QUESTIONS AND ANSWERS ON SHIPPING & COMMODITIES

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1 CONTRACTS OF CARRIAGE

1.1 *Jurisdiction/Proper Law*

1.1.1 *In the absence of express provisions in a bill of lading (or charterparty), by what means will the proper law of the contract be determined?*

The proper law of the Contract should be determined in compliance with art. 5 of Regulation 593/2008 [Regulation Rome I]. This in principle should result to the application of the *lex sedis* of the carrier on the conditional basis that the said place coincides with the place of residence of the receiver, or the place of delivery, or the place of receipt; otherwise the contract shall be governed by the law of the place of delivery.

1.1.2 *Will a foreign jurisdiction or arbitration clause necessarily be recognised? In the event that proceedings can be commenced notwithstanding such provisions, can such proceedings be challenged in your courts (i.e. will the proceedings in breach of any such agreement be stayed) ?*

As far as commercial disputes are concerned, the general rule is that all disputes (including as well torts and unjust enrichment claims) are deemed arbitrable or subject to the conclusion of a jurisdiction clause. Such clauses may be subsequently challenged solely on the grounds of lack of written form, or lack of proper authorization of the party representative to countersign the agreement, or on grounds concerning the defects of the parties' wills (ignorance, extortious imposition of will, threat), or gross abuse. Despite the fact that often Greek Jurisprudence highlights the availability of such options (see Court of Appeal of Athens 1896/1996), it has been so far remarkably hesitant to declare a nullity of an arbitration or jurisdiction clause in a commercial dispute.

Assuming that a signatory party to an arbitration or jurisdiction clause files a lawsuit before the Greek State Courts in breach of such a clause, the defendant is entitled to file and objection on the valid submission of the dispute before a foreign court or an arbitral board at the first hearing of the case; assuming that the allegation is admitted to its merits then the Court shall either dismiss the lawsuit as inadmissible for lack of competence (in case of a jurisdiction clause) or shall order a stay of further proceedings and refer the case to the arbitration (in case of an arbitration clause). Antisuit injunctions are not available in Greek Legal System, while such injunctions

granted abroad are held contradictory to Greek Public Order (Court of Appeal of Piraeus 110/2004). The party suffering the breach of the jurisdiction clause is not entitled to seek further damages before Greek Courts, but is entitled to seek remuneration for the judicial expenses imposed in the course of defending the lawsuit. The amounts awarded though are usually relatively small and do not cover the actual legal costs.

Apart from the submission of an objection before the Court where the main dispute is pending, and irrespective of whether the proceedings have been initiated before the arbitration tribunal, a party may file a lawsuit before the Greek Courts (assuming that the case would fall within the scope of their competence before the conclusion of the arbitration clause) challenging the validity of the arbitration clause itself (Supreme Court 403/1989; Court of Appeal of Athens 12086/1979 and 7796/1978).

1.1.3 *In the event that an injunction or order preventing proceedings is obtained in the agreed jurisdiction (whether court or arbitration), will this be recognised in your court?*

Antisuit injunctions are held contradictory to Greek Public Order (Court of Appeal of Piraeus 110/2004).

1.1.4 *Arbitration clauses:*

1.1.4.1 *Will an arbitration and/or a jurisdiction clause set out in an incorporated document (such as a charterparty referred to in a bill of lading) be recognised if its text is not set out in the contract in question* ?

An arbitration and/or a jurisdiction clause set out in an incorporated document (such as a charterparty referred to in a bill of lading), whose text is not set out in the contract in question, is recognised, under the conditions mentioned below in 1.1.4.2 (Kerameus/Kondlyis/Nikas / Foustoukos), CCP commentary, art. 869 nr. 1). In general terms, the issue should be addressed on an ad hoc basis depending on the very nature of the incorporated document; thus a jurisdiction clause included in General Terms of Sale would be deemed valid only upon the condition that the requirements of art. 23 § 1 Brussels Regulation I are met, while an arbitration clause contained in a prior contractual document between the parties, when incorporated by reference in a new contractual arrangement would most likely be deemed valid. As far as bills of lading are concerned, the prevailing view in jurisprudence firmly favours the validity of clauses either incorporated by reference, or contained in the pre typed general terms of the bill of lading (Court of Appeal of Piraeus 944/2007).

1.1.4.2 *Will the incorporation of an unsigned arbitration agreement into a contract be recognised?*

No. Written form requirement explicitly presupposes the signature of the clause by both parties' authorised representatives. As regards bills of lading, signature of shipper is necessary. Signature of receiver who is not the shipper does not suffice for incoporporation (Court of Appeal of Piraeus 944/2007). It should be noted, however, that the Supreme Court has ruled in a case regarding an international contract of sale of goods that even tacit admission of the other party's acceptance suffices to justify the conclusion of the arbitration clause, whenever this is imposed by good faith and proper trade usages (Supreme Court 1561/1998]. In any case, exchange of faxes and telegrams meets the requirements of written form (869 §1 CCP) and the exchange of emails might be deemed as falling within the scope of the same rule

1.1.5 *In any event, will all of the provisions of a charterparty incorporated into a bill of lading contract be recognised? Specifically, if a charterparty with an arbitration clause is incorporated into a bill of lading, is it necessary for the incorporating words to make express mention of the arbitration clause of the charter?*

Not all of the provisions of a charterparty incorporated into a bill of lading contract shall be recognised. If a charterparty with an arbitration clause is incorporated into a bill of lading, it is necessary for the incorporating words to make express and clear mention of the arbitration clause of the charter, except in the case of "Congenbill" bills of lading, where there is rebuttable presumption that the receiver had access to the charterparty and could review it when entering into the carriage contract by the bill of lading (Court of Appeal of Piraeus 200/1997 and 201/1997).

1.1.6 *If a bill of lading refers to the terms of a charterparty, but without identifying it (eg by date):*

1.1.6.1 *Will incorporation be recognised without such detail?*

According to the prevailing view, the incorporation of clauses with no specific identification to any particular charterparty will not be recognised. The Courts of Piraeus have repeatedly ruled that reference to type, only, of charterparties (such as "shellvoy", "centrocon" etc), without specific

reference to a dated and signed carterparty will not suffice for the respective clauses to be considered incorporated (Muti Membered Court of First Instance of Piraeus 2104/1980, Court of Appeal of Piraeus 3894/1976 and 389/1994).

1.1.6.2 *If so, which charterparty will be incorporated?*

See supra 1.1.6.1

.2 *Parties to the Bill of Lading Contract*

.2.1 *How is the carrier identified? In particular, what is the relationship between statements on the face of the bill and/or the signature by or on behalf of the Master (on such terms as might be apparent) and demise clauses/identity of carrier clauses?*

The issue of the identity of the "carrier" is a question of fact; he is the person who agreed to carry the goods and usually is the shipowner. The demise charterer is liable as carrier, unless the shipper did not know that the vessel is chartered by demise (*Piraeus Multi Member First Instance Court ("PMFIC") 488/1988)*. Where a ship is under a time or voyage charter, the shipowner is deemed as carrier, since the master signing the bill of lading ("BoL") is his servant, unless he proves that the master so acted for the charterer as carrier and clarified this to contracting parties *(Piraeus Appeal Court ("PAC") 750/1992)*. When a BoL is issued by or on behalf of the master on the letterhead of a shipping company, then either the shipowner or such shipping company may be held to be the carrier (*PAC 1156/1991, 718/1988*). Demise clauses/identity of carrier clauses could be invalid if contradictory to statements on the face of BoL and/or the signature by or on behalf of the Master (no reported cases exist).

1.2.1 Who is entitled to sue for loss or damage arising out of the carrier's alleged default? In particular, by what means, if at all, are rights under the contract of carriage transferred? Are there any limits to such transfer? Does any such transfer affect any liability of the original shipper?

Entitled to sue for loss or damage arising out of the carrier's alleged default is any person who has interest in the cargo, in the sense that he holds the right accruing from the carriage contract

and suffers direct damage, e.g. the shipper holding the BoL after assignment from consignee, the shipper having the risk of transport who compensated the consignee, the consignee lawfully holding the BoL, the insurer who compensated the insured's damage and was substituted to his rights by law or assignment, the cargo's pledgee, the assignee of consignee's rights, the charterer of all or part of the ship (*art.134-135 of Code of Private Maritime Law ("CPML"), art.3 Hague-Visby Rules, PMFIC 3365/2006, PAC 738/2009, 186/2006*). Not entitled to sue is the cargo's buyer, not being assignee, consignee or endorsee of the BoL *(PAC 201/2005)* or the cargo's seller who had the risk of transport, not being shipper or charterer (*PAC 386/1999*).

The rights under the contract of carriage are transferred regarding (a) straight BoL's: by assignment and delivery of BoL *(PMFIC 3365/2006)*, (b) negotiable BoL's: by endorsement and delivery of BoL, (c) charterparties: by assignment, if allowed therein, by amending contract or by issuance of BoL. In latter case, BoL terms prevail in affairs between carrier and receiver, when contradictory to charterparty terms, unless express reference was made in BoL to particular terms of charterparty *(PAC 638/1979, Kamvysis Private Maritime Law p.473)*. The lawful holder of the BoL becomes owner of the goods, however he remains a third party to the contract of carriage and isn't entitled to demand performance of such contract from carrier, only compensation in case of loss or damage to goods *(PMFIC 1096/1978)*. Any such transfer does not affect any liability of original shipper *(art.153 CPML)*, unless stipulated otherwise in the contract of carriage.

.3 <u>Liability Regimes</u>

.3.1 Which cargo convention applies – Hague Rules/Hague Visby Rules/Hamburg Rules? If such convention does not apply, what, in summary, is the legal regime? Is it based in any way upon any of the foregoing conventions?

Hague-Visby Rules apply since 1993 (*law 2107/1992*). In cases where they don't apply, *art. 107-148 CPML* are applicable, similar to Hague Rules, by which the carrier is obliged to diligence regarding the cargo, its loading/unloading, stowage, carriage, guarding and maintaining and is liable to pay compensation for any loss or damage calculated on the value of goods of same type and quality in the port of destination at time of unloading, unless he proves that he and his employees and subcontractors exercised prudent carrier's diligence and the loss or damage was due to chance, force majeure or act third party for whom he is not liable (*PAC 738/2009*).

.3.2 Have the Rotterdam Rules been ratified?

Greece signed in 2009, but did not ratify, the "Rotterdam Rules" convention.

.3.3Do the Hague/Hague Visby Rules apply to straight bills of lading?

Opposing judgments exist for Hague-Visby Rules application to straight BoL's *(PAC 944/2007, 240/2006)*.

.3.4Are any such Rules compulsorily applicable to shipments either from your jurisdiction or to it (or both)?

Hague-Visby Rules apply compulsorily to (a) all transports executed under BoL or similar title document for sea carriage (incorporating the holder's right, not sea way bills, car tickets or other transport receipts), where ports of loading and unloading belong to different States and (b) sea transports between Greek ports, whether a BoL was issued or not (art.2(1) *law 2107/1992, PAC 194/2009*).

.4 <u>Lien Rights</u>

.4.1 To what extent will a lien on cargo be recognised? Specifically:

.4.1.1 Will liens arising out of obligations under the bill of lading contract be enforceable as against the receiver for eg freight, deadfreight, demurrage, General Average and any shipper's liabilities in respect of the cargo?

There are no liens arising out of obligations under the BoL contract afforded in the law. The carrier is not allowed to withhold the cargo for non payment of freight and other supplies (eg deadfreight, demurrage), he is only entitled to apply to court for sequestration of cargo, till freight gets paid *(art.152 CPML)* and to sell the cargo only in case of perishing danger with court permission (*PAC*

944/2007). Lien clauses may be interpreted to provide only a right of sequestration *(Piraeus Single Member First Instance Court ("PSFIC") 7603/2002),* right of withholding *(PSFIC 2097/1991)* or obligation of storage *(PMFIC 1838/1979)*. As *art.152 CPML* isn't *ius cogens*, parties may agree in charterparty or BoL that carrier has a lien by which he may withhold the cargo for non payment of freight, deadfreight, demurrage etc *(PSFIC 2097/1991)*. In case of non payment by the receiver (not charterer) of freight, deadfreight and demurrage, sequestration is ordered for freight due by charterer only if provided in BoL or by charterparty clause clearly incorporated in BoL *(PSFIC 7603/2002, 1084/1979).* There is no sequestration right allowed against the receiver for General Average and any shipper's liabilities in respect of the cargo (insofar as those aren't characterised as "freight or other supplies"), unless stipulated in the BoL.

.4.1.2 Can the Owner lien cargo for time charter hire? If so, is this limited to hire payable by the cargo owners?

Owner can apply to court for sequestration of cargo for time charter hire, till hire gets paid *(art.152 CPML).* No other lien is allowed unless agreed by charterparty or BoL. In case of non payment of hire, sequestration of cargo of the cargo owner (not charterer) may be ordered for owner's claim for hire owed by charterer, only if provided in BoL or by charterparty clause incorporated in BoL *(PSFIC 7603/2002, 1084/1979).* The sequestration right is limited to sub-freight and other supplies (eg deadfreight, demurrage) payable by cargo owners, under the BoL, otherwise under the charterparty (*PSFIC 1084/1979, art.153 CPML).* Owner's sequestration right is refused for cargo for which freight is recorded as "prepaid" in the BoL, whether it was indeed paid or not *(Kalamata Single Member Court of First Instance 93/1978, PSFIC 747/1990, 1084/1979).*

.4.1.3 Is it necessary for the Owners to register its right to lien sub-freights as a charge against charterer incorporated in your jurisdiction for that lien to be recognised in the event of the charterer's insolvency?

It is not necessary.

2 COLLISIONS

2.1 Is the 1910 Collision Convention in force?

The 1910 Collision Convention was ratified by Greece by virtue of law ΓΩΠΣΤ/1911 and is still in force.

2.2 To what extent are the Collision Regulations used to determine liability?

The 1972 Collision Regulations (as amended) have been ratified in Greece by Legislative Decree 93/1974 and Presidential Decree 11/1996 and form the basis of determination of collision liability. Specifically, the Courts examine the degree of compliance of Masters and crew to their obligations under the Collision Regulations. It should be added, however, that for liability to be attributed, the Court should be satisfied, not only that there was a breach of an obligation under the Collision Regulations, but also that there exists causal connection between such breach and the collision.

2.3 On what grounds will jurisdiction be founded – what essentially is the geographical reach?

According to acrticle 242 of CPML Greek Courts have jurisdiction over a collision claim in any of the following circumstances :

- If the defendant is a resident/inhabitant of Greece.
- If the vessel attributed with liability for the collision is registered in Greece.
- If the collision occurred within Greek national waters.
- If the ship attributed with liability has been arrested in Greece, even in case such arrest has been lifted before submission of the respective claim.

2.4 Can a party claim for pure economic loss in the event of a collision?

A party may claim for pure economic loss (such as loss of profits) in the event of collision (*Court of Appeal of Piraeus 925/2007, Multi Membered Court of First Instance of Piraeus 5803/2008)*. Any such claim may be awarded if the Court is convinced that the profits would have been probable in the normal course of events, or due to specific preparatory measures that had taken place, if the collision had not occured.

3 SALVAGE

3.1 *Has your country enacted any salvage conventions? If so, which one?*

Greece ratified with law 2391/1996 the London International Convention on Salvage of 1989. Complementary to the above International Convention are applied certain articles of the Code of Private Maritime Law to the extent they are not in conflict with the provisions of the Convention.

3.2 *In any event, what are the principal rules for obtaining non-contractual salvage? In the event that a salvage contract is signed, will this clearly displace any general law on salvage liabilities?*

The principal rules for obtaining non-contractual salvage are :

- Any ship providing salvage operations to another ship in danger is entitled to reasonable remuneration provided that such salvage operations had a useful result. Remuneration is due even where the assistance or salvage is rendered by and to ships belonging to the same ship owner (article 12 of the 1989 Convention).
- In no case may the amount of the remuneration exceed the value of the salvaged property, except in cases of salvage operations rendered in order to minimize or avoid damage to the environment, whereby remuneration may be increased in accordance with the provisions of article 14 of the 1989 Salvage Convention.
- The master and crew of the endangered vessel are not entitled to any remuneration (article 249 CPML).
- Any persons engaging in salvage operation notwithstanding the express and reasonable prohibition of the master or owner of the endangered vessel are not entitled to receive remuneration and recover costs (article 19 of the 1989 Convention).
- A tug, or other vessel providing services by virtue of a pre-existing contract, shall not be entitled to remuneration for assistance or salvage of the ship to which she rendered services, except where she renders exceptional services which she was not obliged to under the contract of towage (article 17 of the 1989 Convention and article 250 CPML).
- Where assistance is rendered by a ship, ½ of the remuneration shall go to the ship owner, to the master and to crew, any agreement to the contrary being void. This provision does not apply to ships operated for the purpose of providing assistance or salvage (article 251 CPML).
- In the event that a salvage contract has not been signed, the remuneration shall be determined taking into consideration the circumstances of the rendered assistance and on the basis of the value of the salvaged property, the efforts and the zeal of the crew of the salving ship in order to avoid or minimize environmental damage and to save property and lives, the degree of success of the operation, the nature and extent of the danger, the

duration of the salvage operation, the costs incurred and loss or damage suffered, the risks and liability and other risks faced by the salvors, the promptness of the salvage operations, the availability of use of the salving vessels and equipment and the state of readiness and efficiency of the salvors' equipment (article 12 of the 1989 Convention).

- The Court may limit or not award remuneration if the salvors by their fault rendered the salvage or assistance necessary or more difficult, or were found guilty of fraudulent or other dishonest conduct (article 18 of the 1989 Convention).
- No remuneration is paid for saving human life, but persons saving human life or assisting for saving a human life are entitled to a reasonable share of the remuneration paid to the Salvor of the vessel or property (article 16 of the 1989 Convention).

