THE SHIPPING LAW REVIEW

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Editors
George Eddings, Andrew Chamberlain
and Rebecca Warder

THE LAWREVIEWS

Chapter 24

IRELAND

Catherine Duffy, Vincent Power and Eileen Roberts[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

With Ireland having the European Union's third-largest ocean area, the Irish government plans to double the state's ocean wealth by 2030 and, in the interim, make Ireland an attractive location for international shipping activities. The changes brought about by Brexit may help to enhance Ireland's position further in the maritime sphere. As an island nation, Ireland has always placed great emphasis on its maritime sector and, in particular, the ports and shipping services that connect traders on the island with international markets.

Irish ports and shipping services are making a valuable contribution to the national effort for economic recovery and development by facilitating growth in trade. The Irish Maritime Development Office (IMDO)[2] has reported that the value of Irish exports in merchandise trade increased by 20 per cent to €111 billion in 2015, and imports in merchandise trade grew strongly by 10 per cent to €67 billion, and while there was a slight decrease (1 per cent) in imports in 2016, there was a sustained increase in exports (4 per cent) in 2016, with shipping being the dominant mode of trade.

Equally, Ireland's tourist industry relies significantly on the efficiency, reliability and effectiveness of the shipping sector. Up-to-date statistics on ship registration are not available publicly, but as at May 2015, there were approximately 3,200 vessels listed on the Irish Ship Register, of which approximately 133 are categorised as commercial vessels.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Ireland, like England and Wales, is a common law jurisdiction whose legal framework is comprised of legislative enactments and case law.[3] The Irish government, in furtherance of its commitment to attract international shipping to Ireland, plans to consolidate shipping legislation into a single statute and, to that end, the Merchant Shipping (Consolidation) Bill is making its way through the drafting process. Until it is enacted, the principal legislation applicable to shipping is the series of statutes cited collectively as the Merchant Shipping Acts dating back to 1894. These Acts are supplemented by a plethora of statutory instruments (or Ministerial orders) that legislate for specific issues (e.g., the commencement of statutes as well as the detail of maritime operations).

1 Catherine Duffy, Vincent Power and Eileen Roberts are senior partners at A&L Goodbody.

2 IMDO, *The Irish Maritime Transport Economist* (Volume 13, 2016).

3 Where Irish case law does not provide a precedent, English case law is of persuasive authority in the Irish courts.

As a member of the European Union, EU maritime laws including treaty provisions, Regulations, Directives and decisions apply in Ireland. If the United Kingdom leaves the European Union then Ireland would be the only common law jurisdiction in the European Union and shipping businesses located there would continue to have the benefits of EU membership, including, for example, free movement of persons, goods, services, capital, payments and establishment.

Ireland has ratified most of the major international maritime conventions, including the Collision Convention 1910, the Brussels Convention, the Oil Pollution Fund Convention, the LLMC Convention 1976, the Athens Convention (including the 1976 and 2002 Protocols), the 1989 Salvage Convention, the OPRC Convention, the Bunker Convention and the United Nations Convention on the International Multimodal Transport of Goods.

Irish maritime legislation is primarily formulated and administered by the Department of Transport, Tourism and Sport. Within the Department, the Irish Maritime Administration (IMA) was established in 2013 to integrate the Department's maritime services. The IMA consists of the Maritime Safety Policy Division, the Marine Survey Office, the Irish Coast Guard, the Maritime Transport Division and a Maritime Services Division.

III FORUM AND JURISDICTION

i Courts

The Irish courts are in the common law tradition, with the High Court being a court of universal jurisdiction and usually the most relevant court in maritime matters.

The Jurisdiction of Courts (Maritime Conventions) Act 1989 incorporates the 1952 Arrest Convention into Irish law. The Act confirms that the High Court has jurisdiction to hear and determine proceedings in Ireland in relation to maritime claims. These proceedings are dealt with by a specialist division of the High Court known as the Admiralty Court. Order 64 of the Rules of the Superior Courts (RSC) deals specifically with the rules and procedures that apply to admiralty claims. Claims arising from the carriage of goods by sea with a value in excess of €1 million are generally heard by another specialist division of the High Court, the Commercial Court, under the provisions of Order 63A of the RSC.

Regulation (EU) No. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast) (Brussels I *bis*) came into effect in Ireland on 10 January 2015 (with the exception of Articles 75 and 76, which applied from 10 January 2014). Brussels I *bis* was implemented to update Council Regulation (EC) No. 44/2001 (Brussels I), which covered jurisdiction as between courts of different EU Member States. Brussels I still applies for proceedings or judgments issued before 10 January 2015. Brussels I established a set of EU rules to determine which court has jurisdiction in cross-border disputes (including maritime disputes) and how court judgments issued in one EU Member State are recognised and enforced in another Member State. Some of the key changes introduced by Brussels I *bis* include the following.

Abolition of the exequatur procedure

Under Brussels I, a judgment given in one Member State does not automatically take effect in another Member State. Instead, it first has to be validated and declared enforceable in a special intermediate court procedure, known as the *exequatur* procedure, which is costly and time-consuming.

Articles 36 and 39 of Brussels I *bis* abolish the *exequatur* procedure, so that any judgment obtained in one EU Member State will be automatically recognised and enforceable in Ireland as if it were delivered in Ireland itself. It is not yet clear how this would operate with regard to the United Kingdom if it leaves the European Union.

Abolition of the Italian Torpedo

Under the Brussels 1 Regulation, where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised must stay its proceedings until the courts have determined whether or not it has jurisdiction. This rule applies even where a party brings proceedings in breach of a jurisdiction agreement for tactical reasons (known as 'Italian Torpedo' actions).[4]

Under Article 31(2) of Brussels I *bis*, a court that is named in an exclusive jurisdiction agreement will now have priority of jurisdiction. This enhances the effectiveness of exclusive jurisdiction agreements over a court in which the proceedings may have been first brought. Brussels I *bis* seeks to avoid abusive litigation tactics by providing for an exception to the general *lis pendens* rule. This exception does not apply, however, where (1) the parties have entered into conflicting exclusive jurisdiction agreements, (2) the dispute involves insurance, consumer or employee matters, (3) the parties have chosen a non-Member State as having jurisdiction, or (4) non-exclusive jurisdiction has been conferred only on a Member State court.

Application to non-EU domiciled parties

Brussels I does not apply to defendants domiciled outside the European Union and, in such cases, the courts of the Member States apply their own national rules to determine whether they have jurisdiction. Article 24 of Brussels I *bis* extends the scope of the rules in relation to jurisdiction agreements by removing the current requirement that at least one party must be domiciled in a Member State. Therefore, where two non-EU parties agree that any dispute will be subject to the exclusive jurisdiction of the Irish courts, the Irish courts will be required to accept jurisdiction.

Article 25 of Brussels I *bis* also introduces a harmonised conflict of law rule on the substantive validity of jurisdiction agreements. The laws of the Member State court designated in the jurisdiction agreement shall govern questions of substantive validity of the jurisdiction agreement, even if that is different from the governing law of the contract.

Introduction of a limited international lis pendens rule

Brussels I *bis* introduces a new international *lis pendens* rule that aims to avoid proceedings taking place inside and outside the European Union. It provides the court of a Member State with discretion to stay proceedings where a court of a non-EU state has already been seised with a related action at the time the EU Member State court is seised.

Clarification on the exclusion of arbitration from the scope of the Regulation

Arbitration matters are excluded from the scope of the Brussels I Regulation. Brussels I *bis* confirms that it does not apply to arbitration; it clarifies the ambit of the arbitration exception and provides that it shall not affect application of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It further clarifies that nothing

4 See *Websense v. ITWAY* [2014] IESC 5.

in Brussels I *bis* will prevent the courts of Member States from referring parties to arbitration, staying or dismissing proceedings, and ruling on the validity of an arbitration agreement in accordance with their national law. The New York Convention takes precedence over Brussels I *bis*, and therefore Member State courts are permitted to recognise and enforce an arbitral reward even if it is inconsistent with another Member State's judgment. The scope of the arbitration exclusion has also been clarified. Brussels I *bis* does not apply to any action or ancillary proceedings relating to the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration or to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

Service

Rules governing the service of proceedings within EU Member States are set out in Council Regulation (EC) No. 1348/2000 on the Service in the Member States of Judicial and Extrajudicial Documents in Civil and Commercial Matters. This Regulation is directly effective and came into force on 31 May 2001. In Ireland, the relevant entity responsible for transmitting documents to be served outside the state and for receiving documents from another state for service in Ireland is the County Registrar (an official operating at a local level in Ireland). Order 11D of the RSC provides for service of judicial documents within the European Union in accordance with this Regulation. Ireland is also a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters 1965, which governs service of judicial documents within signatory countries. The relevant central authority in Ireland entitled to receive requests for service of documents is designated under court rules as the Master of the High Court.

Limitation periods

Pursuant to the Statute of Limitations Act 1957, any proceedings brought in Ireland on foot of a breach of contract claim will be statute barred six years after the cause of action accrues.[5] Tortious claims must also be brought within six years of the accrual of the cause of action[6] (except personal injuries based on negligence, nuisance or breach of duty). Specific (shorter) limitation periods may be prescribed by agreed contractual arrangements.

Maritime cases are afforded unique conditions under the Civil Liability Act 1961. Pursuant to Section 46(2), any claim against the owners or operators of a vessel for personal injury or fatal injury or property damage suffered by a passenger on that vessel or for damage to another vessel or cargo must be initiated within two years of the accrual of the action. This period of two years may be extended at the discretion of the court under Section 46(3) subject to certain conditions as it deems fit.[7]

A longer limitation period of 12 years applies to actions based upon deeds executed under seal.

Cargo actions under the Hague Rules or Hague-Visby Rules have a limitation period of one year. These rules were made part of Irish law by Section 31 of the Merchant Shipping (Liability of Ship Owners and Others) Act 1996 (1996 Act).

5 Section 11(1)(a) of the Statute of Limitations Act 1957.

6 Section 11(2) of the Statute of Limitations Act 1957.

7 *Lawless v. Dublin Port and Docks Board* [1998] 1 ILRM 514 – the plaintiff must show special circumstances before an extension of time would be granted. The court will consider the degree of blameworthiness of the second defendant and the length of the delay.

