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Country Question and Answer Chapters:

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

i) Collision

The Netherlands are a party to the Collision Convention 1910 (for seagoing vessels) and to the Geneva Convention 1960 (for inland waterway navigation). The Conventions' provisions are directly applicable and, in addition, have been incorporated in the Dutch Civil Code ("DCC").

The owner of a ship which was at fault is obliged to compensate the damage (art. 8:544 DCC). Pursuant to the Dutch Supreme Court, there is 'fault of the vessel' (arts. 3 and 4 Collision Convention 1910/art. 8:542 DCC) if the damage results from:

a. a fault of the owner itself or a person for whom the owner of the vessel is liable, such as its servants and independent contractors acting within the scope of their employment;

b. a fault by a person performing work in the interest of the vessel or the cargo, for instance a fault by stevedores appointed by charterers; or

c. a (inherent) defect of the vessel.

Dutch Supreme Court 30 November 2001, *NJ* 2002, 143; *S&S* 2002, 35 (*De Toekomst/Casuele*).

These rules of law with regard to collision cases also apply to allision cases, i.e. when damage has been caused by a vessel without there having been a collision between two vessels (art. 8:541 DCC).

ii) Pollution

Pollution issues, including liability for and prevention of damage, are regulated by various international instruments, which have (also) been incorporated in the DCC. The Netherlands, *inter alia*, are a party to: the CLC plus Protocol 1992 as well as the IFC plus Protocol 2003; the Bunker Oil Pollution Convention 2001; the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways ("ADN"); and the revised Convention for Rhine Navigation. In addition, the implementation of EU Directive No 2005/35 on ship-source pollution and on the introduction of penalties for related infringements, i.e. the "Act on the Prevention of Pollution by vessels" (in Dutch: *Wet voorkoming verontreiniging door Schepen*) and the Water Act (in Dutch: *Waterwet*) may apply.

iii) Salvage / general average

a. Salvage

The Netherlands are a party to the Salvage Convention 1989, which provisions have also been incorporated in the DCC. Under Dutch law, the salvage remuneration shall be due exclusively by the owner of the vessel (art. 8:563(3) DCC). However, parties are allowed to make deviating agreements, for example on the basis of the Lloyd's Open Form ("LOF").

b. General average

The Dutch legislation contains only a very brief regulation on general average, including a definition, the relevant parties for general average purposes, time bars and provisions on the confirmation of the adjustment. In respect of the adjustment, the York-Antwerp Rules 1994 and the Rhine Rules IVR 1979 are incorporated in the DCC by reference (art. 8:613 resp. 8:1022 DCC). However, parties may contractually agree the applicability of other adjustment rules.

iv) Wreck removal

The Netherlands are a party to the Nairobi International Convention on the Removal of Wrecks 2007. This Convention has been implemented in Dutch law by the "Maritime Accident Response Act" (in Dutch: *Wet Bestrijding Maritieme Ongevallen*), giving the Dutch State authority to order the registered owner of a seagoing vessel that is wrecked or stranded in the Dutch Exclusive Economic Zone and causing danger to shipping, to remove the vessel or have the vessel removed (arts. 10 and 13 of the Maritime Accident Response Act). For wrecked inland waterway vessels, the Dutch State has a similar authority based on art. 10 of the "Wrecks Act" (in Dutch: *Wrakkenwet*).

v) Limitation of liability

The Netherlands are party to the London Limitation of Liability Convention ("LLMC") 1976 plus Protocol 1996 (including the amended limitation amounts which are applicable since 8 June 2015), as well as to the Strasbourg Convention on the Limitation of Liability in Inland Navigation ("CLNI") 1988. The CLNI 2012 has not yet been ratified by the Netherlands. In respect of the LLMC and CLNI, the Netherlands have made reservations as per art. 18, *inter alia* for claims for removal of wrecks and cargo. In case of seagoing vessels, liability for costs in respect of wreck removal can only be limited by putting up a separate wreck removal fund as per art. 8:752 DCC, regardless of the ground on the basis of which such claim is brought. (Dutch Supreme Court, 2 February 2018; *RvdW* 2018, 220 and 221.)

vi) The limitation fund

In order to invoke limitation, a fund must be put up as per arts. 642(a)–642(z) of the Dutch Code of Civil Procedure. A fund can be

put up either by making a cash deposit, or by providing a guarantee from a reputable underwriter or bank.