The CPML and the 1989 Salvage Convention do not provide as regards the contents of a salvage contract. Therefore, in the event that a salvage contract is signed, this must observe the general provisions of the Greek Civil Code and specifically those for contracts, bilateral contracts and contracts for the performance of work and sub-contracting. Additionally, under 7 of the 1989 Convention a contract of assistance or salvage entered into during under undue influence or under the influence of danger, may at the request of any person having lawful interest be annulled or modified accordingly by the Court, if the contents thereof are unfair or against the rules of equity, especially if the agreed remuneration is manifestly excessive or disproportionate to the service rendered (art. 253 of the CPML has similar contents).

3.3 *What is the limitation period for enforcing salvage claims in your jurisdiction?*

Under article 23 of the 1989 Convention, salvage claims are time barred if proceedings are not instituted within 2 years commencing from the day on which the salvage operations were terminated, such time bar being extendable by the person against whom the claim is being brought. It should be noted that under article 290 of CPML, claims for the payment of remuneration and expenses arising out of assistance at sea or salvage are time-barred after two years, commencing from the end of the calendar year in which the claim was born. To the extent that the time bar calculated under above article 290 of the CPML is longer than the one provided by the Convention, it shall prevail (article 23(3) of the 1989 Convention).

3.4 *To what extent can the salvor enforce its lien prior to the redelivery of ship/cargo?*

The salvor has a lien on the ship/ cargo of the salvaged ship under article 205 of the CPML. This lien as regards expenses and remuneration due to assistance at sea and salvage stands 3rd in rank (see question 7.2).

4GENERAL AVERAGE

4.1 *Will any General Average claim (whether under the contract, generally or GA securities) necessarily follow the contractual provisions in relation to General Average, in particular, the chosen version of the York Antwerp Rules ("YAR")?*

General Average is regulated in articles 219 to 234 of the Code of Private Maritime Law (CPML) which was based on the York-Antwerp Rules of 1950. Article 225 CPML provides that General Average contribution is decided according to the rules set out in articles 226 et seq., unless if all parties concerned agree unanimously to apply some other method. The parties are therefore free to follow the contractual provisions of the YAR and they may agree so, either before, or after the incident giving rise to GA.

4.2 *Timebars*

4.2.1. Will General Average claims under the contract of carriage be governed by any contractual timebar – in particular, any which might be set out in the YAR (e.g. YAR 2004).

Under articles 275 and 279 of the Greek Civil Code, any agreements amending prescription and/ or time bar provided by Greek legislation (assuming it is applicable) are null and void (*Supreme Court 202/1971*). Therefore, General Average claims cannot under Greek law be governed by any contractual time bar. Given that the YAR 2004 do not consist legislation per se, but are considered business terms to be incorporated by contractual agreement of the parties concerned, the Greek law provisions on time bar regarding General Average claims will prevail over those of YAR 2004.

4.2.2. In the event that claims should be pursued under General Average securities in your jurisdiction (whether under a bond provided by receivers or a guarantee provided by insurers), what is the applicable time bar for such claims? Will this be affected by the provision of YAR 2004 Rule XXIII if 2004 YAR is specified in the relevant contract ?

Under articles 289 (e) and 291 of the CPML, General Average claims are time barred within one year starting from the of the year within which occurred the incident giving rise to General Average. As mentioned above the Greek law provision over time bar will not be affected by provision XXIII of YAR 2004.

4.2.3. To what extent is any General Average adjustment binding?

The General Average adjustment is considered an expertise report aimed to assist the Court to reach its decision and does not have any binding effect on the Courts' ruling (*Multi Membered Court of First Instance of Piraeus 419/1986 and 6035/1977, Court of Appeal of Aegean 114/1987).*

5 LIMITATION

5.1 *What is the tonnage limitation regime in respect of claims against the vessel?*

Greece has ratified with Law 1923/1991 the 1976 Convention on Limitation of Liability for Maritime Claims of London (LLMC). Furthermore, Greece ratified with law 3743/2009 the 1996 Protocol to the LLMC. In ratifying the above convention Greece has not made any of the reservations of article 15 paragraphs 1(b), 2 and 3. Therefore the LLMC applies irrespective of the principal place of business and/or nationality of the party seeking limitation of liability, and irrespective of the size of the vessels involved, or whether they are intended for the navigation of inland waterways. Furthermore, Greece has not included in its national legislation a provision such as the one envisaged by article 10 par. 1 of the LLMC. Therefore , limitation of liability is available whether or not the person who evokes the limitation constitutes a limitation fund.

It should be noted that whilst Greece is a member to the LLMC it has not passed any legislation with regard to the distribution of the limitation fund. Some commentators support that the provisions of Presidential Decree 666/1982 (regarding the distribution of CLC Pollution fund) should be applied by analogy and others support that the respective provisions of PCML are applicable. There are precedents supporting the latter opinion (*Single Membered Court of First Instance of Piraeus 3505/2003, Court of Appeal of Piraeus 382/2005 and 149/2005).* Limitation of liability (and therefore the constitution of the respective fund) may take place at any stage of the legal proceedings, until the completion of the compulsory enforcement procedure.

5.2 *Which parties can seek to limit?*

- ✓ Shipowners, namely the owner, charterer, beneficial owner (‘‘operator’’ is the closest definition in English) and the manager of a seagoing ship. According to Article 105 para 1 of the PCML, the Beneficial Owner is ‘‘the operator of a ship belonging to another person or entity’’, which in Greek is interpreted as *‘‘efoplistis’’* (the equivalent to the French *‘‘armateur’’*).
- ✓ Salvors, namely any person rendering services in direct connection with salvage operations as they are defined in Article 2, paragraph 1(d), (e) and (f) (d) of the LLMC.
- ✓ Any persons connected under an employment agreement with the Shipowner and the salvor (as specified above), namely any person for whose act, neglect or default the shipowner or salvor is responsible (such as crew members). According to commentators the spectrum of this provision should be held to include also independent contractors (stevedores, agents, wharfmen, etc.) used by the shipowner, salvor, etc. for whose the acts, neglect or default, the latter may be responsible.
- ✓ The insurer of (civil) liability for claims subject to limitation in accordance with LLMC is entitled to the benefits thereof to the same extent as the assured person himself.