Another provision potentially relevant to limitation periods for maritime claims involving defective products is Section 7(1) of the Defective Products Act 1991, which provides for a three-year limitation for initiating proceedings under the Act. The producer will not be liable once 10 years have passed since the product was put into circulation.

ii Arbitration and ADR

For a dispute in Ireland to be subject to arbitration, there must be a valid arbitration agreement applicable to the dispute (either by a clause written in the contract under which the dispute arises or where the parties after the dispute has arisen have agreed to arbitrate the dispute). The Arbitration Act 2010 (2010 Act), which repealed the Arbitration Acts 1954–1998, applies to all arbitration in Ireland (both domestic and international) commencing after 8 June 2010.

The 2010 Act includes the entire text of the UNCITRAL Model Law on International Commercial Arbitration (Model Law). It adopts the Model Law in its entirety and incorporates only minimal amendments to the Model Law in the text of the Act itself. For example, the default number of arbitrators (if not specified in the arbitration agreement) will be one and not three as is provided in the Model Law. Under the 2010 Act, the Irish courts may make orders in support of all arbitrations in the same manner irrespective of whether the arbitrations are domestic or international.

The court will give full judicial consideration to the issue as to whether there is an arbitration agreement between the parties. A recent decision in *Vertom Shipping and Trading BV*[8] highlighted the tension between courts and arbitrators regarding responsibility for deciding challenges to arbitrators' jurisdiction. The High Court refused an application to stay proceedings and refer the dispute to arbitration. It held that it was appropriate for the court, rather than an arbitral tribunal, to decide whether an arbitration agreement existed and gave full judicial consideration to the issue.

Several forms of ADR are commonly used in Ireland, including expert determination, early neutral evaluation and mediation. In relation to mediation in particular, the Irish courts often encourage mediation in appropriate cases. If a party refuses to mediate without reasonable grounds for doing so, the Irish courts have jurisdiction to make an adverse costs order against the refusing party. Contracts under Irish law increasingly include mediation and other ADR clauses, including 'stepped' clauses, which require different forms of dispute resolution to be used in a particular order, with ADR often being the first method of resolution followed by arbitration or court proceedings. The introduction of the Mediation Act 2017 (effective from 1 January 2018) requires lawyers to explain mediation and to advise their clients to consider mediation as an option in advance of issuing legal proceedings (which would include proceedings for a maritime claim) and the solicitor with carriage of the proceedings must issue a statutory declaration to that effect.

8 *The Lisheen Mine (Being A Partnership Between Vedanta Lisheen Mining Limited and Killoran Lisheen Mining Limited) v. Mullock and Sons (Shipbrokers) Limited and Vertom Shipping and Trading BV* [2015] IEHC 50.

iii Enforcement of foreign judgments and arbitral awards

Foreign judgments

Since the introduction of Brussels I *bis* in Ireland, it is no longer necessary for parties to apply for and obtain a declaration of enforceability from another Member State. Under Brussels I *bis*, the applicant need only present a copy of the original judgment and a standard form certificate to implement the judgment in another Member State.

Article 54 of Brussels I *bis* provides that where a judgment from one Member State is sought to be enforced in another Member State but 'contains a measure or an order which is not known in the law of that Member State' then the court may adapt the judgment and enforce a 'measure or an order known in the law of that Member State which has equivalent effects'. However, it is still possible for a court to refuse recognition of a judgment on certain grounds. Article 45 specifies the circumstances in which a judgment will not be recognised, including:

a any judgment that was contrary to public policy;

b if it was granted in default of appearance or if the defendant was not served with notice of the proceedings to allow him or her to prepare a defence, or if he or she was not served with sufficient notice;

c if it is irreconcilable with a judgment given in Ireland in connection with the dispute; or

d if it is irreconcilable with a judgment given in another Member State or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

While the Irish courts have previously refused to enforce a foreign judgment because it was manifestly contrary to public policy grounds, as in *Eurofood IFSC Limited*,[9] the Irish courts generally construe the public policy defence narrowly, as was the case in *Bostrom Tankers*.[10]

Enforcement of judgments from countries that are not party to the Brussels or Lugano Conventions are governed by Irish common law and require the commencement of a new action based on the judgment itself. The Irish courts will not examine the merits of the judgment. However, it will be necessary to show that the court that made the judgment had jurisdiction to do so under Irish conflict of laws rules, that the judgment is for a debt or liquidated sum, that is final, conclusive and not contrary to public policy.

Foreign arbitral awards

Irish law incorporates the UNCITRAL Model Law on International Commercial Arbitration (Model Law), which was initially given force of law by the Arbitration (International Commercial) Act 1998 and more recently by the Arbitration Act 2010, which repealed and replaced the earlier legislation for all arbitrations after 8 June 2010. A party may now seek recognition and enforcement of an arbitration award as envisaged by Articles 35 and 36 of the Model Law irrespective of where the award was made or whether it was made in a state that is a party to any particular convention.

9 *In the matter of Eurofood IFSC Limited*, Case C-341/04 and *In the matter of the Companies Acts 1963 to 2003* [2004] IEHC 54.

