



ICLG

The International Comparative Legal Guide to: **Shipping Law 2019**

7th Edition

A practical cross-border insight into shipping law

Published by Global Legal Group, with contributions from:

A. KARITZIS & ASSOCIATES L.L.C

Advokatfirmaet Selmer AS

Ana Cristina Pimentel & Associados,
Sociedade de Advogados, SP RL

Arias, Fábrega & Fábrega

Banwo & Ighodalo

BLACK SEA LAW COMPANY

Clyde & Co LLP

D. L. & F. DE SARAM

DANIOLOS LAW FIRM

Dardani Studio Legale

DELVISO-AVOCATS

Dingli & Dingli

Emirates Maritime Arbitration Centre (EMAC)

EsenyellPartners Lawyers & Consultants

Estudio Arca & Paoli Abogados

Fernandes Hearn LLP

Foley Gardere, Foley & Lardner LLP

FRANCO & ABOGADOS ASOCIADOS

FRANCO DUARTE MURILLO
ARREDONDO LÓPEZ RANGEL

Harris & Co.

HFW Australia

Hill Dickinson LLP

Ince

Jensen Neugebauer

Jipyong LLC

Kegels & Co

KOCH DUKEN BOËS

Lee and Li, Attorneys-at-Law

Mattos Filho, Veiga Filho, Marrey Jr. e

Quiroga Advogados

Meana Green Maura y Asociados SLP (MGM&CO.)

Morais Leitão, Galvão Teles, Soares
da Silva & Associados (Morais Leitão)

Mulla & Mulla & Craigie Blunt & Caroe

NAVICUS

Noble Shipping Law

Q.E.D INTERLEX CONSULTING SRL

Rolmax Law Office

Rosicki, Grudziński & Co.

Sabatino Pizzolante Abogados Marítimos &
Comerciales

Shepstone & Wylie Attorneys

SSEK Indonesian Legal Consultants

ThomannFischer

Tomasello & Weitz

Van Traa Advocaten N.V.

Vda

VUKIĆ & PARTNERS

Yoshida & Partners





Contributing Editor
Andrew Bicknell,
Clyde & Co LLP

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Sales Support Manager
Toni Hayward

Sub Editor
Jane Simmons

Senior Editors
Caroline Collingwood
Rachel Williams

CEO
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
Print Group
August 2019

Copyright © 2019
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-912509-89-8
ISSN 2052-5419

Strategic Partners



General Chapters:

1	Key Recent Shipping Cases in the English Courts – Andrew Bicknell & Hatty Sumption, Clyde & Co LLP	1
2	The Changing Face of Maritime Law and Risk – Cyber, E-Commerce, Automation of Vessels – Julian Clark, Hill Dickinson LLP	7
3	The (Likely) Execution of the United States-Mexico-Canada Agreement (USMCA) – Alejandro N. Gómez-Strozzi, Foley Gardere, Foley & Lardner LLP	13
4	Portuguese Tonnage Tax – Enhancing Shipping in Portugal – Cátia Henriques Fernandes, Morais Leitão, Galvão Teles, Soares da Silva & Associados (Morais Leitão)	15
5	EMAC and the Development of Maritime Arbitration in the UAE – Jyothi Mani, Emirates Maritime Arbitration Centre (EMAC)	19
6	BIMCO on 2020 – Charter Parties and Bunker Contracts – Mads Wachter Kjærgaard & Nina Stuhmann, BIMCO	23
7	Ensuring Competitive and Fair Shipping Markets – Mark Jackson, The Baltic Exchange	28

Country Question and Answer Chapters:

8	Angola	VdA: João Afonso Fialho & José Miguel Oliveira	30
9	Australia	HFW Australia: Nic van der Reyden & Hazel Brewer	36
10	Belgium	Kegels & Co: André Kegels	43
11	Brazil	Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados: Nilton Mattos & Flávio Spaccaquerche	51
12	Canada	Fernandes Hearn LLP: James Manson	57
13	Chile	Tomasello & Weitz: Leslie Tomasello Weitz	63
14	China	Rolmax Law Office: Hector Fan & Captain Guimin Qiao	68
15	Colombia	FRANCO & ABOGADOS ASOCIADOS: Javier Franco	75
16	Croatia	VUKIĆ & PARTNERS: Gordan Stanković	80
17	Cyprus	A. KARITZIS & ASSOCIATES L.L.C: Antonis J. Karitzis & Zacharias L. Kapsis	85
18	Denmark	Jensen Neugebauer: Mads Poulsen	92
19	Dominican Republic	Q.E.D INTERLEX CONSULTING SRL: Luis Lucas Rodríguez Pérez	98
20	France	DELVISO-AVOCATS: Henri Najjar	104
21	Germany	KOCH DUKEN BOËS: Dr. Axel Boës & Henrike Koch	110
22	Greece	DANIOLOS LAW FIRM: John Markianos-Daniolos	116
23	India	Mulla & Mulla & Craigie Blunt & Caroe: Shardul Thacker	122
24	Indonesia	SSEK Indonesian Legal Consultants: Dyah Soewito & Stephen Igor Warokka	130
25	Ireland	Noble Shipping Law: Helen Noble	136
26	Israel	Harris & Co.: John Harris & Yoav Harris	142
27	Italy	Dardani Studio Legale: Marco Manzone & Lawrence Dardani	147
28	Japan	Yoshida & Partners: Norio Nakamura & Taichi Hironaka	153
29	Korea	Jipyong LLC: Choon-Won Lee & Dahee Kim	158
30	Malta	Dingli & Dingli: Dr. Tonio Grech & Dr. Fleur Delia	164
31	Mexico	FRANCO DUARTE MURILLO ARREDONDO LÓPEZ RANGEL: Rafael Murillo	169
32	Mozambique	VdA: João Afonso Fialho & José Miguel Oliveira	173
33	Netherlands	Van Traa Advocaten N.V.: Vincent Pool & Jolien Kruit	179

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.



Country Question and Answer Chapters:

34	Nigeria	Banwo & Ighodalo: Kashimana Tumba & Tenilola Olowu	185
35	Norway	Advokatfirmaet Selmer AS: Norman Hansen Meyer & Nils Bugge	190
36	Panama	Arias, Fábrega & Fábrega: Jorge Loaiza III	196
37	Peru	Estudio Arca & Paoli Abogados: Francisco Arca Patiño & Carla Paoli Consigliere	208
38	Poland	Rosicki, Grudziński & Co.: Maciej Grudziński & Piotr Rosicki	214
39	Portugal	Ana Cristina Pimentel & Associados, Sociedade de Advogados, SP RL: Ana Cristina Pimentel	221
40	Russia	NAVICUS: Konstantin Krasnokutskiy	226
41	South Africa	Shepstone & Wylie Attorneys: Edmund Christian Greiner & Pauline Helen Kumlehn	232
42	Spain	Meana Green Maura y Asociados SLP (MGM&CO.): Jaime Soroa & Edmund Sweetman	238
43	Sri Lanka	D. L. & F. DE SARAM: Jivan Goonetilleke & Savantha De Saram	244
44	Switzerland	ThomannFischer: Stephan Erbe	251
45	Taiwan	Lee and Li, Attorneys-at-Law: Daniel T.H. Tsai	255
46	Turkey	Esenyel Partners Lawyers & Consultants: Selcuk S. Esenyel	260
47	Ukraine	BLACK SEA LAW COMPANY: Evgeniy Sukachev & Anastasiya Sukacheva	265
48	United Arab Emirates	Ince: Mohamed El Hawawy	271
49	United Kingdom	Clyde & Co LLP: Andrew Bicknell & Hatty Sumption	277
50	USA	Foley Gardere, Foley & Lardner LLP: Peter A. McLauchlan & Anacarolina Estaba	283
51	Venezuela	Sabatino Pizzolante Abogados Marítimos & Comerciales: José Alfredo Sabatino Pizzolante & Iván Darío Sabatino Pizzolante	293

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Shipping Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Seven general chapters, which explore topical issues affecting shipping law from a cross-border perspective.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 44 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Andrew Bicknell of Clyde & Co LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
 Group Consulting Editor
 Global Legal Group
Alan.Falach@glgroup.co.uk

Netherlands



Vincent Pool



Jolien Kruit

Van Traa Advocaten N.V.

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 into the Dutch Civil Code ("DCC").

The owner of a ship which was at fault is obliged to compensate the damage (art. 8:544 DCC). The Dutch Supreme Court has given a wide definition to term the "fault of the vessel" (arts 3 and 4 Collision Convention 1910/art. 8:542 DCC).

The rules 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

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 into the DCC. Pursuant to the Dutch Code, 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 into 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 will enter into force in the Netherlands on 1 July 2019. 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.

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 ("DCCP"). 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, 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 the carriage of goods under bills of lading (“b/l”), the Netherlands are a party to the Hague-Visby Rules (“HVR”) including the SDR-Protocol, which provisions have also been incorporated in Book 8 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.

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

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), including the person who signed the b/l, the person on whose behalf the b/l was signed and the person whose form was used for the b/l. Each of these carriers can be sued for cargo claims.

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 Recast Regulation.

iv) Time limits

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

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).

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.

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 the provision of incorrect information (art. III-5 HVR; art. 8:411 DCC).