5.3 *What is the test for breaking the limitation?*

According to the LLMC, limitation invoked by any of the persons of article 1 may be broken if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result. The notion of ‘‘recklessness’’ is assimilated in Greek law to ‘‘gross negligence’’ (*Single Membered Court of First Instance of Piraeus 3424/1997*). Where the person seeking limitation of liability is a legal entity, the above conditions for breaking the limitation (i.e. personal act or omission etc) should be met by the physical persons representing such legal entity (*Single Membered Court of First Instance*

of Piraeus 3505/2003, Court of Appeal of Piraeus 149/2005). The burden of proof of the above conditions for breaking limitation lies with the claimant disputing the limitation right.

5.4 *To what degree does any limitation provisions found jurisdiction for the substantive claim?*

To the extent that the party seeking limitation of liability establishes a limitation fund in Greece, then, no other Greek Court will have jurisdiction for a substantive claim since, by virtue of article 13 of LLMC, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of the person establishing the fund. In such a case, all claims should be submitted before the administrator of the limitation fund that will be appointed by the Court.

When limitation of liability is being invoked without the establishment of a limitation fund (e.g. by way of an objection in pending proceedings), no jurisdiction is being founded for the substantive claim.

5.5 *Which package limitation figure applies.*

As mentioned above Greece has ratified the 1996 Protocol to the LLMC. Therefore, liability may be limited as follows :

(a) in respect of claims for loss of life or personal injury,

(i) 2 million Special Drawing Rights (SDR) for a ship with a gross registered tonnage not exceeding 2,000 tons,
(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned above:

- for each ton from 2,000 to 30,000 tons, 800 SDR ;
- for each ton from 30,001 to 70,000 tons, 600 SDR, and
- for each ton in excess of 70,000 tons, 400 SDR,

(b) in respect of any other claims,
(i) 1 million SDR for a ship with a gross registered tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned above :

- for each ton from 2,000 to 30,000 tons, 400 SDR;
- for each ton from 30,001 to 70,000 tons, 300 SDR; and
- for each ton in excess of 70,000 tons, 200 SDR.

It should be mentioned that Greece is a member of the International Monetary Fund (IMF) and thus the Special Drawing Right is given the Euro value of the date of establishment of the limitation fund, in accordance with the method applied by IMF on that date.

6 POLLUTION AND THE ENVIRONMENT

1 Which CLC regime applies?

CLC 1969 as amended by Protocols 1976 and 1992, ratified by *law 314/1976, Presidential Decree 81/1989 and Presidential Decree 197/1995* respectively. The amounts of limitation of liability were further amended by Resolution No.1(82)/18.10.2000 of IMO's Legal Committee ratified by *Presidential Decree 286/2002.* The procedure for the establishment and distribution of the limitation fund is governed by *Presidential Decree 666/1982 as amended by Presidential Decree 494/1989.*

Greece has also ratified with law 1638/1986 the 1971 Fund Convention. The Protocols of 1976 and 1992 to the Fund Convention were ratified by Presidential Decree 270/1995 and the 2003 Protocol was ratified by law 3482/2006.

7 SECURITY AND ARREST

.1 Is your jurisdiction a party to any particular arrest convention? If so, which one?

Greece is a party to Arrest Convention, 1952 which has been ratified by Legislative Decree 4570/1966.

.2 Which claims afford a maritime lien in your jurisdiction?

Generally the following claims afford a maritime lien in Greek vessels (*art.205 CPML)*:

(a) Court costs for creditors' common interest, dues and charges burdening the ship, taxes pertinent to navigation, guarding and maintenance expenses incurred after ship's arrival at last port;

(b) Claims of master and members of crew arising from employment contract, Seamen Pension Fund's contributions and certain fines of Seamen's Employment Office;

(c) Salvage rewards and expenses;

(d) Compensations for collision payable to ships, passengers and cargoes.

The following special status exists for Greek vessels registered under the Greek flag as foreign capital under Ministerial Approvals:

(a) For those registered before 1982, preferred mortgages have priority over all maritime liens apart from liens of art.2 of Liens and Mortgages Convention 1926; and

(b) For those registered after 1982, preferred mortgages have priority over all maritime liens apart from liens of art.2 of same Convention, insofar those are recognized by Greek law.

As regards foreign flag vessels sold in auction in Greece, the law of flag governs the existence of lien, while the priority of the lien is governed by the Greek law.

.3 In any event, to what extent does a mortgagee have priority over claims for loss and damage which are not maritime liens?

A mortgagee has full priority over claims for loss and damage not being maritime liens.

.4 *Is there any suggestion that an arrest claim might lead to the founding of substantive jurisdiction?*

It leads so, if at the time of the first court hearing of the writ of action (a) the vessel remains arrested in Greece or (b) guarantee has been placed to Greek courts for the release of the vessel.

.5 To what extent can sister/associated ships be arrested?

All claims are *in personam,* therefore any ships belonging to the same defendant may be arrested, without prejudice to art.3(3) and (4) of the Arrest Convention 1952 in case of vessels with a flag of a contracting State to such Convention.

Usually the defendant is the shipowner. A vessel may also be arrested for claims against its operator, arising out of its operation (*art.106 CPML*). The identity of "operator" of the vessel is a matter of evidence. The demise charterer is usually held to be the operator, while the manager and the time charterer rarely do so. Therefore it is possible to arrest a vessel belonging to a company for debts of another vessel operated by such company, but not belonging to it.

Regarding ships owned by different companies and belonging to same beneficial ownership, courts very rarely order the arrest of one ship for the debts of the other ship by piercing the corporate veil. They do so, in case of abuse of the legal personality, namely when the dominant beneficial shareholder used the legal personality to circumvent the law or avoid fulfilling his obligations.