Pursuant to case law of the Dutch Supreme Court (29 September 2006, *NJ* 2007, 393; *S&S* 2007, 1 (*Seawheel Rhine/Assi Eurolink*)), judgments from other European courts allowing the institution of a property fund under the LLMC for a wreck removal claim should be recognised in the Netherlands, and a separate wreck removal fund no longer has to be constituted in the Netherlands.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

Dutch criminal law applies to all vessels and crew within Dutch territorial waters. In addition, it applies outside territorial waters to Dutch vessels, their crew and even to pirates taken on board such vessels as well as to Dutch citizens, even on board foreign flag vessels. Dutch criminal law gives the authorities extensive powers for investigation into criminal acts.

Besides the criminal law aspect, the Dutch Board for Transport Safety has extensive powers with regard to Dutch vessels anywhere in the world, to investigate incidents such as collisions, groundings, etc. and gather information in respect of these incidents. In some cases, the master and/or crew members have to appear before the Maritime Disciplinary Tribunal.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

In respect of carriage of goods under bills of lading ("b/l"), the Netherlands are a party to the Hague-Visby Rules ("HVR") including the SDR-Protocol. Their provisions have direct effect, if the requirements set out in arts. I and X HVR have been complied with (art. 8:371(3) DCC). The Netherlands have also incorporated the HVR in Book 8 Dutch Civil Code (arts. 8:382–386 and art. 8:1712 DCC).

In respect of cargo damage during inland waterway transportation, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway ("CMNI") is applicable. Inland waterway claims will not be further discussed below.

The DCC also contains a regulation for time and voyage charters, including provisions on liability, laytime, demurrage, etc. These rules, however, are not mandatorily applicable. Contractually agreed provisions, in principle, prevail.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

i) Title to sue

There are three types of bills of lading: the order b/l; the bearer b/l; and the b/l to a named consignee (straight b/l) (art. 8:412 DCC). The HVR may apply to all of these types of b/l (see also question 2.1 above).

The lawful holder under an order b/l is the person to whose order this b/l has been endorsed. An endorsement in blank changes the order b/l into a bearer b/l; the person who holds such order b/l endorsed in blank becomes the lawful holder.

The lawful holder under a straight b/l is the consignor as long as this consignor (or its bank) holds the b/l. The named consignee becomes the lawful holder from the moment the b/l comes into its possession (Dutch Supreme Court 29 November 2002, *NJ* 2003, 374; *S&S* 2003, 62 (*Ladoga 15*)).

The b/l holder, in order to receive the goods, has to hand over the b/l to the carrier (art. 8:481 DCC). Only the lawful holder of a b/l has title to sue and is entitled to claim damages, even if the b/l holder has not suffered any damage himself (art. 8:441(1) DCC).

ii) Identity of carrier

In cases where a b/l has been issued, more than one person may become the carrier under the b/l (art. 8:461 DCC). Each of these carriers can be sued for cargo claims. Carriers under a b/l can be:

1. The person who signed the b/l or the person on whose behalf the b/l was signed.
2. The person whose form was used for the b/l (this is a special feature of Dutch law).
3. If a master b/l has been issued:
   a. The owner or – if the master is in the service of a bareboat charterer – the bareboat charterer.
   b. The last time charterer or voyage charterer in the chain of contracts of carriage who concluded a contract of carriage with the consignor (this is also a special feature under Dutch law).
4. Only the owner or bareboat charterer, with the exclusion of other carriers under a b/l, if any, is regarded as a bill of lading carrier if such owner or bareboat charterer is clearly identified (name and address) in the b/l.

iii) Incorporation of charterparty provisions in the b/l

A clear incorporation clause including a reference to the arbitration clause in the charterparty in principle is valid under Dutch law (art. 8:415 DCC). Special requirements apply for the incorporation of jurisdiction clauses, *inter alia* pursuant to the EC Brussels I (*bis*) Regulation.

iv) Time limits

The HVR provide for a time bar of one year after the goods have been delivered or should have been delivered (art. III-6 HVR). The DCC contains a statutory time limit for all contracts of carriage of goods by sea, including charterparties, of one year (art. 8:1711 DCC). This time bar can be extended by contract between the parties (art. 8:1701 DCC). Parties are allowed to agree specific and separate contractual time bar periods, as long as they do not violate mandatorily applicable law.