The liability for dangerous goods has been regulated separately (*inter alia*, in art. 8:398 DCC; art. IV-6 HVR).

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 into 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).

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. Vessels flying the flag of a convention state can be arrested for the Maritime Claims listed in art. 1(1). Other vessels can be arrested for any claim against the vessel owners or which may be enforced against the vessel (see also question 4.2 below). 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. Arrest of a sister ship for a mortgage claim is possible under Dutch national law (art. 10 Arrest Convention).

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, and such description must be supported by 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 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.

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.

4.3 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

Unlike the Arrest Convention 1999, the Arrest Convention 1952 does not expressly mention this type of claim as a maritime claim. A ship that does not sail the flag of a Member State to the Arrest Convention 1952 can be arrested for such claim.

4.4 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 (see question 4.1, iii)).

For example, in case of a claim against the time charterer, the bunkers owned by the time charterer can be arrested.

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 the 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 contractual rights of retention (lien), *inter alia*, with regard to earlier contracts of carriage between such parties.

4.5 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 DCC).

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 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.

The Dutch court can also be asked to appoint a court surveyor, either to conduct a full research including issuing a report with his conclusions, or merely to gather evidence.

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. When a party has exclusive access to particular evidence, it can be held against this party, when he does not provide the same.

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 most 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 upon 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.

Recognition of jurisdiction clauses

Jurisdiction clauses referring to a court of an EU Member State 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. B/I holders, in principle, are bound by jurisdiction clauses referring to an EU Member State or to a Lugano Convention (EVEX) 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.

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 DCCP (arts 1020–1076).

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 no settlement is reached, a 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.

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.

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 to 12 months after the writ was issued.

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. In practice, these fees usually cover only a (small) part of the lawyers' fees.

Mediation/ADR

There is no 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 "UNUM" (previously called "TAMARA"; see <https://unum.world>).

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.

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, and for judgments rendered in summary proceedings, the appeal period 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. 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 a notarial deed may 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 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.

Power of attorney

In principle, a party does not need to provide a (legalised) power of attorney.

7 Foreign Judgments and Awards

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

Judgments from EU 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, a foreign judgment will generally be recognised and enforced without going into the merits of the case, if such judgment meets some minimum requirements.

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. 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.

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

In order to ensure that vessels sailing the Dutch flag can protect themselves against piracy attacks in high-risk areas, legislation has been accepted which allows private armed guards to be positioned on board vessels sailing the Dutch flag in such areas.

The 2012 Strasbourg Convention on the limitation of liability in Inland Navigation (“CLNI 2012”) will enter into force in the Netherlands on 1 July 2019.

**Vincent Pool**

Van Traa Advocaten N.V.
Meent 94
3011 JP Rotterdam
Netherlands

Tel: +31 10 224 5528 / +31 6 227 11627
Fax: +31 10 414 5719
Email: pool@vantraa.nl
URL: www.vantraa.nl

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. He is an excellent litigator, renowned for his very practical, effective approach. To quote *Chambers & Partners*: "Vincent Pool concentrates on transportation law relating to logistics and dry shipping disputes. Recognised in the market for his experience in carriage of goods and freight forwarding, he assists with contractual disputes, as well as damage and loss of cargo." He is fluent in English and German.

**Jolien Kruit**

Van Traa Advocaten N.V.
Meent 94
3011 JP Rotterdam
Netherlands

Tel: +31 10 224 5511 / +31 6 4600 4043
Fax: +31 10 414 5719
Email: kruit@vantraa.nl
URL: www.vantraa.nl

Jolien Kruit joined Van Traa in 2005, after obtaining Master's degrees in both Leyden and Southampton. She assists companies in the national and international shipping trade in respect of both the dry and wet sectors of shipping law. Jolien also lectures in the Master Maritime and Transport law of the Erasmus School of Law Rotterdam, where she completed her PhD on General Average in 2017. *Chambers & Partners* writes, "Particularly well known for her expertise in general average, Jolien Kruit is regarded by one impressed client as 'the most knowledgeable in the Netherlands' in this respect. 'She knows how to bring her legal knowledge across in a very clear and understandable way'".



Van Traa is a boutique law firm that specialises in international trade, transport & logistics and insurance & liability. It is one of the very few firms in the Netherlands with the expertise and the required experience to deal with legally complex issues in all aspects of transport law, including rail, road, multimodal, brown and blue water carriage; casualties; wet and dry shipping; logistics and forwarding; aviation, commodities; and marine insurance.

With approximately 30 lawyers, Van Traa is very well-suited to dealing with larger cases that require a specialist team. As mentioned in the 2019 edition of *Chambers & Partners*: Van Traa has an "impressive transportation practice, with a first-rate maritime offering".

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk