



Shipping

in 30 jurisdictions worldwide

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Newbuilding contracts

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

In Polish maritime law, there is no particular regulation relating to the issue of transfer of ownership of a vessel. As the vessel is an object defined as to its identity, the transfer of her ownership takes place by virtue of a mere agreement signed by both parties, which automatically transfers the title to the vessel, without the need of transferring a possession. Issuing a bill of sale is not necessary. An agreement transferring the ownership of a vessel that is a Polish property (and must be registered in the Polish Registry of Ships), or is supposed to become such, should be concluded in writing, with signatures attested by a notary public, under penalty of invalidity.

Ownership of a newbuild (one that has not been registered yet) can be transferred by virtue of a written agreement, even without notarisation. Nevertheless, in practice it is recommended to have the document transferring ownership of the vessel attested by the notary public in each case.

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

For guarantees and warranties the Civil Code and Banking Law regulations apply, similarly as in the sale agreement. It means that in case of warranty no additional formalities are required, but in case of guarantee it is necessary to hand over the guarantee documentation (the guarantee itself at least) by the guarantor.

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

There are such workable, practical procedures. A legal action brought to the court, aiming at taking over possession of such vessel from the yard, can last for months. A security procedure cannot be instituted in such instance.

- 4 Where the vessel is defective and damage results, would a claim lie in 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?

The shipowner that was a party to a shipbuilding contract, according to the regulation contained in the Civil Code, may demand the shipbuilder to remove the defects, indicating to the shipbuilder a deadline, after which he or she will not accept the repair. The shipbuilder can refuse the repair, if it requires excessive expenses. If the defects are not able to be removed on time or they are impossible to remove at all, the shipowner may withdraw from the agreement or demand the reduction of the purchase price (a theoretical solution only). A ship-

builder may grant the shipowner a separate guarantee for the vessel, which may significantly extend buyer's rights.

A (new) purchaser from the original shipowner or any third party who sustained damage cannot bring such action against the shipbuilder, unless the purchaser's rights granted by the shipbuilding contract to him or her were subsequently transferred to the new buyer, together with the vessel herself. Such transfer must be made in writing.

A claim lying in product is attributable to consumer goods only, which means that it does not comprise a vessel.

Ship registration and mortgages

- 5 What vessels are eligible for registration under the flag of your country?

Vessels eligible for permanent registration are in practice those owned by persons or companies with a seat in any European Community member state, or owned in at least 50 per cent by such company or person.

- 6 What are the requirements for company formation?

According to the Commercial Code of Companies, the following is necessary to form a joint stock company: the establishment of the company, including the signing of an article of association by the founders; a minimum of 500,000 Polish zloty (approximately US\$147,000) in company capital brought by stockholders; appointment of a management and supervisory board; and entry in the Registry of Companies.

To form a limited liability company, it is necessary to sign an article of association, bring company capital in the amount of 50,000 Polish zloty (approximately US\$147,000), appoint a management and supervisory board (if required by the article of association or any other legal act), and enter the company in the Registry of Companies. Foreign companies may also carry out activity in the form of representations and branch offices.

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

Temporary registration (bareboat charter registration) is possible. For this period, the vessel remains in the Polish underlying registry and remains subject to underlying registry real rights (ownership, mortgages, etc), while the vessel can fly the flag of the temporary registry flag and be subject to jurisdiction of the temporary registry in all other matters.

Polish law recognises flagging out from the Polish Registry and flagging in as well.

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

The Register of Mortgages is kept by the Maritime Chambers, one in Gdynia, the other in Szczecin. The Chambers keep the Ship Registry, where the mortgages are registered. Polish law recognises both maritime hypothecation and – since 2001 – the mortgage as well. In practice a mortgage is more popular now. In the third part of this register the existence of the maritime hypothecation or mortgage should be mentioned. There should be listed the amount of hypothecation or mortgage, the currency, the entitled person, and the date of entry or eventually the date of crossing it out.

Limitation of liability

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

In the Polish legal system, the London Convention on Limitation of Liability For Maritime Claims dated 19 November 1976 is in force. The limitation of liability is as per convention. Its provisions were transferred directly to the Polish Maritime Code (article 97ff).