.6 Is it possible to arrest ships for claims arising out of (a) MOAs; (b) ship repair; and (c) ship construction contracts?

Under the Code of Civil Procedure it is possible to arrest a ship for claims arising out of MoAs. However, to the extent the 1952 Arrest Convention is applicable, arrest for claims out of MoAs will be possible only if the dispute pertains to the ship's title or ownership (art.1(1)(o) of the Convention).

It is possible to arrest ships for claims arising out of ship repair or ship construction contracts.

.7 To what degree can an arrest be anticipated/ prevented by the lodging of security?

After the filing of an arrest petition, either before or after issuance of an order of provisional prohibition of sailing or an arrest judgment, upon the petition of the defendant the court must order the vessel's release by the lodging of guarantee (*art.705 Code of Civil Procedure – "CCP"*). Lodging of security is impossible before the filing of an arrest petition.

.8 If a vessel can be arrested, by what means can the claim be secured? Specifically:

.8.1 Can an arresting party insist on a cash deposit or a bail bond?

The guarantee should be in cash deposited with the Bails and Loans Fund, however following request of the defendant, the court may permit the guarantee to be given, instead of cash, by: (a) shares or bonds, Greek or foreign, (b) bank letter of guarantee of a solvent bank or (c) registration of mortgage on real estate property in Greece (*art.163-164 CCP*).

.2 Will the court accept a letter of guarantee from a protection and indemnity club?

The court may accept a letter of guarantee from P&I clubs, if the litigants agree to it (*art.162 CCP*).

.3 Does any guarantee have to be provided by a domestic bank or other acceptable guarantor?

Domestic or foreign banks with branches in Greece may be allowed by court to provide letters of guarantee. Other guarantors may be allowed to provide guarantee only if they grant mortgage on real estate property in Greece (*art.164 CCP*) or all litigants agree to it (*art.162 CCP*).

.9 Briefly summarise the further security options: eg freezing orders, attachment of debts due to the defendant, etc.

Debts due by third parties (banks, clients etc) to the defendant may be attached following a judgment for conservative arrest of property of a defendant. Provisional freezing orders may be issued by court to prevent the dissipation of the corresponding claims of the defendant till issuance of arrest judgment.

8 CONTRACTS OF SALE OF GOODS

8.1 Jurisdiction/Proper Law

8.1.1 *In the absence of express provision in a contract of sale, by what means will the proper law of the contract be determined? (If appropriate, refer to 1.1.1 above).*

By virtue of art. 4 § 1 (a) of Regulation Rome I, the law of the place where the seller has its principal establishment should be deemed the lex contractus. Greece is also a signatory party to the UN Convention on the International Sale of Goods (CISG, ratified by virtue of Law 2532/1997) thus in transactions concluded between parties which are seated in another signatory State, CISG's provisions should be held in principle applicable, unless explicitly excluded by virtuer of the parties' contractual arrangement.

8.1.2 *Will a foreign jurisdiction or arbitration clause necessarily be recognised? In the event that proceedings can be commenced before your court notwithstanding such provisions, can such proceedings be challenged? In other words, will the proceedings in breach of any such agreement be stayed?*

With the exception of consumer sales, such a clause would be recongised. Antisuit injunctions are held contrary to Greek Public Order though, so the defendant party would only be entitled to file an objection invoking the conclusion of the clause. Assuming that the objection would be granted the Greek Court would either dismiss the lawsuit for lack of competence (in the case of a jurisdiction clause) or stay the proceedings referring the case to the arbitral board (in the case of an arbitration clause).

8.1.3 *In the event that an injunction or order preventing proceedings is obtained in the agreed jurisdiction (whether court or arbitration), will this be recognised by your court?*

Recognition (and much more exequatur) of such an injunction would be denied on the ground of contradiction to Greek Public Order.

8.2 Arbitration clauses:

8.2.1 What are the essential elements for the recognition of an arbitration agreement? (Eg must a contract be signed for its terms to be recognised? Does the arbitration clause itself require separate signature?)

Under the relevant provisions of the Greek Code of Civil Procedure (CCP), an arbitration clause should meet the requirements of written form, upon penalty of nullity. The same principle applies to international commercial arbitration proceedings, taking place in Greece, that fall within the scope of Law 2735/99, incorporating in Greece, the Model Law of UNCITRAL on International Arbitration (hereinafter, Greek Law on International Arbitration- GLIA). However, if the defendant does not challenge the competence of the arbitral tribunal, the lack of written form is not relevant. The requirement of written form is considered met even in case of exchange of faxes, e-mails and telegrams. Apart from the written form, CCP, does not provide for any other special requirement. However, since the arbitration agreement is considered as a contract, all the general requirements for the conclusion of a valid contract under Greek Civil Code have to be met. Furthermore, if the contracting party, in the arbitration agreement, is a legal entity, the person signing it has to be authorized to represent the company.

There are no further mandatory elements that have to be incorporated in the arbitration agreement. Even a vague notion that disputes concerning the performance and interpretation of a contract are submitted to arbitration, is enough. Of course, the parties are entitled to define a number of further details, such as e.g. the number of arbitrators, the applicable procedural law (e.g. ICC Arbitration Rules etc), whether the arbitration is ad hoc or institutional (and in the second case, the arbitral institution), the place of the proceedings, a choice of law clause etc. In practice, the contracting parties define at least the place of the proceedings and the applicable procedural rules.

Compliance to the written form requires signature of the document by authorized representatives of the parties or the parties themselves.

Passing of title / property / risk

8.2.1 *What terms if any are implied by your rules as to the passing of:*

8.2.1.1 *title (property) to the goods ?*

There are no specific requirements as regards the conclusion of a Sale Contract in Greek Law nor as regards the transfer of property to the goods. Normally, transfer of title for chattels and generally movables passes with delivery. Transfer of property in cases of cars, motorbikes and similar machinery presupposes registration to the competent authorities.

8.2.1.2 *passing of risk?*

Under Greek Law the passing of risk is effected as of delivery of the goods to the buyer (art. 522 Civil Code); to the extent that a transaction falls within the scope of CISG, then the matter is resolved in compliance with the principles set in arts. 31 et seq. CISG. Incoterms' clauses incorporated by reference in a Sale Contract are held valid and in those cases the place and time of delivery are determined in compliance to the context of the incorporated Incoterm.

