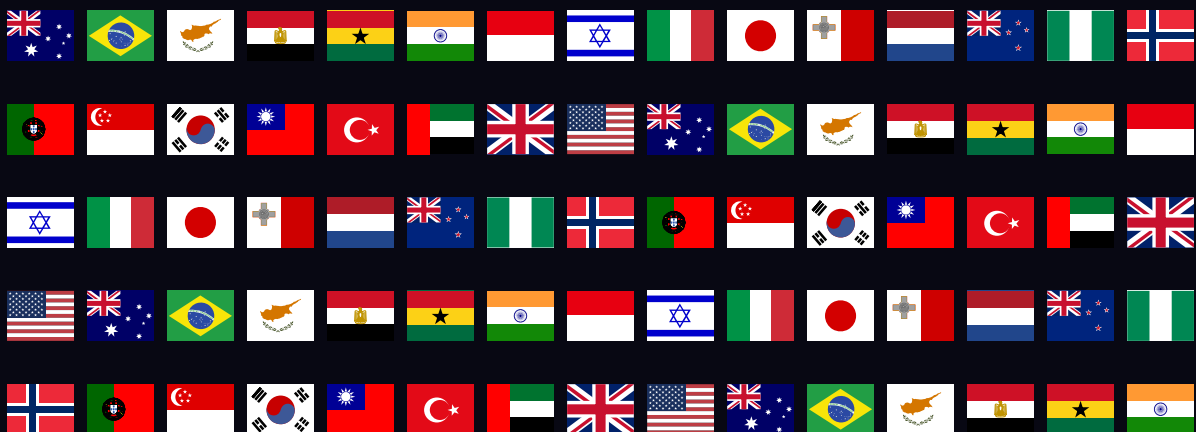


SHIPPING

New Zealand



Shipping

Consulting editors

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MFB Solicitors

Quick reference guide enabling side-by-side comparison of local insights into newbuilding contracts; ship registration and mortgages; limitation of liability; port state control; classification societies; collision, salvage, wreck removal and pollution; ship arrest; judicial sale of vessels, carriage of goods by sea and bills of lading; shipping emissions; ship recycling; jurisdiction and dispute resolution; international conventions; and recent trends.

Generated 26 June 2023

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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?

Title will pass in accordance with the terms of the contract, or, pursuant to the provisions of section 144 of the Contract and Commercial Law Act 2017 (CCLA) (title passes when the parties intend it to pass, with regard to the terms of the contract, the conduct of the parties and circumstances of the case). Typically, title will pass on delivery.

Law stated - 30 April 2023

Refund guarantee

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

Under the Property Law Act 2007, section 27, a contract of guarantee must be in writing and signed by the guarantor. (Note that it is not common for refund guarantees to be issued in the New Zealand shipbuilding industry.)

Law stated - 30 April 2023

Court-ordered delivery

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

An order for specific performance is available, but it is a discretionary remedy and will only be given where an award of damages is inadequate.

Law stated - 30 April 2023

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?

Typically, a claim would lie in contract against the shipbuilder, at the suit of the shipowner. However, a shipbuilding contract will often contain provisions seeking to limit or exclude liability in respect of defective workmanship or materials.

Law stated - 30 April 2023

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?

The Ship Registration Act 1992 created the New Zealand Register of Ships (the Register) for commercial vessels and pleasure craft. The Register comprises two parts. Part A, which is aimed principally at larger commercial vessels, confers nationality, provides evidence of ownership and enables registration of a mortgage, whereas Part B, which is mainly for recreational vessels, only confers nationality, is less expensive and easier to achieve.

All New Zealand-owned ships exceeding 24 metres register length must be registered in Part A, except for pleasure craft, ships engaged solely on inland waters and barges that do not proceed on voyages beyond coastal waters (although they may register). Vessels on demise charter to New Zealand-based operators may also register in Part A. New Zealand-owned ships that are pleasure vessels, or do not exceed 24 metres register length, or ships jointly owned or majority-owned by New Zealand citizens or residents, may register in Part B.

It is not possible to register a vessel under construction (the vessel would not be a 'ship' as defined in the Ship Registration Act 1992).

The Fisheries Act 1996 separately established a Fishing Vessel Register for fishing vessels operating in New Zealand fisheries waters.

Law stated - 30 April 2023

Who may apply to register a ship in your jurisdiction?

Only New Zealand nationals (whether individuals or companies) are entitled to register a ship (or where the majority of the owners are New Zealand nationals).

Law stated - 30 April 2023

Documentary requirements

What are the documentary requirements for registration?

An application for Part A registration must be made in the prescribed form, together with a declaration of ownership and nationality, builder's certificate, tonnage certificate, any documents relating to a change in ownership (eg, bill of sale, deletion certificate of previous registry) and any other document required by the registrar, depending on the ship concerned (a list is available on the Maritime New Zealand website). The requirements of Part B are less demanding. Only the prescribed form and evidence of the closure of any previous registration are required.