Besides, cargo claims limitation is also recognised, as per the Hague-Visby Rules.

- 10** What is the procedure for establishing limitation?

The possibility to limit the liability without establishing the fund exists in Polish legal system. It results from the article 98, section 1 of the Maritime Code. However the court may subject the limitation of liability on the establishing of the fund, if there exists the possibility to discover creditors not known yet. According to article 101 of the Maritime Code, the liability arising in connection with navigation of a vessel of not lower than 300 gross register tons (GRT) is equal to 100,000 special drawing rights (SDR) in case of death and personal injury. In the remaining cases the limit of liability is 50,000 SDR. The fund could be established in cash or by way of presenting a guarantee acceptable in a particular jurisdiction. The procedure of establishing the limitation fund is as per the convention.

- 11** In what circumstances can the limit be broken?

Exclusion of limitation of liability takes place when it is proven that damage resulted from the actions or negligence of the liable person, performed with the intention to cause damage or recklessly and with the awareness that damage might probably result.

Port state control

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

Maritime administration is in the care of the director of the Maritime Office. Control in ports is carried out in the following fields: maritime inspection; flag inspection; port state control; and control of vessels' movements. In Poland there are three Maritime Offices:

Maritime Office in Gdynia

Urząd Morski w Gdyni
Chrzanowskiego 10
81-338 Gdynia
Tel: +48 58 620 69 11
umgdy@umgdy.gov.pl
www.umgdy.gov.pl

Maritime Office in Słupsk

Urząd Morski w Słupsku
Al Sienkiewicza 18

76-200 Słupsk,
Tel: +48 59 847 42 56
secretariat@umsl.gov.pl
www.umsl.gov.pl

Maritime Office in Szczecin

Urząd Morski w Szczecinie
Pl Batorego 4
70-207 Szczecin
Tel: +48 91 4339598
sekretariat@ums.gov.pl
www.ums.gov.pl

- 13** What sanctions may the port state control inspector impose?

The director of the Maritime Office (on the application of the port state control inspector) may detain a vessel and fine the owner. The maximum level of fines that can be imposed is 1 million SDR. The detention of a vessel could be for security reasons – in order to force a shipowner to pay a fine imposed (article 59(2) of the Act on Polish Maritime Territories and Maritime Administration). The port captain also can detain a vessel for a period not exceeding 72 hours, at a creditor's request in order to secure claims for unpaid port charges, damages caused by a vessel to the port facilities or navigation routes as well as environmental pollution (article 42 of the above Act).

There are also port state control inspections carried out on board vessels entering Polish ports.

PSC inspections take place on board vessels in ports belonging to the Paris Memorandum of Understanding on Port State Control (the Paris MoU), ensuring that these vessels meet international safety, security and environmental standards, and that crew members have adequate living and working conditions. The PSC may require deficiencies that have been found during inspection to be removed in good time, or may detain a vessel until the deficiencies are removed.

- 14** What is the appeal process against detention orders or fines?

The party detained or fined by the director of the Maritime Office is entitled to appeal to the respective ministry for the maritime affairs in the form of administration proceedings.

If the detention results from the Paris MoU regulations, the shipowner can appeal through their review panel.

Classification societies

- 15** Which are the approved classification societies?

The Polish Register of Shipping (PRS) has been acting in classification since 1936. At present the PRS, acting beyond the structure of the International Association of Classification Societies (IACS), cooperates on the basis of mutual agreements with IACS classification societies (eg, DnV, LR, ABS, CCS, RMRS) and non-IACS classification societies in the field of maritime safety.

PRS's activities have been assessed by the European Maritime Safety Agency (EMSA) and the European Community has granted limited recognition to PRS, following several audits confirming its compliance with criteria set out by Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspections and survey organisations. Limited recognition means that the effects of the recognition embrace only those members that submit the request for such recognition. For the member states that are listed in the Decision, the effects of the recognition are full, with no limitations.

PRS's class is considered as equivalent to the highest Lloyd's class by many international organisations, as well as maritime administrations.