10 *Bostrom Tankers AB v. Factorias Vulcano SA* [2004] 2 IR 191.

IV SHIPPING CONTRACTS

i Shipbuilding

Although Ireland was once host to a vibrant shipbuilding industry, by the end of the 20th century shipbuilding had diminished to almost nothing in terms of commercial vessels.

ii Contracts of carriage

The 1996 Act gives effect to the Convention relating to the Athens Convention 1974 and the Protocol thereto and to the Hague-Visby Rules. In this chapter, we focus on the Hague-Visby Rules (the Rules) as they apply in Ireland.

The Rules have the force of law in relation to, and in connection with, the carriage of goods by sea where the port of shipment is an Irish port whether or not the carriage is between ports in two different states. The Rules apply in relation to any bill of lading and any receipt marked as a non-negotiable document if the contract contained in or evidenced by the bill of lading expressly provides that the Rules govern the contract.

Bills of lading are otherwise governed by the Bills of Lading Act 1855 (the 1855 Act). Other than through the adoption of the Rules, there has been no change in Irish law dealing with bills of lading. The 1855 Act is restrictive[11] and, accordingly, does not capture multimodal contracts of carriage. As at May 2018, Ireland is not a signatory to the Hamburg Rules or the Rotterdam Rules.

The 1996 Act provides that an absolute warranty of seaworthiness is not to be implied in contracts to which the Rules apply.[12]

Liens

The following classes of liens apply in Ireland:

a maritime liens:
- bottomry and respondentia;
- damage done by a ship;
- salvage;
- crew's wages; and
- master's wages and disbursements;

b possessory liens;

c statutory liens; and

d equitable liens.

As a matter of Irish law, liens do not have to be registered to be effective against the ship or third parties. Under the RSC, maritime liens may be pleaded as statutory liens.[13]

Irish common law recognises possessory liens whereby a claimant in possession of an asset may enforce its claim by retaining the relevant asset. This includes a repairer's lien and a shipowner's lien on cargo for outstanding freight or general average contributions.

An equitable lien exists independently of possession and, as in England, is only binding on third parties who have acquired a legal interest in the liened asset with notice of the lien.

11 See subsection iii.

12 Section 35.

13 Order 64 of the RSC.

While liens enjoy priority over other rights regardless of registration, with regard to limitation funds constituted under the LLMC Convention, the 1996 Act provides that a lien shall not prejudice or affect the proportions in which a fund is distributed among the claimants.

iii Cargo claims

A bill of lading evidences a contract for carriage, obliging a carrier to deliver a cargo against that document. Under the 1855 Act, every consignee of goods named in a bill of lading and every endorsee of it to whom the ownership of the goods described in the bill of lading has passed has, or will have, all rights of action and will be subject to the same liabilities in respect of the relevant goods. This is rather restrictive as it is confined to consignees and endorsees and therefore does not include a pledgee of goods and does not apply to waybills, multimodal contracts of carriage or delivery orders. Ireland does not have an equivalent of the English law comprised in the Contracts (Rights of Third Parties) Act 1999 to assist it to overcome issues arising from lack of privity of contract. However, in some circumstances, Irish law looks to the principle applicable in the United Kingdom and Ireland implying a contract between a consignee and a carrier in circumstances where a consignee takes delivery of goods from the carrier by presenting the bill of lading and paying outstanding charges. It is generally thought that the Irish courts would follow the decision of the English courts in *Brandt v. Liverpool, Brazil and River Steam Navigation Co Ltd*,[14] which determined the conditions for implying a contract as being (1) the holder of the bill of lading must have some interest in the property, (2) the actions of the parties must be construed as offer and acceptance, and (3) sufficient consideration must be provided.

As a general principle, the Irish courts will not interfere in contractual terms agreed as arms' length between commercial parties. Accordingly, demise and 'identity of carrier' clauses incorporated in a bill of lading are likely to be recognised and upheld by an Irish court.

There is no case law in Ireland to give guidance on whether a bill of lading relating to carriage on a chartered vessel that expressly incorporates the terms of the charterparty would be upheld in the Irish court. However, on general principles, it is possible to incorporate terms into a contract by reference to another contract. In the absence of specific legislation or case law, it is likely that the Irish courts would look to English law and decisions in the English courts for guidance on the extent to which the terms of a charterparty may be incorporated into a bill of lading.

Under Irish law, a shipowner may be liable for damage caused whether or not it is the contractual carrier.

The 1996 Act expressly excludes shipowners' liability where any property on board the ship is lost or damaged by reason of fire on board the ship, or precious materials are lost or damaged through theft or otherwise and the nature and value of the relevant items has not been disclosed to the owner or master of the ship in the bill of lading or otherwise in writing.