Law stated - 30 April 2023

Dual registration

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

The Ship Registration Act 1992 provides that vessels on demise charter to New Zealand-based operators may register in Part A.

Law stated - 30 April 2023

Mortgage register

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

Maritime New Zealand, through the registrar, shall record the particulars of the mortgage in the Register and endorse

on the instrument of mortgage the fact that it has been entered and the date and time of entry.

Law stated - 30 April 2023

LIMITATION OF LIABILITY

Regime

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

Limitation of liability is governed either by contract or by default statutory regimes incorporating international conventions on limitation of liability.

Both the Hague-Visby Rules (incorporated into New Zealand law by virtue of section 209 of the Maritime Transport Act 1994 (Maritime Transport Act)) and the Contract and Commercial Law Act 2017 (Part 5) govern limitation of liability relating to the carriage of goods.

Limitation of liability under the Maritime Transport Act was reformed in 2013 to give the Convention on Limitation of Liability for Maritime Claims 1976 as amended by the 1996 Protocol (LLMC) the force of law in New Zealand (see section 84A and Part 7 of the Maritime Transport Act generally). The LLMC regime allows shipowners (owners, charterers, managers or operators of a seagoing ship), salvors and insurers to limit their liability for the claims listed in article 2 of the LLMC Convention. However, section 86(4) of the Maritime Transport Act states that articles 2, 3 and 9 of the LLMC Convention do not limit or affect claims related to the removal of wrecks by either a regional council or the director of Maritime New Zealand, the removal of hazards to navigation, or personal injury. In those cases, the provisions of the Maritime Transport Act or the Accident Compensation Act 2001 will take precedence. New Zealand adopted the new 2015 LLMC liability limits on 8 June 2015.

New Zealand's position in relation to limitation of liability is slightly different from that of its Pacific neighbours. Fiji is not a party to the LLMC nor the 1996 Protocol: as noted in *Cruz Holdings Limited v Concrete Solutions (Fiji) Limited* [2021] FJHC 273 at [45] Fiji has acceded to the International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957 (the 1957 Convention) only. However, under Part 5 of the Maritime Transport Act 2013 (Fiji), a charterer is entitled to rely on a limitation fund constituted by an owner. Tonga is a signatory to both the LLMC and the 1996 Protocol. However, *DS Venture Limited v Tonga Cable Limited* [2019] TOSC 119 held that the liability limits provided for in the 1957 Convention should be imposed, as provided for in section 2 of the Shipping (Limitation of Liability) Act 1980 (Tonga).

Law stated - 30 April 2023

Procedure

What is the procedure for establishing limitation?

Pursuant to the Admiralty Act 1973, the New Zealand High Court has jurisdiction over admiralty in rem and in personam proceedings (the District Court has jurisdiction over admiralty in personam proceedings where the amount in dispute does not exceed NZ\$350,000). Part 25 of the High Court Rules relates to the High Court's admiralty jurisdiction. The High Court Rules does not contain any specific provisions governing the constitution of a limitation fund or whether limitation can be pleaded without setting up the fund. Currently, the courts are left to apply the LLMC provisions (which have the force of law in New Zealand) and adopt whatever procedure is necessary in the circumstances of the case, using the inherent jurisdiction of the court and general powers under the High Court Rules. However, the High Court Rules do state that actions for limitation of liability must be in the form of an action in personam and require the person seeking relief to name at least one person (with claims against it) as the defendant in the proceeding.

The limits that apply are calculated on the basis of the vessel's tonnage as prescribed by the LLMC.

Law stated - 30 April 2023

Break of limitation

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

Article 4 of the LLMC applies: the limit can only be broken if the loss resulted from a personal act or omission, committed with the intent to cause such loss, or recklessly and with the knowledge that such loss would probably result. Limitation has never been broken in New Zealand.

Law stated - 30 April 2023

Passenger and luggage claims

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

New Zealand is not a party to the Athens Convention. The Contract and Commercial Law Act 2017 (CCLA) applies to domestic carriage and will cover damage to luggage. Under the CCLA, a carrier will be strictly liable for loss or damage up to a limit of NZ\$2,000 per piece. A carrier has unlimited liability for loss of or damage to hand luggage if caused by the negligence or wilful default of the carrier.

The Accident Compensation Act 2001 contains a statutory bar on claims for personal injury suffered in New Zealand or suffered by New Zealand residents during international carriage (if the injury would have been covered by the Act).

Law stated - 30 April 2023

PORT STATE CONTROL

Authorities

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

Port state control is governed by the Maritime Transport Act and is carried out in accordance with the Tokyo Memorandum of Understanding. The regulatory body is Maritime New Zealand, and the Maritime Transport Act gives the director of Maritime New Zealand certain powers of inspection, investigation, detention and rectification.