Polish Register of Shipping: head office

Polski Rejestr Statków SA
 Al Generała Jozefa Hallera 126
 80-416 Gdansk
 Tel: +48 58 346 03 92
 mailbox@prs.pl
 www.prs.pl

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

There is no possibility of the Polish Registry of Ships being held liable, on the basis of the Act on the Polish Registry of Ships of 26 October 2000 and further regulations. If a third party seeks to sue the society, the rules of the Civil Code must be applied.

Collision, salvage, wreck removal and pollution

- 17** Can the state or local authority order wreck removal?

The director of the Maritime Office can order wreck removal at expense of the shipowner, if the owners declare such an intention in the period of six months from the date of sinking or from the date appointed by the owners but not followed.

- 18** Which international conventions or protocols are in force in relation to collision, salvage and pollution?

The International Convention of Salvage 1989 (ratified by Poland in 2006) as well as the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 (ratified by Poland in 1938) are in force. However, the Brussels 1910 Salvage convention has not been abandoned by Poland yet, which in certain situations can be a bit misleading and cause problems when deciding which regulations are actually in force.

Poland also ratified the International Convention on Civil Liability for Bunker Oil Pollution 2001.

Poland is also a party to the Convention of Search and Maritime Salvage 1979, Hamburg (ratified by Poland in 2000).

- 19** 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.

Salvage operations at sea are carried out by the Maritime Exploration and Salvage Services, cooperating with the navy, police, fire brigade, coast guard and Polish Ship Salvage Company (a state-owned but commercial company); the latter's salvage form is sometimes used. The form is based on the following essential principles: 'no cure, no pay', environmental protection and calculation of remuneration due. More often used are the agreements for salvage operations in Lloyd's standard form, Danish Em Z Svitzer Salvage Company Ltd, and French LD. The most often used is Lloyd's standard form.

Ship arrest

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

The International Convention Relating to the Arrest of Sea-Going Ships 1952 is in force in Poland. It was ratified in 1976. The new 1999 Convention is supposed to be ratified in the future.

- 21** In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?

Vessels flying the flag of 1952 Convention member states are subject to

arrest only for maritime claims listed in the Convention. All other vessels can be arrested in connection with any credible claim, if the claimant proves that he or she has a 'legal interest' in arresting the vessel; 'legal interest' means that the claimant may (in the future) encounter serious trouble while enforcing such claim unless the subject vessel is arrested. A ship may be arrested exclusively by virtue of a court decision.

As far as sister ships are concerned, article 3.4 of the 1952 Convention applies, in relation to time charterers as well as bareboat charterers. Consequently, arrest is possible but subsequent execution of the court judgment issued against the claimant not being the shipowner is not possible. Thus the practical value of article 3.4 of the Convention is somewhat limited.

- 22** What is the test for wrongful arrest?

Ultimate failure of the claim is the essential pre-condition of a wrongful arrest claim. Bad faith of the claimant is not an essential condition; the good faith of the claimant does not protect him or her from damages for the wrongful arrest, if the claim finally collapses.

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

The court may demand the claimant provide a security, in cash or in the form of a bank guarantee. This may be done at the debtor's request or on the judge's own initiative. In practice, the decision requiring a cash deposit from the arresting party fully depends on the particular circumstances of the case. Experience shows that claimants are very frequently requested to provide simultaneous securities.

- 24** Who is responsible for the maintenance of the arrested vessel?

The person who was responsible right before the arrest, that is, the ship's operator. The claimant is not responsible, unless the court decides so, and it happens rarely. Neither the arresting court nor the bailiff is responsible for maintenance of such vessel.

Carriage of goods by sea and bills of lading

- 25** Are the Hague Rules, Hague-Visby Rules, Hamburg Rules, or some variation in force and have they been ratified or implemented without ratification?

The Hague-Visby Rules are in force in Poland; they were incorporated into the Polish Maritime Code and ratified in 1937.

- 26** Who has title to sue on a bill of lading?

A party entitled to sue on a bill of lading depends on the type of bill of lading:

- 'straight' bill of lading – the person to whom the bill of lading is issued and who keeps the original;
- 'order' bill of lading – the person who was endorsed as such in the bill of lading by the shipper who keeps the duly endorsed original (3/3 originals must be endorsed); and
- 'bearer' bill of lading – the bearer holding the original.