A prescription of a right of action (i.e. a cargo claim time bar) may also be interrupted by a written communication in which the claimant clearly states and claims that he suffered damage (art. 3:317 DCC). Such notice from the cargo claimant is a unilateral legal act and no consent of the debtor (carrier) is needed. However, such interruption of the time bar is not possible when the claim lapses, which is the case in respect of bills of lading. In such situations, time has to be protected by a contractual extension of the time limit between the b/l carrier and the lawful b/l holder or by initiating legal proceedings (art. 8:1712(3) DCC).

v) Limits of liability

The DCC has taken over the limits of liability set out in art. IV-5(a) HVR, i.e. 666.67 SDR per package/unit, or 2 SDR per kilogram of the damaged goods, whichever shall be higher (art. 8:388(1) DCC).

The carrier may not limit its liability, when it is proven that the damage has arisen from an act or omission of the carrier (that is the carrier itself, the *alter ego* of the carrier, and it does not include its servants) done either with the intent to cause damage or recklessly and with the knowledge that damage would probably result therefrom (art. 8:388(5) DCC).

It should be noted that it follows from case law of the Dutch Supreme Court that 'conscious recklessness' comes very close to intent (Dutch Supreme Court 5 January 2001, *NJ* 2001, 391 and 392; *S&S* 2001, 61 and 62).

vi) Non-contractual claim against the carrier

It is possible under Dutch law for the owner of the goods to claim in tort against the carrier, except for a cargo claim under a b/l: only the lawful b/l holder has title to sue; see question 2.2(i). However, it is argued in legal literature that the position should be changed.

Book 8 DCC contains a complicated set of rules in case of claims in tort (arts. 8:361–365 DCC), boiling down to the following concept:

A carrier against whom a claim in tort has been instituted, shall be liable towards the claimant no further than he would be if he were a party to the actual contract of carriage which has been entered into by the claimant itself (art. 8:363 DCC) or – if the claimant is the owner of the goods and not the contracting shipper – the last contract of carriage in the chain of contracts of carriage of the goods (art. 8:364 DCC). In short: "The claimant gets a taste of its own medicine."

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

In general, the shipper is liable towards the carrier for damage caused by the goods *or the handling thereof* unless the damage has been caused by a fact which a prudent shipper has been unable to avoid and the consequences of which such shipper has not been able to prevent (shipper's *force majeure*; art. 8:397 DCC). It is specifically provided that the shipper is deemed to have guaranteed the accuracy of the cargo description (marks, number, quantity and weight) and is liable to the carrier for provision of incorrect information (art. III-5 HVR; art. 8:411 DCC). However, a shipper is not liable for damage caused without an act, fault or neglect of the shipper or his agents or servants (art. IV-3 HVR; art. 8:383(3) DCC).

The liability for dangerous goods has been regulated separately (*inter alia*, in art. 8:398 DCC; art. IV-6 HVR). The reference to 'dangerous goods' has to be taken in a broad sense. It concerns "goods which a prudent carrier would not have wished to receive for carriage, had he known that, after taking receipt thereof, they could constitute a risk". All IMDG-Code goods will be considered dangerous, but also non-IMDG-Code goods can be a dangerous good in the sense of art. 8:398 DCC, for instance solidified resin in drums (not being a dangerous good under the IMDG) becoming liquid because of external heat and leaking out of the drums. The same might be true if the goods fall under international sanctions and the shipper has not informed the carrier about the sanctions.

As soon as the goods become dangerous, as described in art. 8:398(1) DCC, the carrier may unload, destroy or otherwise render harmless such goods, and the shipper is liable for all costs and damage.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Passenger liability is regulated by the Athens Convention (as incorporated in the EC Regulation 392/2009), which provisions are also incorporated in the DCC. A reservation has been made in respect of limitation of liability for death and personal injury (in accordance with section 2.2 of the IMO Guidelines).

The Athens Convention contains a two-tier liability system:

- 'risk' liability up to an amount of 250,000 SDR per passenger (art. 3(1) Athens Convention); or
- 'fault' liability of the carrier limited to 400,000 SDR per passenger (art. 7(1) Convention). The LLMC plus Protocol 1996 (see under question 1.1(v)) with its passenger fund may still apply in certain cases, depending on the number of passengers the vessel may carry.