Law stated - 30 April 2023

Sanctions

What sanctions may the port state control inspector impose?

Under section 55 of the Maritime Transport Act, the director of Maritime New Zealand has powers to detain a vessel or impose conditions on the operation of the vessel. It is an offence to contravene or fail to comply with a prohibition or condition notified by the director. On conviction, a person committing an offence is liable to a fine or imprisonment.

Law stated - 30 April 2023

Appeal

What is the appeal process against detention orders or fines?

It is possible to appeal to the New Zealand District Court.

Law stated - 30 April 2023

CLASSIFICATION SOCIETIES

Approved classification societies

Which are the approved classification societies?

Maritime New Zealand keeps a list of recognised classification societies. These are:

- American Bureau of Shipping;
- Bureau Veritas;
- DNV GL;
- Nippon Kaiji Kyokai; and
- Lloyd's Register.

Law stated - 30 April 2023

Liability

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

It is unlikely that a classification society will be held liable for breach of duty of care to subsequent purchasers in circumstances where class certificates are issued in a statutory capacity for the purpose of safety (see *Attorney-General v Carter* [2003] 2 NZLR 160 (CA)). It is unclear whether a classification society will owe a duty of care in other circumstances.

Law stated - 30 April 2023

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

Can the state or local authority order wreck removal?

Where a 'wreck' will be hazardous to navigation, the director of Maritime New Zealand may:

- require a vessel's owner, its master (or person in command) or agent of the owner, to remove the whole or any part of that hazard in a manner specified by the director and within a time specified by the director; or
- arrange to have the hazard removed, if:
 - the vessel's owner has not complied with the notice to remove the hazard;
 - no regional council has jurisdiction over the place where the hazard is located; and
 - any action taken to remove the hazard is not inconsistent with the Resource Management Act 1991.

Similarly, regional councils have the power to remove a wreck under Part 3A of the Maritime Transport Act. Under those provisions, a regional council may take steps in accordance with the Maritime Transport Act to remove and deal with any wreck within its region that is hazardous to navigation. These include requiring the vessel's owner or agent of the vessel's owner to remove the wreck within a time and in a manner satisfactory to the regional council. In addition, the council may destroy, dispose of, remove, take possession of, or sell a wreck (or any part of it) if the regional council has made reasonable efforts to find the owner or agent and that owner or agent either cannot be found or fails to remove the whole of the wreck within the time specified or in a manner satisfactory to the council.

Law stated - 30 April 2023

International conventions

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

The following international conventions are in force in New Zealand:

- 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 1973/78 (MARPOL);
- the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC);
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
- the United Nations Convention on the Law of the Sea (UNCLOS);
- the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC Convention);
- the Marine Pollution by Dumping of Wastes and Other Matter, 1971 (London Dumping Convention) and 1996 Protocol;
- the International Convention on Salvage 1989;
- the Convention on the International Regulations for Preventing Collisions at Sea 1972; and
- the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910.

The following conventions are not in force in New Zealand:

- the Nairobi International Convention on the Removal of Wrecks 2007; and
- the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision 1952 (although the Admiralty Act nonetheless reflects its provisions).

Law stated - 30 April 2023

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 agreement. The Lloyd's standard form of salvage agreement is acceptable.

Typically, salvage operations will be undertaken by professional salvage operators.

Law stated - 30 April 2023

SHIP ARREST

International conventions

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

New Zealand is not a signatory to any international convention regarding the arrest of ships. Ship arrest is instead provided for in the Admiralty Act 1973 and Part 25 of the High Court Rules.

Law stated - 30 April 2023

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?

Vessel arrest is a remedy available for claims listed under section 4(1) of the Admiralty Act 1973, or for claims that are maritime liens in common law in New Zealand. The particular vessel's flag is immaterial for the purpose of New Zealand law.

Section 4(1) of the Admiralty Act 1973 lists 19 different claims, which include those:

- concerning possession or ownership of a ship;
- in respect of a mortgage or charge on a ship;
- for damage done or received by a ship;
- for death or injury due to a defect in a ship (or its equipment);
- arising out of a carriage of goods or hire agreements for a ship;
- in the nature of salvage, towage or pilotage;
- in respect of goods, materials or services supplied to a ship;
- in respect of construction, repair or equipment of a ship;
- for crew wages or disbursements;
- arising out of a general average act;
- arising out of bottomry; and
- for the forfeiture or condemnation of a ship or carried goods.