8.2.2 *In relation to the passing of title and risk, do your rules apply even if the underlying contract applies another law?*

The respective provision of Greek Law, i.e. art. 522 of the Civil Code, is not attributed mandatory law status. Therefore the passing of title and risk will be regulated by the law regulating the underlying contract.

8.3 Description and quality

8.3.1 *Do your rules imply terms on (a) the description of the goods and/or (b) their quality?*

The parties are not obliged to incorporate detailed description of the goods or their quality in the Contract; such description though is recommendable to avoid subsequent challenges as regards the (non) conformity of goods.

Under art. 519 of the Civil Code the seller is obliged to provide adequate information to the buyer on the legal relationships of the goods and to hand all titles confirming his ownership rights.

8.4 Performance

8.4.1 ***Delivery:*** *What provisions does your law make as to delivery of the goods (eg on timing and method of delivery)?*

In principle the matter is regulated according to the parties' free will. Unless an agreement to the contrary has been concluded, the seller must bear the expenses concerning the delivery of the goods and especially those having to do with the weighting, numbering and accounting. The buyer must bear such expenses as are incurred for the receipt of the goods and especially those required for the transfer of the goods to another place than the one of delivery.

In case a place of delivery has not been explicitly fixed by virtue of the Contract, then under the interpretational guideline set in art. 320 of the Civil Code the place of delivery of the goods should be located at the place of the establishment of the seller.

In case the time of delivery has not been agreed then by virtue of art. 323 of the Civil Code the goods must be delivered instantly.

8.4.2 ***Acceptance:*** *When is the buyer deemed to have accepted the goods?*

In case the buyer collects the goods without raising objections as regards their conformity this in principle results to a proper acceptance. Under Greek Law though, the buyer is entitled to invoke lack of conformity of the goods within a five years period from delivery, unless he accepted the goods in the knowledge of the lack of conformity. In the cases that fall within the scope of CISG, art. 43 applies, imposing to the buyer the burden to notify properly the seller for the lack of conformity within a reasonable period after delivery.

8.4.3 ***Payment:*** *In the absence of express provision, by when must a buyer pay for the goods?*

Unless otherwise agreed, consideration for goods is deemed due and payable upon delivery.

8.5 Other terms

8.5.1 **Classification of terms**:

8.5.1.1 *Do your rules differentiate between warranties (breach of which only entitles the innocent party to damages) and conditions (breach of which also entitles him to terminate the contract), and if so what is the effect?*

There is no such distinction. Greek law treats lack of conformity of the goods and lack of agreed identities of the goods unanimously. By virtue of art. 540 of the Civil Code the buyer is entitled either to demand the repair of the goods or their substitution (on the condition that such substitution or repair does not imply excessive and unreasonable costs for the seller), or to

impose a reduction of the price or to rescind the contract, unless the defect or the lack of conformity is minor.

8.5.1.2 *In English law, we also have the concept of intermediate (or innominate) terms. Breach of such terms may have differing effects depending on the gravity of the consequences of the breach. Do you have a similar concept under your system?*

The seller is deemed, by virtue of the principle of good faith, as bearing various "secondary obligations" towards the buyer, such as the obligation to provide adequate information on product's operation or to cooperate with the buyer. Failure of the seller to meet the requirements of good faith may result to the seller's liability depending on the gravity of the conduct. Warranty is explicitly regulated in art. 599 of the Civil Code and is due in principal only in those case as explicitly agreed.

8.5.2 **Exemption clauses**:

8.5.2.1 *Do your courts recognise exemption (ie exclusion) clauses, such as force majeure?*

An agreement excluding the liability of the seller or constructor of a produce for intentional or gross negligence is deemed null and void (art. 332 a' GCC). A clause excluding liability for force majeure though would be held valid.

8.5.2.2 *What are the key requirements for relying on an exemption clause?*

See supra. 8.5.2.1. As force majeure are considered unexpected events, that could not be predicted applying reasonable care and concern, that affect the contract to its heart and render inequitable the performance of the obligations of any of the two parties.

8.6 Remedies

8.6.1 *What are the seller's remedies where the buyer is in breach of contract? (Eg damages, price if goods unpaid, lien, stoppage in transit)*

Seller is entitled to ask for the payment of the outstanding price of the goods and to seek remuneration for whatever additional damages incurred. All types of actual (direct or indirect) damages are deemed recoverable. A fixed interest rate also applies to the claim, from the day of submission of the claim until the day of payment, currently fixed at a 8.75 %/annum.

8.6.2 *What are the buyer's remedies where the seller is in breach of contract? (Eg damages)*

See supra 8.5.1.1. The buyer is also entitled to seek whatever actual damages incurred.

8.6.3 *Are there any general limitations on the remedies available? (Eg can one recover consequential loss?)*

Except for punitive damages (which are held as contradictory to Greek public policy), all other types of actual damages are recoverable.

8.7 Time limit

8.7.1 *What is the statutory limitation period?*

The general limitation period in commercial transactions is 5 years. The same period applies to the exercise of the buyer's rights from a Sales Contract. Tort claims are subject also to a five years limitation period starting from the day the victim became aware of the damage and the person liable to compensate him.

The limitation period applying to claims in general in Greek Law though is twenty years. Within this scope fall also the claims from unjust enrichment or the buyer's claims for legal defects of the goods.

8.7.2 *Do your courts uphold shorter contractual limitation periods?*

Contractual clauses providing for shorter limitation periods are deemed null and void under Greek law (275, 276 Civil Code). However, the provisions on prescription do not qualify in principle as mandatory rules. Thus in case the contract was regulated by a foreign law acknowledging the validity of such clauses, then in principle such an arrangement would be deemed valid.