14 [1924]1 KB 575.

iv Limitation of liability

By the enactment of the 1996 Act, Ireland gave effect to the LLMC Convention in Irish domestic law. The 1996 Protocol to the LLMC Convention was given effect in Irish law by the Sea Pollution (Hazardous Substances) Compensation Act 2005 but the operative provisions have not yet been brought into force. Under Irish law, the LLMC Convention applies to seagoing ships and to non-seagoing ships[15] and to any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or a part of a ship.[16]

As regards who can limit liability and which claims are subject to limitation, the shipowner (defined for Irish law purposes as being a shipowner as owner, charterer, manager and operator of a ship, whether seagoing or not)[17] is the party entitled to limit liability under the LLMC. There is no case law in Ireland to determine what is meant by 'charterer', 'manager' or 'operator' of a ship. However, the decision of the English courts in the case of *CMA CGM SA v. Classica Shipping Co Ltd*,[18] in which the Court of Appeal determined that charterers are entitled to limit their liability would be of persuasive authority in Ireland.

A salvor may avail of the limitation of liability in respect of claims in connection with salvage operations.

An insurer of liability for claims subject to limitation under the LLMC Convention is entitled to the same benefits of the LLMC Convention as the assured.

Article 2 of the LLMC Convention specifies claims subject to limitation. Section 11 of the 1996 Act qualifies Article 2 and provides that the right to limit liability under the LLMC shall not apply to claims in respect of the raising, removal, destruction or rendering harmless of a ship that has sunk or been wrecked, stranded or abandoned, including anything that is or has been on board such a ship and that Article 3 of the LLMC providing for claims excepted from limitation is to be construed accordingly.

Irish procedure for establishing limitation

Under Irish law, it is not necessary to admit liability to avail of a limitation defence, nor does raising a limitation defence constitute an admission of liability. If successfully pleaded as a defence, liability is limited to the amount per claim provided for in the LLMC Convention.

Limitation can be pleaded by a party as a defence to a claim made against it. It is also open to a party anticipating a claim being made against it to open limitation proceedings to have the court determine its right to limit its liability under the LLMC Convention.

Article 6 of the LLMC Convention provides for calculation of the general limits that may be claimed. Article 11 permits any person alleged to be liable for a claim to constitute a fund with the court or other competent authority in any state party in which legal proceedings are instituted in respect of claims subject to the limitation. Under Article 11(2), a fund may be constituted by producing a guarantee or by depositing a sum of money. However, the constitution of a fund is not a requirement to avail of the benefit of limitation.

Under Irish law, the distribution of the fund among claimants is not affected by the rights of lien holders.[19]

15 Part II, Section 10 of the 1996 Act.

16 Part II, Section 9 of the 1996 Act.

17 Section 10 of the 1996 Act.

18 [2004] 1 Lloyd's Rep. 460, at page 465.

19 Section 16 of the 1996 Act.

Breaking limits

Article 4 of the LLMC Convention provides that a person shall not be entitled to limit his or her liability if it is proven 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'. With such a high level of proof required, breaking the limits is difficult.

V REMEDIES

i Ship arrest

Two pieces of legislation govern shipping arrests in Ireland. The Brussels Convention was implemented into Irish law by the Jurisdiction of Courts (Maritime Conventions) Act (1989 Act), which is the basis of modern shipping law in Ireland. However, the older Courts of Admiralty (Ireland) Acts 1867 and 1876 are applicable to ships registered in non-Convention countries. Ships to which the Convention applies may be arrested under the 1989 Act. Otherwise, as Ireland is a common law jurisdiction, the law of arrest in Ireland is similar to the law of arrest in England. Ireland has not ratified the International Convention on the Arrest of Ships 1999. It is possible to arrest a sister ship of Convention countries[20] although it is not possible to arrest associated ships.

Procedure to arrest

Proceedings must be brought *in rem* before the admiralty judge of the High Court. Often a warning letter is sent to the owner or agent in advance of the application to arrest but this is not a legislative requirement or legal proof. A summons setting out the claim is issued in the Central Office of the High Court and must be accompanied by an *affidavit* exhibiting the bill of lading, charterparty and other documents relevant to the application for the arrest and must include the information set out in Order 64 of the RSC. The *affidavit* can be sworn by either the arresting party or their solicitor. The applicant must undertake to be responsible for the Admiralty Marshal's expenses of arrest.

The application is made *ex parte* to the Master of the High Court or the admiralty judge. No arrest order will be granted by the court unless it is satisfied that the vessel is within Irish waters and is flying the flag of one of the contracting states to the Brussels Convention. The arrest is effected by service of the warrant of arrest by the Admiralty Marshal or his or her substitutes and the warrant is then filed in the Central Office. Service of a summons or warrant against the ship, freight or cargo on board is effected by nailing or affixing the original summons or warrant for a short time on the main mast or on the single mast of the vessel and, on taking off the summons or warrant, leaving a true copy nailed or affixed in its place.

In a recent decision of the Admiralty Court,[21] a third party sought to intervene in the proceedings by virtue of the fact that its subsidiary companies had paid a sum of money to the plaintiff on foot of an order for arrest. The Court held that a shareholder has no property, legal or equitable, in the assets of a company and thus the third party never had any interest in the vessel or, by extension, in any of the funds in court and thus had no *locus standi* to defend the proceedings and otherwise intervene in them.

20 *The 'Marshal Gelovani'* [1995] IR 159 and *The 'Kapitan Labunets'* [1995] 1 IR 164.

21 *Amsterdam Trade Bank NV v. The owners and all persons claiming an interest in the MV 'Clipper Faith'* [2014] IEHC 329.