If the claim is one listed in section 4(1), the in rem claim and warrant for arrest generally may only be against the subject vessel. However, sister or associated vessels may be arrested in the following circumstances:

- the claim must be one listed in section 4(1)(d) to (r) of the Admiralty Act 1973 (including, for example, claims for damage done or received by a ship, damage to goods carried on the ship, or in respect of goods, materials or services supplied to a ship);
- the person who would be liable on such claim by an action in personam must, when the cause of action arose, be the owner or charterer of, or in possession or in control of, the subject vessel; and
- the other vessel must, when the claim is brought, be beneficially owned or on charter by demise to such person.

Maritime liens

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

New Zealand does have the concept of a maritime lien.

The Admiralty Act 1973 provides that maritime liens include:

- damage done by a ship;
- salvage;
- seafarers' wages;
- master's wages and disbursements; and
- bottomry and respondentia.

A mortgage or charge against the vessel is also a maritime lien.

Law stated - 30 April 2023

Wrongful arrest

What is the test for wrongful arrest?

Wrongful arrest requires bad faith or subjective recklessness (*Transpac Express Ltd v Malaysian Airlines* [2005] 3 NZLR 709 (HC)).

Law stated - 30 April 2023

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?

Generally, no, but a supply confirmed by the Master may give rise to a statutory lien under the Admiralty Act giving rise to an *in rem* claim against the vessel.

Law stated - 30 April 2023

Security

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

Counter security is not required, although as part of the court papers to be filed on an application for an arrest warrant, the arresting party must provide a written indemnity to the Admiralty Registrar covering any fees and expenses including harbour dues (and to cover the Admiralty Registrar against any liability relating to lawfully executing the warrant).

The Admiralty Registrar also typically requires payment of funds into court as security for such fees and expenses at

the same time the application is filed. The amount varies and is dependent on the Admiralty Registrar's view of what his initial upfront costs will be for the particular vessel to be arrested. In our experience, it tends to be in the region of NZ \$10,000 to NZ\$20,000. From time to time, the Admiralty Registrar may then request additional security to cover fees, expenses and harbour dues as the original payment is exhausted.

Law stated - 30 April 2023

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?

Generally, the parties will agree on security issues without court intervention (eg, if a ship is arrested and the claim is covered by insurance, the insurer will typically offer security). Otherwise, at the first level, the registrar will normally address any security issues. If the parties disagree on security or one party wants to challenge the registrar's decision, an application may be made to the High Court.

There is no prescribed upper limit on security, but it would not exceed the value of the ship plus all relevant costs. The arresting party is formally entitled to an amount paid into court reflecting its reasonably arguable best case, together with interest and costs. However, in practice the court will usually release the vessel on the provision of an irrevocable undertaking from an International Group P&I Club.

Law stated - 30 April 2023

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?

Neither particular formalities nor a power of attorney is required. The court papers on the application must include an affidavit from the applicant (outlining the claim, whether any caveat against the issue of an arrest warrant has been filed, and any other relevant information). If the affidavit is to be sworn overseas, it may be sworn before a commissioner of the High Court of New Zealand, a person who is authorised to administer oaths by the law of the foreign country, notary public, someone otherwise authorised by a judge to administer the oath. If translations are necessary (whether for the body of the affidavit or relevant documents exhibited), the arresting party also needs a separate interpreter's affidavit exhibiting both the original foreign language document and its translation. Translations will generally be required to be certified.

Either the arresting party or its solicitor also needs to sign an indemnity for the Admiralty Registrar's costs of arrest and taking care and custody of the vessel. Other court papers where a signature is required can also be signed by the solicitor.

The court will require originals of the papers making up the in rem claim and arrest application for filing (although where relevant documents have been appended to affidavits, these need only be copies). But if the deponent for an affidavit is overseas and time requires it, a copy could be filed to put matters in motion together with an undertaking from the person filing to forward the original once received. In only limited cases (typically, a memorandum of counsel) will the court accept an electronic filing.

An arresting party should allow ideally 48 hours to prepare and file an arrest application and for the Admiralty Registrar to put matters in motion. Where there is urgency and the ship is at port, the arrest may be applied for and effected that

same day.

Law stated - 30 April 2023

Ship maintenance

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

The Admiralty Registrar takes custody of the arrested vessel and is responsible for its care, and the arresting party will need to pay his or her costs of doing so. If the plaintiff is successful and a fund is constituted, the plaintiffs' costs of arrest are given a priority over claims other than the court or registry costs.

Law stated - 30 April 2023

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?

A party is not required to pursue the claim on its merits in the New Zealand courts, but there must be a substantive claim in an appropriate jurisdiction. Vessels may be arrested in support of foreign proceedings.

Law stated - 30 April 2023

Injunctions and other forms of attachment

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

A party could seek a 'freezing order' from the court, restraining a respondent from removing assets located in or outside New Zealand (and disposing of, dealing with, or diminishing the value of, those assets). The application must be accompanied by an undertaking to pay any damages the court awards against the applicant. Where the application is 'without notice', the applicant also needs to provide full and detailed disclosure of all material facts, including any possible defences, and all information casting doubt on its ability to comply with its undertakings.