Passenger ship carriers are obliged to maintain insurance or other financial security in respect of liability for death and personal injury (art. 4 (*bis*) Athens Convention).

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

i) Arrest of ships

The Netherlands are a party to the Arrest Convention 1952. In Dutch case law, the Convention's jurisdiction provision has been held to also apply to vessels which are not registered in a contract State (District Court of Rotterdam 14 March 2012, *S&S* 2012, 86 ("*Kaliakra*"/"*UK 143*")). Art. 3(1) Arrest Convention allows for the arrest of a sister ship, i.e. a ship owned by the same owner. Art. 3(4) Arrest Convention applies the same rule to maritime claims against a bareboat charterer. The particular ship in respect of which the maritime claim arose may be arrested, even though the owner of that vessel is not the debtor of the maritime claim (art. 8:360 DCC) or a vessel owned by the bareboat charterer may be arrested for such claim. The Dutch Supreme Court has held that the second sentence of art. 3(4) should be interpreted in a broad sense, meaning that when a time or voyage charterer is liable for a maritime claim, a vessel owned by such charterer may be arrested for this claim which was related to the chartered vessel and not related to the arrested vessel (Dutch Supreme Court 9 December 2011, *NJ* 2012, 243; *S&S* 2012, 24, *European Transport Law* 2012-1, p. 24 (*Costanza M*)). The Netherlands made the reservation allowed for in art. 10 Arrest Convention. This means that arrest of a sister ship for a mortgage claim is possible under Dutch national law.

ii) Outline of arrest procedure

An arrest of a vessel may be made within a couple of hours. In the arrest application, *inter alia* the claim (amount and legal basis), the creditor and debtor have to be described, supported by some documentation. Usually, no countersecurity is required from the applicant for arrest. The court, in principle, decides after a marginal review of the application without hearing the debtor. After the court has granted leave to arrest, the bailiff makes the arrest on board the vessel. The bailiff's official report is the evidence that the arrest has been made. The debtor of the claim for which the arrest was made may request the court in summary proceedings to lift the arrest. Dutch law provides for (strict) liability for wrongful arrest (*inter alia*, District Court of Rotterdam 9 July 1993, *S&S* 1994/4 *cf.* 26 June 1997, *S&S* 1998/86 (*Yukon*)). Whether the arrest was wrongful depends on the validity of the underlying claim.

iii) Attachment of assets

Attachment of assets other than vessels, such as 'bank accounts', containers or third-party attachments (i.e. the attachment of assets that are owned by the debtor but are held by another party), is also possible and relatively easy under Dutch law. The procedure is the same as set out above.

iv) Arrest/attachment of assets out of the jurisdiction

Under the Brussels I Regulation Recast (EC 1215/2012), Dutch Courts have been willing to give permission to make an arrest/attachment on assets which are in other EU Member States.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

In order to be able to arrest a vessel, the claim in respect of which the arrest was made has to be recoverable against the vessel. This means that there either must be a direct liability to pay the bunkers for the shipowner, or the claim must be recoverable against the vessel otherwise, i.e. the claim must be recoverable against the vessel both under the law applicable to the claim and under the law of the vessel's place of registration.

4.3 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

Arrest/attachment of assets

When security is sought from a party, assets belonging to that party may be arrested/attached.

For example, in case of a claim against the time charterer, the bunkers owned by the time charterer can be arrested. When bunkers have been arrested on board, the vessel is not allowed to sail, and if no security is put up, the bunkers may have to be pumped out of the vessel.

Lien over cargo

Under Dutch law, the carrier may exercise a right of retention (lien) over the goods for unpaid freight and other costs in connection with a contract of carriage, like general average contributions (art. 8:489(2) DCC). This lien over the cargo can be invoked against third parties, such as the owner of the goods not being a party to the contract of carriage.

The parties to the contract of carriage can agree to a contractual right of retention (lien), for example, for unpaid freight and costs with regard to earlier contracts of carriage between such parties.

4.4 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

If the debtor provides sufficient security in the form of a cash deposit or a guarantee of a suitable guarantor (for example, a guarantee issued by a member of the International Group of P&I Clubs), the arrest must be lifted (art. 6:51 BW *cf.* District Court of Rotterdam, 1 April 2010, *S&S* 2010, 134).