Types of claims

The claims for which a vessel can be arrested, as set out in Sections 27 to 37 of the Court of Admiralty (Ireland) Act 1867, are:

a all claims whatsoever relating to salvage and to enforce the payment thereof;
b all claims in the nature of towage and to enforce payment thereof;
c any claims for damage received or done by any ship;
d any claim for the building, equipping or repairing of any ships;
e any claim by a seaman of any ship for wages earned by him on board the ship;
f any claim in respect of a registered mortgage; and
g any claim by the owner of any bill of lading of any goods carried into any port in Ireland in any ship for damage done to the goods by the negligence or misconduct of or breach of duty or breach of contract on the part of the owner, master or crew of the ship.

The claims for which a vessel can be arrested were extended by Article 1 of the Brussels Convention and include the following:

a damage caused by any ship either in collision or otherwise;
b loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
c salvage;
d agreement relating to the use or hire of any ship whether by charterparty or otherwise;
e agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
f loss of or damage to goods, including baggage, carried in any ship;
g general average;
h bottomry;
i towage;
j pilotage;
k goods or materials wherever supplied to a ship for her operation or maintenance;
l construction, repair or equipment of any ship or dock charges and dues;
m wages of masters, officers or crew;
n master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
o disputes as to the title to or ownership of any ship (including disputes as to possession of a ship);
p disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship; and
q the mortgage or hypothecation of any ship (including the mortgage or hypothecation of any share in a ship).

Sister and associated ship arrests

Sister ship arrest in Ireland is permissible. However, this power of arrest of a sister ship in Ireland is confined to ships of Convention countries only.[22] It is not possible to arrest associated ships.

22 *The 'Marshal Gelovani'* [1995] IR 159 and subsequently in the case of *The 'Kapitan Labunets'* (see footnote 20).

Security and counter-security

A claimant is not required to provide security for an arrest, although the claimant must provide an undertaking for the arrest expenses of the Admiralty Marshal and undertake to indemnify the Admiralty Marshal for all losses incurred in arresting the vessel. The Admiralty Marshal is responsible for the maintenance of an arrested vessel until such time as it is released.

The defendant can provide security to procure the release of the vessel in the form of a payment into court or a payment to the plaintiff, either in money or in the form of an appropriate letter of guarantee from a recognised bank or a letter of undertaking from a recognised P&I club. On payment of appropriate security, the vessel will be released.

In Ireland, it is possible for a third party who also has a claim against the same vessel to enter what is known as a *caveat* against release. This means that should the owner seek to release the vessel, the *caveat* would prevent the application being successful on the basis that there is another claim seeking to maintain the arrest of the vessel.

Wrongful arrest claims

The test for wrongful arrest is usually bad faith or gross negligence and is a difficult burden of proof to satisfy. There is very little Irish case law relating to wrongful arrest and what amounts to a good and sufficient reason. In the limited case law to date,[23] reference was made to the need to establish a 'fair and statable' case and 'sufficient grounds for the arrest of the vessel'. If a vessel has been wrongfully arrested, the arresting party may be held liable for the costs of the proceedings and for damages for wrongful arrest.

ii Court orders for sale of a vessel

If no security is forthcoming or indeed no settlement agreement has been reached whereby the arresting party and the shipowners can progress matters, it is possible for an application to be made by the arresting party to the courts to have the vessel sold. The vessel will be sold 'as is', free from encumbrances, liens and with good title. Any claims against the vessel that existed before the sale are transferred to a claim against the sale proceeds.

The Admiralty Marshal appoints an auctioneer and an expert to appraise the vessel and fix a reserve price that is not disclosed to the auctioneer or any other party until the auction gets under way. Auctions of vessels in Ireland are advertised internationally and attract buyers from around the world. If the reserve price is reached at the auction, the vessel is sold to the highest bidder. All parties, including those who have obtained judgment or registered cautions, must be served with the application for sale. The Admiralty Marshal can also order the vessel to be sold under Rule 35 of Order 64 of the RSC if no appearance is entered by the shipowner to the arrest proceedings. If the vessel is sold before the conclusion of the case, the funds from the sale will be lodged in court and subsequently, once the case is determined, the monies will be distributed according to the court order. Court costs are usually 5 per cent of the sale price and are the responsibility of the purchaser. In addition, 10 per cent of the sale price is payable to the court by way of duty and is deducted from the sale proceeds.

The determination of priorities against the proceeds of sale is decided by the admiralty judge in the absence of agreement between the parties. Generally wages and Admiralty Marshal's expenses take priority over the mortgage and then other creditors follow if there are sufficient funds available.

23 *MV 'Blue Ice'* [1997] IEHC 56.

VI REGULATION

i Safety

Ireland has a well-established legislative code relating to maritime safety, which comprises both domestic legislation (principally the Maritime Safety Act 2005) and international conventions on safety.

Maritime safety is administered by the Department of Transport's Maritime Safety Directorate (MSD). The MSD comprises two main sections: the Maritime Safety Policy Division and the Marine Survey Office (MSO) (which includes the Marine Radio Affairs Unit).