It could be harder to obtain a freezing order as opposed to arresting a vessel, as there are more onerous requirements. The court would need to be satisfied that:

- the applicant has a good arguable case and a cause of action recognised by the New Zealand courts;
- there are assets to which the order can apply (which may be outside the jurisdiction); and
- there is a real risk the respondent will dissipate or dispose of those assets.

Law stated - 30 April 2023

Delivery up and preservation orders

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

Interim orders are available for the detention, custody or preservation of any property (subject to any ordered conditions). The court can also order the sale of property where it is perishable or likely to deteriorate or for any other good reason the court considers justifies it being sold before the hearing. Charging orders (operating as 'stop' orders

preserving property) are available, charging the defendant's property with the payment of a sum the entitled party may obtain or has obtained by judgment.

Search orders are aimed at preserving evidence and are normally sought without notice at the very start of a proceeding. They may direct the defendant to hand over documents or other property. Because they are so invasive, the court is likely to require multiple undertakings, and must be satisfied the plaintiff has a strong prima facie case, the potential loss or damage to the plaintiff, if the search order is not made, will be serious, there is sufficient evidence the defendant has the relevant evidentiary material, and there is a real possibility the defendant will destroy such material.

Law stated - 30 April 2023

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?

It is unlikely bunkers can be arrested separately and as distinct from the vessel. The High Court has expressed the view that a vessel would include permanent structures, and its components and accessories, but not its bunkers. A freezing order may be available in respect of bunkers.

Law stated - 30 April 2023

JUDICIAL SALE OF VESSELS

Eligible applicants

Who can apply for judicial sale of an arrested vessel?

Any party to the proceeding (including interveners) may request a commission for the appraisal and sale.

Law stated - 30 April 2023

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?

Either before or after judgment, a party may make a request for commission for appraisal and sale. The commission issued by the court directs the registrar to arrange for the vessel to be appraised and sold for the highest price that can be obtained. The sale proceeds are then paid into court together with a filed certificate of appraisal showing an account of the sale. Generally, the mode of sale will be by tender using brokers the registrar has appointed. Timing will depend on whether the application for sale is opposed, the state of the vessel and whether there is a market for it. Costs for advertising and conducting the sale will be the amount actually paid by the registrar.

Law stated - 30 April 2023

Claim priority

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

The order of priority is not immutable but, subject to any discretionary element taking into account the circumstances of the case, the customary order is as follows:

- costs and expenses of the court and registrar;
- costs and expenses of the producer of the fund (generally the arresting party);
- maritime liens (excluding ship mortgages);
- possessory liens;
- ship mortgages;
- statutory claims under section 4(1) of the Admiralty Act 1973; and
- other claims.

Law stated - 30 April 2023

Legal effects

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

A judicial sale will give the purchaser clear title free of encumbrances (including maritime liens).

Law stated - 30 April 2023

Foreign sales

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

Yes, where the foreign court has competent jurisdiction.

Law stated - 30 April 2023

International conventions

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

No.

Law stated - 30 April 2023

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-Visby Rules have the force of law in New Zealand by virtue of section 209 of the Maritime Transport Act. The Hague-Visby Rules are appended to schedule 5 of the Maritime Transport Act. Under article 1(e) of the Hague-

Visby Rules, carriage by sea covers the period from the time when the goods are loaded to the time they are discharged from the ship.

New Zealand is not a signatory to the Rotterdam Rules. There is no indication that it is likely to sign in the near future.

Law stated - 30 April 2023

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?

The Contract and Commercial Law Act 2017 (CCLA) (Part 5) almost always governs domestic carriage of goods by land, water or air.

Law stated - 30 April 2023

Title to sue

Who has title to sue on a bill of lading?

Under the CCLA, the following persons have right of suit on a bill of lading:

- the lawful holder of the bill of lading;
- the consignee identified in a sea waybill as being entitled to delivery under the contract of carriage; or
- the person entitled to delivery of goods specified in the undertaking of a ship's delivery order.

Law stated - 30 April 2023

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?

Unless it is specifically referred to in a bill of lading incorporation clause, a charter party jurisdiction or arbitration clause will not be incorporated into the bill of lading. However, a validly incorporated jurisdiction or arbitration clause will be binding on a third party lawful holder of the bill of lading.

Law stated - 30 April 2023

Demise and identity of carrier clauses

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

Yes, so long as it is clearly set out in the bill of lading.

Law stated - 30 April 2023

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?

For domestic carriage, under the CCLA, a shipowner as the actual carrier may be liable to the contractual carrier, who may seek compensation from the shipowner as an actual carrier for loss or damage to goods (eg, where the contractual carrier has incurred a liability to the owners of the goods). In addition, the contractual carrier of goods may retain a common law right to sue the shipowner as an actual carrier in tort or bailment.

For international carriage, where a shipowner is not a carrier under the Hague-Visby Rules, they are able to benefit from the terms of a bill of lading, as a sub bailee. They may also raise any reasonable terms within the charter party as a defence to the cargo interests. In practice, normally cargo interests will sue the relevant 'carrier' under the bill or take an assignment of rights from the contractual carrier against the actual shipowner.

Law stated - 30 April 2023

Deviation from route

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

What amounts to deviation will depend on the terms of the contracted carriage terms. There is a common law right to deviate from the normal route for reason of avoiding danger to the ship or cargo or to save human life. This right is also contained in article IV(4) of the Hague-Visby Rules.

Where there has been an unlawful deviation, this will be a breach of contract that could result in the shipowner or carrier being held liable for any losses.

Law stated - 30 April 2023

Liens

What liens can be exercised?

A shipowner's lien for freight on cargo arises out of common law and contract. A lien on sub-freight or sub-hire arises only in contract.

Law stated - 30 April 2023

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?

Delivery without production of the bill of lading will potentially expose the carrier to a claim for misdelivery by the lawful bill of lading holder. Liability can probably not be limited under unmodified Hague-Visby Rules.

Law stated - 30 April 2023

Shipper responsibilities and liabilities

What are the responsibilities and liabilities of the shipper?

Under the Hague-Visby Rules, the shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him or her, and is obliged to indemnify the carrier against all loss arising or resulting from inaccuracies of any of the above.

Common law requires the shipper not to ship 'dangerous goods' without the consent of the carrier. Article IV(6) of the Hague-Visby Rules extends this definition to include any cargo that directly or indirectly causes or threatens to cause loss of life, damage to the ship or other cargo, delay or expenses to the carrier.

Law stated - 30 April 2023

SHIPPING EMISSIONS

Emission control areas

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

New Zealand does not currently have any ECAs in force.

Law stated - 30 April 2023

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?

New Zealand is a signatory to MARPOL Annex VI. The sanction for non-compliance is a fine of up to about NZ\$50,000 depending on the offence for each breach. The relevant rules are embodied in the Marine Protection Rules Part 199: Prevention of Air Pollution from Ships and the Engine Fuel Specification Regulations.

Law stated - 30 April 2023

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 are no commercial ship recycling facilities in New Zealand. New Zealand is not a party to any ship recycling conventions.

Law stated - 30 April 2023

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

Which courts exercise jurisdiction over maritime disputes?

If the amount in dispute is more than NZ\$350,000 or is an in rem claim, it will be brought to the High Court. In personam claims of NZ\$350,000 and less may be determined by the District Court.

Law stated - 30 April 2023

Service of proceedings

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

Generally, the rules governing such service are set out in Part 6 of the High Court Rules. But Part 6 does not apply to initiating documents that may be served in Australia under the Trans-Tasman Proceedings Act 2010 (TTPA) (for which the TTPA itself governs and broadly requires such documents to be served in Australia in the same way as those documents would be served in New Zealand under domestic rules).

Otherwise, Part 6 provides that an originating document may be served outside New Zealand without leave for particular claims (such as tort, breach of contract) where such claims have a connection with New Zealand as specified in Rule 6.27 (for example, for tort, the act or omission was done, or the damage suffered, in New Zealand). Leave is also not required in certain other limited cases such as where the subject matter of the proceeding is land or other property in New Zealand, or where the person to be served has submitted to the jurisdiction of the court.

For proceedings when service is not allowed under Rule 6.27, the leave of the court is required to serve an originating document out of New Zealand, and a formal 'on notice' application will need to be brought (Rule 6.28). If service has nevertheless been affected without leave, the plaintiff runs the risk the court may dismiss the proceeding. The court can, however, still decide to assume jurisdiction under Rule 6.29 where the plaintiff can establish the court should assume jurisdiction or would have granted leave if it had been requested under Rule 6.28, or it is in the interests of justice the failure to seek leave should be excused.

For personal service of documents other than originating documents, the court's leave is required for service abroad (Rule 6.30).

Service must comply with both New Zealand procedure and the procedure of the foreign jurisdiction. As a result, subject to any relevant treaty, service in civil law jurisdictions will normally only be allowed by diplomatic means through the court. This is a lengthy process, but can be shortened by applying for substitute service.

Law stated - 30 April 2023

Arbitration

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

The most prominent arbitration institute in New Zealand is the Arbitrators' and Mediators' Institute of New Zealand. Two smaller arbitration institutes also exist: the New Zealand Dispute Resolution Centre and the New Zealand International Arbitration Centre. None of these institutes have specialist maritime expertise. The Maritime Law Association of Australia and New Zealand has issued arbitration rules, which parties may adopt, and has a panel of recommended arbitrators.

Foreign judgments and arbitral awards

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

Foreign judgments may be enforced in New Zealand by registering the judgment under the Reciprocal Enforcement of Judgments Act 1934 (REJA), under the TTPA, registering a memorial of the judgment under the Senior Courts Act 2016 or by bringing an action at common law.

REJA includes judgments from the United Kingdom and other countries specified by Order in Council (including France, Hong Kong and Singapore). A judgment registered under Part I of REJA has, for the purpose of enforcement, the same effect as if the judgment had been originally given in the High Court on the date of registration. The TTPA is directed at registrable Australian judgments. Similarly to REJA, a registered Australian judgment has the same force and effect as if it were a judgment given by a New Zealand court (subject to some limitations).

The Senior Courts Act 2016 concerns judgments made by a court in a British Commonwealth country for a sum of money. A memorial may be filed in the High Court and sealed. The New Zealand court may then require the person against whom the judgment was issued to show why the judgment should not be executed. If the person fails to appear or fails to show sufficient cause, the court may order execution. The judgment may be enforced as if it were a judgment of the High Court. Finally, subject to common law rules, foreign judgments both in personam and in rem are enforceable.

Arbitration awards are enforceable under the Arbitration Act 1996. Further, New Zealand is a signatory to the Convention of the Recognition and Enforcement of Arbitral Awards 1958 (New York Convention). The New York Convention makes arbitral awards of Convention states enforceable in all other Convention states as if they were domestic arbitral awards.

Law stated - 30 April 2023

Asymmetric agreements

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

Asymmetric jurisdiction agreements are uncommon in New Zealand, but it is expected that, in principle, they would be considered valid and enforceable. However, section 210 of the Maritime Transport Act provides that clauses limiting the jurisdiction of the New Zealand courts in respect of a bill of lading or similar document relating to the sea carriage of goods from or to any place in New Zealand have no effect.

Law stated - 30 April 2023

Breach of jurisdiction clause

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

If the claimants are amenable to a New Zealand court's personal jurisdiction, the New Zealand court could on application grant an injunction restraining the claimants from commencing or pursuing the foreign proceedings. However, the circumstances must be such that commencement or pursuit of the foreign proceedings would be oppressive or vexatious to the applicant; that means either the proceedings cannot possibly succeed, are in breach of a New Zealand jurisdiction (or arbitration) clause or the claimants are suing in more than one jurisdiction without

substantial reasons for doing so, or the conduct of the foreign proceeding would interfere with the domestic court's due process (*Maritime Mutual Insurance Association of (NZ) Ltd v Silica Sandport Inc* [2023] NZHC 793).

The oppressive or vexatious threshold will not be met simply because the claimants have brought proceedings in two jurisdictions (New Zealand and elsewhere) and New Zealand is *forum conveniens*.

Law stated - 30 April 2023

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

The defendant may protest jurisdiction and apply to the New Zealand court to dismiss (or, alternatively, stay) the proceeding on the basis it has no or should not exercise jurisdiction (*forum non conveniens*). A contractual non-exclusive submission to a foreign court or arbitral tribunal will be a relevant consideration but is not conclusive.

In practice, where a plaintiff has served proceedings without leave of the court, he or she will carry the burden of showing New Zealand is the appropriate forum. In exceptional circumstances, a plaintiff can ask the New Zealand court to exercise its discretion to refrain from stay proceedings in favour of a more appropriate foreign court, if it is in the interests of justice.

Law stated - 30 April 2023

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 2010, New Zealand has a generally applicable limitation period of six years after the date of the act or omission that is the basis of the claim. However, there are several exceptions, including the following:

- A late knowledge date applies to claims where the claimant has gained knowledge of all the relevant facts as specified by the Limitation Act 2010 section 14(1).
- Under the Hague-Visby Rules, there is a one-year limit for claims in respect of loss or damage to goods under a contract of carriage governed by the Hague-Visby Rules.
- A general 12-month limit applies to offences under the Resource Management Act.
- Under the Contract and Commercial Law Act 2017, there is a one-year time limit for claims (however, the contracting carrier must be notified of any loss or damage within 30 days).
- Under the Maritime Transport Act:
 - a general one-year time limit applies to all offences, which does not run while a person charged with the offence is beyond territorial seas;
 - under section 97, a two-year time limit applies on claims for damage caused by a ship; and
 - under section 361, unless the proceedings commenced no later than three years after the date on which the claim arose or no later than six years after the event that caused liability to be incurred, no action may be brought in respect to:
 - the discharge or escape of oil from an International Convention on Civil Liability for Oil Pollution Damage 1992 ship; or
 - the discharge or escape of bunker oil from an International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ship.
- Under article 23 of the Salvage Convention, salvage claims are subject to a two-year time limit, but this does not

apply to claims reliant on maritime liens.