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Art. 843a Dutch Code of Civil Procedure ("DCCP") regulates the right of access to information. A party with a legitimate interest may demand in court (even if no proceedings on the merits are pending) inspection or copies of documents from another party with whom the applicant has a legal relationship. The applicant should clearly indicate which documents he would like to inspect and prove his legitimate interest; 'fishing expeditions' are not allowed.

Pre-examination of witnesses (art. 186 DCCP) and experts (art. 202 DCCP) is possible under Dutch procedural law. In addition, it is possible to attach evidence. More concretely, the court's permission can be obtained to have the bailiff make copies of all documents and electronic data on board the vessel.

5.2 What are the general disclosure obligations in court proceedings?

In the Netherlands, there are no disclosure proceedings as in common law jurisdictions. However, art. 21 DCCP provides that a party is under a duty to assert the relevant facts fully and truthfully, and art. 22 DCCP provides that in all instances and in all stages of the dispute, the court may order the parties to provide information or to submit records. If parties do not provide the required information or records, the court may draw the conclusion that it deems appropriate to decide the dispute.

In principle, the court must accept as established all facts asserted by the one party that are acknowledged by the other party or insufficiently contested by the latter. When a party has exclusive access to particular evidence, it can be held against this party, when he does not provide the same (see, for example, Court of Appeal Arnhem-Leeuwarden 27 September 2016, *S&S* 2017, 27).

As set out in question 5.1 above, a party with a legitimate interest can also ask the court to order a party to provide specific documentation.

6 Procedure

6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

Since 1 January 2017, the District Court of Rotterdam and the Court of Appeal of The Hague have exclusive jurisdiction in maritime matters in the Netherlands (art. 625 *et seq.* DCCP).

Commencement/service out of jurisdiction

Proceedings start with a writ of summons. Writs of summons initiating legal proceedings in the Netherlands may be served to any party inside or outside the Netherlands. Service within the EU takes place pursuant to the EC Service Regulation 1393/2007. Service outside the EU is regulated by the Hague Service Convention 1965 in respect of Member States of this Convention. If neither the EC Regulation nor the Hague Convention apply, service out of jurisdiction in general is regulated by arts. 54, 55 and 56 DCCP which give rules to serve the writ of summons to a party with no known place of business in the Netherlands or to a party with a known place of business outside the Netherlands.

Recognition of jurisdiction clauses

Jurisdiction clauses referring to an EU jurisdiction are recognised by the Dutch courts according to the requirements of art. 25 of the Brussels I Regulation Recast (EC1215/2012); *cf.* the case law of the European Court of Justice. Bill of lading holders, in principle, are bound by jurisdiction clauses referring to an EU Member State or to a Lugano Convention jurisdiction (EU Member States, Denmark, Iceland, Norway, and Switzerland).

In case of a jurisdiction clause for a court outside an EU or EVEX jurisdiction, the Netherlands have a particular rule on jurisdiction in maritime matters. Art. 629 DCCP states that in case of a contract of carriage of goods by sea to the Netherlands between a carrier and a consignee who was not the shipper, the District Court of Rotterdam will be the competent court. This rule cannot be set aside contractually, unless the contract of carriage contains a jurisdiction clause which declares competent the court of a *named* place in the country where either the carrier or the receiver of the goods has its place of business.

Arbitration clauses are recognised according to the requirements of the New York Arbitration Convention 1958 and the extensive rules on arbitration in Book 4 of the Code on Civil Procedure (arts. 1020–1076 DCCP).

Pleadings/submission

The writ of summons has to include the claim submissions. It has to contain, *inter alia*, a description of the claim and the claimed amount, the nature of the dispute, an overview of the relevant facts, the claim's legal basis and the grounds for the claim, the arguments raised by the defendant, if any, and an offer to provide evidence to support the claim.

The defendant replies with a written statement of defence after which the court may order a personal appearance of the parties to give information or to try to reach a settlement. If the defendant is challenging the court's jurisdiction, he must do so in his first statement. If no settlement is reached, judgment can be delivered or the claimant may continue with a written statement of reply and the defendant reacts with a written statement of rejoinder. Depending on the complexity of the case, a party or both parties may ask for an oral hearing. The court may allow parties to exchange further written statements before the court will render a judgment.