Maritime safety policy is formulated by the Department of Transport's Maritime Safety Policy Division. This division is responsible for maritime safety policy, security policy and legislation (including leisure safety), aids to navigation and the corporate governance of the Commissioners of Irish Lights.

ii Port state control

Port state control (PSC) is administered in Ireland by the MSO, which is the designated competent authority. The PSC regime in Ireland is primarily embodied in the European Communities (Port State Control) Regulations 2010 (as amended) (SI No. 656 of 2010), which give effect in Irish law to the EU regime on PSC (principally, Directive 2009/16).

iii Registration and classification

Registration

Ship registration is in a transitional phase following the enactment of the Merchant Shipping (Registration of Ships) Act 2014 (2014 Act) at the end of 2014, which, when it becomes effective,[24] will provide a modernised, centralised and flexible ship registration system in Ireland akin to that in the United Kingdom. Pending the 2014 Act coming into effect, Irish ship registration is governed by the Mercantile Marine Act of 1955 (1955 Act) and the Fisheries (Consolidation) Act 1959 as amended by the Fisheries (Amendment) Act 1962 and the Fisheries (Amendment) Act 1983.

The following persons are qualified to be registered in Ireland as an owner or part owner of a ship:

a the Irish government;
b a minister of the Irish government;
c a national of an EU Member State;
d a body corporate established under and subject to the law of and having its principal place of business in an EU Member State; and
e nationals of and body corporates having their principal place of business in a reciprocating state and entitled under the laws of that state to own a ship having the nationality of that state.[25]

24 Expected shortly: www.irishstatutebook.ie/eli/isbc/2014_43.html.

25 The current reciprocating states are the United Kingdom and the Commonwealth states of Canada, New Zealand and Pakistan.

The following categories of vessel must be registered under the Irish flag:

a ships fully owned by persons being citizens of Ireland or Irish bodies corporate and that are not registered under the law of another country; and

b fishing vessels 35 feet and over in length, wholly owned by qualified persons or bodies.

The following categories of vessel are exempt from the obligation to register:

a ships not exceeding 15 net registered tonnage (other than fishing vessels more than 35 feet in length) provided they are used only in navigation on the rivers, canals, lakes or coasts of Ireland, Great Britain, the Channel Islands or the Isle of Man, or within the territorial waters off their coasts;

b ships acquired before the passing of the 1955 Act;

c ships in respect of which the Minister for Transport, Tourism and Sport (the Minister) has, under Section 21 of the 1955 Act, consented to registry under the law of another country; and

d ships owned by Irish citizens not ordinarily resident in the state.

There is no provision to register vessels under construction under the flag of Ireland and dual flagging is not permitted.

Other than the ownership of a vessel, only mortgages and discharges of registered mortgages may be registered on the register of an Irish ship. The mortgage register is a prioritised register with priority being afforded according to the date and time at which the mortgage is recorded by the registrar on the ships register and not by reference to the date of creation of the mortgage. The registrar will record mortgages in the order in which they are presented to him or her for registration.

The register is maintained at the particular port of registration. There are currently several ports at which a vessel may be registered in Ireland. The 2014 Act will centralise registration on to one computerised register.

Classification

The following classification societies are recognised and approved by the Irish government for the purposes of performing surveys and inspections on Irish registered vessels:[26]

a the American Bureau of Shipping;

b Bureau Veritas;

c Class NK (Nippon Kaiji Kyokai);

d Germanischer Lloyd AG;

e Lloyd's Register;

f Registro Italiano Navale (RINA); and

g the Russian Maritime Register of Shipping.

Generally, classification societies exclude their liability in contract. Any claim in tort for breach of duty of care would require the person claiming the breach to establish that a duty of care was owed by the classification society; that the classification society breached the duty of care; and that the breach resulted in loss or damage to the claimant.[27] There has been no Irish case law specifically with regard to classification societies and their duty of care to third parties.

26 www.dttas.ie.

27 *Ward v. McMaster* [1989] ILRM 400.

However, English case law is of persuasive authority in the Irish courts and accordingly the House of Lords decision in *Marc Rich & Co v. Bishop Rock Maritime (the 'Nicholas H')*,[28] in which it was held that classifications societies do not owe a duty of care to third parties in respect of their classification and certification duties, would be likely to be followed.

The European Communities (Ship Inspection and Survey Organisations) Regulations 2011 gave effect in Irish law to Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations. It contains articles relating to the financial liability of recognised organisations for any marine casualty caused by wilful act, omission or gross negligence.

iv Environmental regulation

There are three sources of environmental regulation in the Irish context: international, EU and national.

First, Ireland is a party to conventions such as the CLC Convention and its 1976 and 1992 Protocols (see Ireland's Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988–2005). Ireland is also a party to the HNS Convention (see the Sea Pollution (Hazardous Substances) (Compensation) Act 2005). Second, as an EU Member State, Ireland is subject to the entire body of EU environmental law, including the maritime environmental directives. Third, there are also Irish statutes and statutory instruments that are relevant, including the Air Pollution Act 1987 and the Harbours Acts. In terms of policy, Ireland is intent on vigorously enforcing its environmental regime.

v Collisions, salvage and wrecks

Ireland is a party to the Collision Convention 1952 (see the Jurisdiction of Courts (Maritime Conventions) Act 1989).