In addition to these statutory limits, the Admiralty jurisdiction draws on the equitable concept of laches in other instances of delay. When considering laches, the court may apply the by analogy with reference to the Limitation Act 2010 provisions.

The Limitation Act 2010 applies equally to arbitral and civil proceedings. Foreign law time bars are matters of substance and not procedure.

Law stated - 30 April 2023

Court-ordered extension

May courts or arbitral tribunals extend the time limits?

The Limitation Act 2010 provides a complete defence to claims made against a defendant after the expiry of a limitation period. The act specifies some exceptions to limitation periods and start dates. However, it does not grant the courts a general discretion outside these exceptions. The Limitation Act 2010 applies equally to courts and arbitral tribunals.

Law stated - 30 April 2023

MISCELLANEOUS

Maritime Labour Convention

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

The Maritime Labour Convention came into force in New Zealand in March 2017. It applies to New Zealand ships of over 200 gross tonnes or smaller vessels engaged in international voyages that are engaged in commercial activities and to foreign vessels in a New Zealand port.

Law stated - 30 April 2023

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?

Economic hardship will not entitle a party to avoid a contract, subject to the express terms of the contract.

Law stated - 30 April 2023

Other noteworthy points

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

In relation to shipping, the New Zealand government is particularly focused on issues of the environment. A national debate about clean seas and inland waters led to the introduction in May 2018 (and updated in November 2018) of a Craft Risk Management Standard to prevent bio-fouling from ships' hulls and the adoption of international regulations for ballast water. This has led to the detention in or rejection from New Zealand waters of a number of foreign-flagged vessels.

Law stated - 30 April 2023

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?

New Zealand has now acceded to MARPOL Annex VI and it is in force.

The High Court in successive decisions has given an anti-suit injunction in favour of a New Zealand arbitration clause (*Maritime Mutual Insurance Association (NZ) Limited v Silica Sandport Inc* [2023] NZHC 793) and anti-enforcement judgments to prevent New Zealand resident trusts from enforcing potentially fraudulently obtained decisions (*Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 288 [2023] NZHC 466).

The High Court has also left open the Court's ability to not follow the English approach to time bar and amending intituling under the Hague-Visby Rules because of the different procedural rules (*Silver Fern Farms Ltd v AP Møller Maersk* [2022] NZHC 3120).

The New Zealand courts have upheld orthodox views of marine insurance policy interpretation with respect to warranties (*JDA Co Ltd v AIG Insurance New Zealand* [2022] NZCA 532, [2023] NZSC 41). However, there is still uncertainty about the effect of exclusion and limitation clauses in freight forwarder terms and conditions (*Vienna Group Ltd v Kerry Logistics (Oceania) Ltd* [2022] NZHC 1743, [2023] NZHC 846).






Maritime New Zealand, the national maritime regulator, continues to take an increasingly active approach to health and safety regulation, bringing a number of prosecutions against vessel owners, operators, ports and stevedores for breaches of health and safety regulations.

Supply chain delays continue to be an issue for the shipping industry, but these issues have substantively improved. There is still a shortage of workers.

Finally, in the wake of the Russian invasion of Ukraine on 24 February 2022, New Zealand has introduced its first set of autonomous sanctions. These are contained in the Russia Sanctions Act 2022 and the Russia Sanctions Regulations 2022. Broadly, they prohibit various sanctioned persons from entering or remaining in New Zealand; prohibit ships owned or controlled by the Russian government or sanctioned persons from entering a New Zealand port; and prohibit dealing with the assets or securities of a sanctioned person.

Law stated - 30 April 2023

Jurisdictions

	Australia	Holding Redlich
	Brazil	Kincaid Mendes Vianna Advogados
	Cyprus	Chrysses Demetriades & Co LLC
	Egypt	Eldib Advocates
	Ghana	Kimathi & Partners Corporate Attorneys
	India	Phoenix Legal
	Indonesia	Budidjaja International Lawyers
	Israel	J.SPRINZAK Maritime Law Firm
	Italy	Studio Legale Mordiglia
	Japan	Okabe & Yamaguchi
	Malta	Dingli & Dingli Law Firm
	Netherlands	Van Steenderen MainportLawyers
	New Zealand	Hesketh Henry
	Nigeria	Creed & Brooks
	Norway	Advokatfirmaet BÅHR AS
	Portugal	Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL
	Singapore	Haridass Ho & Partners
	South Korea	Cho & Lee
	Taiwan	Lee and Li Attorneys at Law
	Turkey	Cavus & Coskunsu Law Firm
	United Arab Emirates	Afridi & Angell
	United Kingdom	MFB Solicitors
	USA	Seward & Kissel LLP