8.8 Finance

8.8.1 *In what circumstances is it possible for your courts to prevent payment out under:*

8.8.1.1 *a letter of credit?*

In principle the issuance of a letter of credit is treated as a legal cause authorizing the receiver to collect the amount due irrespectively of any principal or contractual background relationship. However the issuer is deemed entitled to invoke arguments from the contractual relationship to prevent payment on the ground that such a payment would qualify as unjust enrichment. Whether the issuer might be in place to act proactively, preventing the payment of the letter of credit is not treated unanimously by jurisprudence. There are though some precedents awarding interim orders preventing the payment of the letter of credit.

8.8.1.2 *performance bonds?*

See supra 8.8.1.1.

8.8.2 *What does one have to show to prevent payment out?*

Either that the cause for which the letter of credit or the performance bond was issued has not followed (p.e. the goods were not eventually delivered or that they were heavily defective), or that the conduct is heavily abusive, or that there is a counterclaim validly submitted to a set off.

8.9 Security

8.9.1 *What remedies are available to obtain security for the claim:*

8.9.1.1 *where the substantive claim is being litigated?*

The petitioner in provisional relief proceedings is entitled to a broad ranges of measures of provisional relief including: a) prenotation of a mortgage; b) security orders, c) provisional arrest; d) set of the debtor's assets in guardianship. Such measures of provisional relief may be either awarded by the Court where the case is pending, or by the Court of First Instance of the place where the measure shall be executed. In the cases that are pending before a Multimember Civil Court of 1st Instance (claims exceeding 80.000 €), recourse to it under its capacity as the Court of the principal proceedings is not practical because the Court will address the petition only on the date of the principal hearing (686 § 5 CCP). In the cases that fall within the competence of the Court of Peace (financial object <= 12.000 €) a petition for provisional relief may be also brought before that same Court.

8.9.1.2 *where the substantive claim is not being litigated in your jurisdiction? (In this scenario must the substantive claim then be litigated in your jurisdiction, notwithstanding the contract's jurisdiction clause?)*

Assuming that Greece is the place where the provisional measure will be enforced, then the Greek Courts are competent to address a request for provisional relief by virtue either of art. 31 Brussels Regulation I, or the combined application of arts. 3 and 683 CCP, despite the fact that the principal proceedings are pending abroad or have not initiated yet. Filing for interim relief before the Greek Courts in principle does not prejudice the matter of jurisdiction. The petitioner may also apply for provisional relief before the Greek Courts even assuming that the measure of provisional relief shall be enforced abroad, in case the Greek Courts maintain a concurrent jurisdiction as regards the principal claim.

Some Courts have gone as far as to acknowledge the option of seeking interim relief before the Greek Courts where the case falls within the scope of an exclusive jurisdiction clause in favour of another jurisdiction. This is not however a dominant position and contrary rulings are also met.

8.9.2 *Must the applicant have already commenced substantive proceedings (whether by litigation or arbitration) to be able to obtain security?*

No. However, assuming that the request for provisional relief is granted then the petitioner should file the main lawsuit either before the Greek Courts or before the foreign competent court (and in those cases falling within the scope of an arbitration clause, before the Arbitral Board) within one month since the issuance of the award on provisional relief. Failure of the petitioner to comply to the said requirement results to the automatic revocation of the order.

8.9.3 *Is there a distinction between the remedies available for a claim which is subject to litigation and one which is referred to arbitration?*

No.

8.9.4 *What tests are applied to establish a right to each remedy? (Eg is the applicant entitled as of right to security or must it show a dissipation of assets?)*

The petitioner is required to demonstrate successfully that he has a good case to the merits of the case (“fumus boni juri”) and that his claim is threatened by a real and current danger or that the grant of the injunction satisfies a necessity of urgency (“periculum in mores”). The petitioner must satisfy both requirements (682 CCP).

Furthermore the type and mean of relief sought should not result to a permanent satisfaction of the claim, but should aim to the preservation of the secured claim *pendente lite (692 § 4 CCP)*.

8.9.5 *Is the applicant required to provide counter security, and if so by what means?*

By virtue of art. 694 CCP the Court is entitled to order the provisional relief upon the condition of the production of counter security, either upon request of the other litigant party, or even ex officio. Such type of counter relief though is not often met in practice, and it has been granted in a few only cases where the petitioner's financial means are arguable thus justifying the conclusion that if he does not succeed in the main proceedings, restitution of the damage caused by the provisional measure shall be difficult. In such cases where the provisional relief is granted upon the condition of the production of counter security, it may not be enforced before prior production of such security (701 CCP).

8.9.6 *What exposure does an applicant have for damages if the attachment is deemed wrongful?*

In case the principal lawsuit is eventually dismissed by virtue of a final and irrevocable award, then the petitioner is deemed liable to compensate the other party, upon the condition that he was cognizant or ignored out of gross negligent that the secured claim was not justified to its merits (703 CCP). The respective provision though is fairly rarely applied and in any case it is fairly difficult to demonstrate a case for liability, given that the precondition for the award of provisional relief is the demonstration of a good case to the merits; thus the petitioner may always invoke that he relied in good faith to the Court's authority.

8.10 Enforcement

8.10.1 *Is your country a signatory to the New York Convention?*

Yes. Greece has ratified New York Convention by L.D. 4220/1961.

8.10.2 *To what extent is the New York Convention applied in practice?*

It is applied in all cases falling within the scope of art. 1 of the Convention and definitely in all arbitral awards issued in the territory of other signatory States.

8.11 Vienna Convention

8.12.1 *Is your country a signatory?*

Greece has ratified CISG by L. 2532/1997.

9 GENERAL FORMALITIES

9.1 *Does a lawyer require a formal Power of Attorney to be able to act?*

Proper representation of a party before Court proceedings demands the filing before the Court at the hearings' date the latest of notarized (and to the extent applicable apostilled) power of attorney. Prior to the date of the hearings the Power of Attorney is not required in principle as a procedural requirement. However in case the party's lawyer is required to execute any act or dealing with Public or Judicial Authorities in Greece, then he must be in place to demonstrate his capacity as a representative of the interested party.

9.2 *Do claim documents (and their translation) require notarisation?*

No. Issuance of certified copies by the representing lawyer is enough.