226) (the Regulations), which specifically deal with the application of the MLC in Ghana. In Ghana, ships of 500 gross tonnage or more, which are in the territorial waters of Ghana and fly the flag of a member state of the MLC must obtain certification from the GMA. The certification is referred to as the Maritime Labour Certificate. The Maritime Labour Certificate is prima facie evidence that the ship complies with the MLC.

Further, under the Regulations, no ship owner can operate a ship in Ghana unless the ship has been issued with a valid declaration of MLC.

The ship owner is required to keep the MLC and Maritime Labour Certificate in a conspicuous place at all times on board the ship.

Also, an authorised officer of the GMA has the authority to inspect a Ghanaian ship and a foreign ship when it arrives at a Ghanaian port to ensure that the ship complies with the MLC. The Regulations also provide rules for seafarer compensation, for loss or foundering of ship, manning levels, conditions of employment, accommodation, health protection, medical care and security protection of seafarers.

Relief from contractual obligations

Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

The Ghanaian courts strictly enforce the legal rights and liabilities of parties to any shipping contract once the parties have freely entered into the contract and are of similar bargaining power.

Generally, the court would refuse to grant any party to a contract a relief from the enforcement of any right or liability against the person on the basis of mere inconvenience or hardship caused by economic conditions.

However, the court may in exceptional circumstances grant relief from the enforcement of legal rights and liabilities of the parties if the economic conditions affected the fundamental obligations of either party under the contract or affected the subject matter of the contract in a way that makes the contractual obligation radically different from what was originally undertaken under the contract.

It is important to note that parties are free in Ghana to incorporate as an express term (force majeure clause) in their agreement that a change in the economic conditions that makes the contractual obligations onerous to perform would

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relieve either party of any liability. In this case, the court would honour the wishes of the contracting parties.

Other noteworthy points

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

Although Ghana has ratified many international conventions relating to shipping, few have been incorporated into domestic law. Unless an international convention is incorporated into domestic law, it does not have the force of law in Ghana.

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

No updates at this time.

LAW STATED DATE

Correct on

Give the date on which the information above is accurate.