Exchange of evidence

Documents, survey reports, etc. evidencing the facts as written down in the statements (submissions) are usually submitted in concert with the particular statement.

Exchange of documents before trial has started is unusual in the Netherlands.

Indicative timescale

How long a trial will last very much depends on the complexity of the case and the number of statements exchanged. A judgment may be delivered within six months after the writ was issued, but it may easily take a year or more in complex cases before a judgment is given.

Interest on claims

Statutory legal interest starts to run from the day that the damage occurred and it is compound interest (art. 6:119 DCC). The statutory interest is fixed by regulation and amounts, at the moment, to an interest rate of 2% per year. For contractual claims, a higher statutory or contractually agreed interest rate may be applicable.

Costs rules

The winning party is awarded the fixed court fee which depends on the amount at stake and which fee has to be paid by the claimant as well as the defendant before proceedings have started. In addition, the winning party is awarded a fixed fee for other expenses, including costs of lawyers. The latter fee is based on a graduated scale depending on the amount at stake, the number of submissions exchanged and whether or not oral hearings took place. In practice, these fees usually cover only a (small) part of the lawyers' fees.

Mediation/ADR

There is no such rule (yet) that mediation/ADR is required before parties go to court. Mediation has become more popular in the Netherlands, but not so much yet in maritime and transport cases.

Arbitration

The Dutch arbitration institute for maritime and transport law is Transport And Maritime Arbitration Rotterdam-Amsterdam ("TAMARA"); see https://www.tamara-arbitration.nl.

On this website, the arbitration rules can be downloaded, as well as the hourly fee of the arbitrator and the administrative costs, based on the claim amount in a graduated scale (https://www.tamara-arbitration.nl/arbitrage/arbitragereglement/#c81).

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

Are costs recoverable?

See under question 6.1, 'Costs rules'.

What interest is payable on claims?

See under question 6.1, 'Interest on claims'.

Specialist knowledge/experience

Maritime and transport law is considered a highly specialist field of law. For this reason, maritime matters are, in principle, dealt with exclusively by specialised judges of the District Court of Rotterdam and the Court of Appeal of The Hague. An exception has been held to apply in case of international jurisdiction clauses for other Dutch courts. Questions of law can also be asked to the Supreme Court (see also 'Rights of appeal' below). Proceedings before the District Court of Rotterdam may be conducted in the English language, if all parties agree thereto.

The Grotius Academy, a collaborative venture of Dutch Law Faculties, organises nine-month postgraduate courses on maritime and transport law. The diploma for this course is highly regarded.

Most Dutch lawyers ("*advocaten*") acting in the shipping industry are members of the Dutch Transport Law Association.

Litigation delays

See also under question 6.1, 'Indicative timescale'.

Serious litigation delays may occur when evidence (documents, witnesses) has to be gathered from countries abroad, in particular from non-English or non-German speaking countries.

Rights of appeal

Judgments rendered by a District Court (the court of first instance), in principle, can be appealed in the Court of Appeal. Exceptions are made, for example, for cases with a financial value of less than €1,750.

An appeal generally has to be made within three months after a judgment is rendered. However, in case of limitation proceedings, an appeal has to be instituted within two weeks after the court's decision, whereas for judgments rendered in summary proceedings the period for appeal is four weeks.

Unless the judgment of the District Court has been declared provisionally enforceable, an appeal will suspend the enforceability of the judgment.

A judgment of the Court of Appeal may be appealed to the Supreme Court. Generally, an appeal has to be lodged within three months from the day on which the judgment is rendered, but shorter time periods may apply in specific matters. The Supreme Court in principle deals with issues on the interpretation and application of the law and with the non-compliance of procedural rules only.

Evidential issues

Documents on evidence do not have to be notarised. Only in case of verification of a signature may a notarial deed be required.

Translations of documents which are in the English or German language are generally not required.

Cross-examination of witnesses

Whenever witnesses are heard in court, the judge as well as both parties' lawyers ("*advocaten*") may ask questions. The judge summarises what has been said and writes it down in the record of the witness examination. Such record is not a verbatim account of what has been said.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Judgments from EC or EVEX countries are recognised and enforced in accordance with the rules of the Brussels I Regulation (Recast) or EVEX Convention. Pursuant to the Brussels I Regulation (Recast), all judgments from courts of EU Member States must, in principle, be recognised without any special procedure in the other EU Member States. As a matter of European law, the courts are not allowed to review the foreign judgment as to the substance. Only after being declared enforceable by the Dutch Court, in accordance with the Brussels I Regulation (Recast), can the foreign judgment be enforced.