- 27** To what extent can the terms in a charterparty be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charterparty, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

There are no limits as to the contents of the terms in the charterparty incorporated from the bill of lading. Terms incorporated to the charterparty bind each third party – bill of lading holder or endorsee. If the bill of lading refers to the contents of the charterparty without its direct incorporation, charterparty conditions are binding for third parties only if the contents of the charterparty was known or it was easy to learn.

A jurisdiction clause incorporated in charterparty is valid for the third-party holder of the bill of lading referring to the charterparty only if the third-party holder had an opportunity to get acquainted with the charterparty itself. Different views are sometimes formulated, expressing opinion such a jurisdiction clause is always binding for the third-party holder, but these are in minority.

Within relations among companies having seats in EC states art. 23 of Council Regulation No. 44/2001 applies accordingly.

An arbitration clause incorporated in charterparty is valid for the third-party holder of a bill of lading referring to the charterparty only, if the third-party holder consented in writing (exchange of faxes or e-mails also) for such arbitration clause. This is the local law understanding of the 1958 New York Convention regulations in this respect.

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

Both the demise clause and identity of carriers clause are recognised and binding in Polish law.

29 Is the shipowner liable for cargo damage where he is not the contractual carrier and what defences can he raise against such liability? In particular, can he rely on the terms of the bill of lading even though he is not a contractual carrier?

The shipowner is liable for cargo damage only if a bill of lading issued for the cargo carried on shipowner's vessel does not identify the carrier or identifies the carrier improperly or insufficiently (for example the carrier's address has not been given). The only sure defence is identification of the carrier.

The shipowner can rely on bill of lading terms, since the shipowner is regarded as the carrier then.

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

According to article 140, section 2 of Maritime Code a deviation from the route for the purpose of saving life or property at sea or for other justified reason does not constitute an infringement of the contract of carriage; the carrier is not liable for any damage resulting therefrom. A deviation from the route for other than above specified reasons constitutes a breach of the contract of carriage.

31 What liens can be exercised?

The following liens can be exercised:

- upon a vessel – the liens mentioned in the 1926 Convention on maritime liens and hypothecations, ratified by Poland and incorporated in Polish Maritime Code; and
- upon a cargo – the carrier has a lien on cargo, securing payment of freight and other dues accrued in connection with the subject carriage.

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

If the carrier intentionally released the cargo without presentation of original bill of lading, this constitutes an unlawful act and no limitation of liability can be applied. Unintentional release of the cargo without presentation of the original of bill of lading constitutes a breach of an agreement and causes the liability of the carrier, which however is subject to the limits resulting, for instance, from the contents of the bill of lading.

33 What are the bill of lading holder's responsibilities and liabilities?

The bill of lading holder is entitled to collect the cargo, to dispose it. He or she can demand the survey before the cargo is delivered. The bill of lading holder is obliged to cover the expenses connected with cargo delivery, with the exception of unloading expenses. He or she must also pay the carrier the freight in the amount resulting from the bill of lading.

Jurisdiction and dispute resolution

34 Which courts exercise jurisdiction over maritime disputes?

Jurisdiction over the matters governed by maritime law is executed by common courts. There are not special courts for shipping and maritime trade. In practice these are courts in Gdansk, Gdynia and Szczecin. A two-tier legal system is applicable (first instance court and court of appeal), but in some cases a cassation can be lodged to the Supreme Court.

The Polish Registry of Ships is kept by the Maritime Chambers in Gdynia and in Szczecin. The Maritime Chambers also investigate marine accidents and issue judgments determining professional responsibility of the persons involved (masters, crewmembers, etc.). In the same course, the Maritime Chambers also determine the 'nautical liability' of the persons or companies involved in shipping. These judgments are the basis for subsequent judgments of the civil courts.

The Maritime Chambers are organised as common courts:

First instance courts

Maritime Chamber at District Court of Gdańsk (seated at Gdynia)
Pl Konstytucji 5,
81-354 Gdynia
Tel: +48 58 620 73 15
www.im.gov.pl

Maritime Chamber at District Court of Szczecin
Pl Batorego 4,
70-207 Szczecin
Tel.: +48 91 433 67 82

Second instance court

Appeal Maritime Chamber at District Court of Gdańsk
Pl Konstytucji 5,
81-354 Gdynia
Tel: +48 58 621 87 77
oim.gdynia@poczta.fm
www.im.gov.pl

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

A copy of the writ of summons together with all attachments, all translated into the official language of the defendant's seat must be delivered to the defendant personally, ie to its seat. No delivery to the agent, broker, etc, is permissible, unless the defendant expressly consented so. The defendant is given only 14 days to respond, which is a very short term indeed, in practice. Lack of response in the instructed period of time exposes the defendant to a judgment by default against him, which subsequently is difficult to defend against him.

Within EC states respective EC regulations apply accordingly.

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

There is a domestic arbitration court for maritime disputes – the International Court of Arbitration in Gdynia (IMAC) at the Polish

Update and trends

In the current term the Parliament was not engaged in maritime law amendments. No new projects or parliamentary acts are foreseen.

Chamber of Maritime Commerce. The list of arbitrators consists of a number of experienced maritime lawyers. The court is located in Gdynia, although there is a possibility to organise hearings in any place agreed by the parties.

International Court of Arbitration at the Polish Chamber of Maritime Commerce

Miedzynarodowy Sad Arbitrazowy przy Krajowej Izbie Gospodarki Morskiej
24 Armii Krajowej Str.
81-372 Gdynia
Tel: +48 58 782 01 93
kazba@kigm.pl
www.kigm.pl

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

Regarding judgments, EC regulations apply in EC states, in particular Council Regulation No. 44/2001. In relations with non-EC residents and judgments issued outside EC states, Polish law demands mutuality in recognition of foreign judgments, which condition is rarely fulfilled. US courts judgments are basically not recognised in Poland.

Regarding arbitration awards, Poland is a party to 1958 New York Convention; all the rules therein apply accordingly.

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

There are no such remedies. Unlike in England, the claimant may institute his or her proceedings anywhere in the world and the defendant – acting in Polish court – cannot stop him or her. In fact, a Polish court is not interested in what the claimant does outside Poland. But such a claimant simply will not be able to enforce judgment given in a (wrong) jurisdiction in Poland. Since the judgment recognition and enforcement procedure in Poland involves the presence of the defendant (at the second stage of such procedure), the defendant always has an opportunity to demand that the motion for recognition is discarded by the court. In order to do so, the defendant must evidence existence of a valid jurisdiction clause referring to jurisdiction of Polish courts. Consequently, in case of a valid jurisdiction clause

referring to Polish courts, commencement of a legal action outside Poland (when the claimant intends to enforce such a judgment in Poland subsequently) is purposeless, since the judgment would be useless in Poland.

39 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 can demand that the writ of summons is discarded by the Polish court or arbitration, by evidencing existence of the valid jurisdiction or arbitration agreement as concluded between the parties.

Limitation periods for liability**40** What time limits apply to claims? Is it possible to extend the time limit by agreement?

According to article 108 of the Maritime Code the time bar for the claims resulting from the carriage agreement is two years from the due moment, and for claims resulting from the bill of lading – one year from the date when the cargo was delivered or supposed to be delivered.

Tort claims are subject to a three-year time bar.

It is possible to extend the time limit; this is done by written agreement signed by the parties to the dispute and may be effected in relation to all claims that have arisen in connection with matters and issues regulated by the Maritime Code.

41 May courts or arbitral tribunals extend the time limits?

Neither courts nor arbitrators can extend the time limits.

However, commencement of the court action (or arbitration) automatically interrupts the passing of the time bar period. The time bar period does not start running anew till the court proceedings are pending.

The claimant may obtain interruption of elapse of a time limit by instituting a *procedure amiable* at the court, which is relatively easy and cheap. Upon termination of the *procedure amiable*, the time bar period starts running anew. *Procedure amiable* cannot be instituted in arbitration.

Miscellaneous**42** Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

See 'Update and trends'.

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