Outside the EU/EVEX, if there is no treaty between the Netherlands and the State in whose court the judgment was given (for instance, between the Netherlands and the USA), the dispute between the parties in theory should be dealt with again by the Dutch Court (art. 431 DCCP). In practice, however, foreign judgments will generally be recognised and enforced without going into the merits of the case if such judgment meets three minimum requirements:

a. the foreign court had jurisdiction on an internationally respected basis;

b. the foreign judgment is a final and binding judgment in the State where the judgment was delivered; and

c. the foreign judgment should not be in conflict with (Dutch) public order and the principles of fair trial.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Arbitration awards made outside the Netherlands can be recognised and enforced under the New York Convention 1958 to which the Netherlands are a party. The New York Convention contains a *more favourable right* provision, allowing the applicant to benefit from the domestic laws if these laws are more favourable to recognition and enforcement than the New York Convention (see also arts. 1075 and 1076 DCCP). An award will generally be recognised by the court in the *exequatur* procedure. In exceptional cases only (for example, in case of the absence of a valid arbitration agreement between parties or when recognition is against the public order), an award will not be recognised.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

All the Conventions mentioned in this overview have direct effect. The Dutch courts are bound to apply the authentic text (usually English) of the Convention and construe the meaning of the wording in accordance with arts. 31–33 of the Vienna Convention of the Law of Treaties 1969. Much weight is given to the uniform interpretation of (maritime) Conventions.

It should be noted that the Netherlands are well-known for their easy and fast way to arrest vessels, other property and evidence. A title for arrest may even be obtained in respect of property in other jurisdictions. In the Netherlands, it is also possible to auction a vessel relatively easily.

In general, the specialised maritime judges of the District Court of Rotterdam have exclusive jurisdiction in maritime matters. In urgent matters they can be approached at short notice. It is possible to conduct proceedings in the English language if all the involved parties agree thereto.

In early 2018, the Dutch Supreme Court held that a wreck removal fund must be formed according to Dutch law in order to be able to limit liability for recourse claims in respect of the raising and removal of vessels and their cargo, and that liability for such claims cannot be limited with a property fund.

In addition, in order to ensure that vessels sailing the Dutch flag can protect themselves against piracy attacks in high-risk areas, the Dutch House of Representatives has accepted a legislative proposal which allows private armed guards to be positioned on board vessels sailing the Dutch flag in such areas.

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Vincent Pool heads Van Traa's transport, shipping and logistics team. He graduated from Erasmus University Rotterdam in 1999. His expertise is in transport law, including all aspects of charterparty and bill of lading disputes, multimodal carriage and related logistic services. Vincent is an excellent litigator, renowned for his very practical, effective approach. In *The Legal 500* he is commended for his "great knowledge" and described as a "wonderful sparring partner". He is fluent in English and German.

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Jolien Kruit joined Van Traa after successfully completing the Civil and Business Law (Leiden 2004 *cum laude*) and the Maritime Law (Soton 2005) Master's programmes. Jolien assists companies in the national and international shipping trade in respect of both the dry and wet sectors of shipping law. In February 2017, she completed her Ph.D., titled: "General Average, Legal Basis and Applicable Law – The overrated significance of the YAR". In *The Legal 500*, Jolien is indicated as a next-generation transport lawyer.

VAN TRAA

Van Traa is a boutique law firm that specialises in international trade, transport & logistics and insurance & liability. Since its foundation in 1898, the firm has built up extensive experience in advising on maritime issues, both on the dry and the wet side. With approximately 30 lawyers, Van Traa is very well-suited to dealing with larger cases that require a specialised team. On the other hand, it is also of a size where everyone knows each other well, and where know-how is shared and passed on from the older generation to the younger. As mentioned in the 2017 edition of *The Legal 500*, Van Traa is "particularly strong in high-end liability cases in the transport sector" and "excels in related insurance and trade matters". *Chambers* indicates that Van Traa is "second to none in the area of transportation, in terms of strength, depth and expertise".

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