Ireland is also a party to the 1989 Salvage Convention (see the Merchant Shipping (Salvage and Wreck) Act 1993). The Minister for Transport has general superintendence of all matters relating to every wrecked or stranded vessel. There is no mandatory form of salvage agreement, but the Lloyd's Open Form is normally used.

Ireland is a party to Nairobi WRC 2007 but no enabling Irish legislation has been adopted to date.

Pursuant to the European Communities (Vessel Traffic Monitoring and Information System) Regulations 2010 (as amended), it is an offence under Irish law to fail to report immediately to the Irish Coast Guard any incident or accident affecting the safety of the ship, such as a collision within the exclusive economic zone of the state. Failure to notify is likely to result in prosecution.

The Merchant Shipping (Investigation of Marine Casualties) Act 2000 provides that certain responsible persons involved in a marine casualty must immediately, and by the quickest means feasible, notify the casualty to the Chief Surveyor of the Marine Survey Office. The Act also provides for a no-fault review of casualties by the Marine Casualty Investigation Board to determine the cause, so as to ensure that the occurrence is not repeated.

28 [1995] 2 Lloyd's Rep 299.

vi Passengers' rights

Ireland acceded to the Athens Convention and to the 1976 Protocol in 1998, and to the 2002 Protocol in 2014. However, since 31 December 2012, Regulation (EC) No. 392/2009 applies in Ireland by virtue of SI No. 552 of 2012. This raises the limits of liability on and introduces compulsory insurance to cover passengers on ships covered by the Regulation. Application of the Regulation in relation to Class B ships travelling in the state has been deferred until the end of 2018. SI No. 552 of 2012 also gives effect to EU Council decisions 2012/22/EU and 2012/23/EU to give the force of law to the Athens Convention Protocol 2002.

vii Seafarers' rights

Seafarers have extensive rights not only under international and EU law but also under domestic Irish law. In 2014, it was announced that Ireland had ratified the Maritime Labour Convention. With effect from 21 July 2015, Ireland is a party to the Convention and implements the requirements contained in it both for Irish-flagged ships and for international ships calling at Irish ports. Seafarers also benefit from a favourable tax regime. The Mercantile Marine Office maintains the Register of Seafarers.

VII OUTLOOK

The outlook for the Irish shipping sector is positive, and the state is committed to fostering and developing it further. This has been supported by the establishment of the IMDO, the streamlining of administration in the sector and the enactment of new legislation (e.g., Merchant Shipping (Registration of Ships) Act 2014 and the proposed consolidation of existing statutes). The state is also working on developing a new national ports policy, and the Competition and Consumer Protection Commission has published a study of competition in the Irish ports sector. There are also plans to establish an international shipping services centre in Dublin along the lines of Dublin's very successful International Financial Services Centre. The Irish government hopes the Irish shipping sector will continue to grow by way of some indigenous activity but also overseas companies relocating some or all of their operations to Ireland, and the fact that the United Kingdom is planning to leave the European Union could mean that some would be more inclined to become established in Ireland so as to be part of the European Union.

Appendix 1

ABOUT THE AUTHORS

CATHERINE DUFFY

A&L Goodbody

Catherine Duffy is the chairman of A&L Goodbody, a partner in the finance department and head of aviation and transport finance. Catherine's practice focuses on all aspects of banking, including corporate and acquisition financing, asset financing (aircraft, property, and shipping), securitisation, tax-based financing and leasing, and general banking.

Catherine has been recognised as one of Ireland's most influential and successful businesswomen at the Women's Executive Network (WXN) 2017 Awards.

VINCENT POWER

A&L Goodbody

Dr Vincent Power is a partner specialising in EU law, EU and Irish competition and antitrust law, merger control, regulatory law and transport law for national and international as well as public and private clients. He is the author of the award-winning book *European Union Shipping Law*, which is part of the Lloyd's Shipping Law Library.

He is head of the firm's EU, competition and procurement group, which is consistently ranked at the forefront of Irish law firms, and he is regarded as the most experienced competition lawyer practising in Ireland.

In 2017, he won the ILO Client Choice Award in the EU Competition and Antitrust category across the entire European Union, which is awarded by The International Law Office in recognition of a partner who excels across the full spectrum of client service. In 2018, he won the ILO Client Choice Award for the EU Competition and Antitrust category in Ireland.

Vincent has advised on most of the leading competition, merger control, EU law, cartel, abuse of dominance, State aid, joint venture, pricing, refusal to supply, competition investigations and competition litigation cases in Ireland during the past 20 years. He has been involved in several hundred merger filings in Ireland and the European Union, and has experience and expertise in all the issues involved. He has developed a particular expertise in regard to Brexit law.

EILEEN ROBERTS

A&L Goodbody

Eileen Roberts is a partner in A&L Goodbody's litigation and dispute resolution department. She is an experienced commercial litigator specialising in large-scale commercial disputes, in particular in the areas of property, corporate disputes, financial, pensions, transport (maritime and aviation) and insurance. She represents clients not only in court work but also has extensive experience of arbitration, mediation, and tribunals and inquiries. Her clients include blue chip corporates and financial institutions.

A&L GOODBODY

International Financial Services Centre
North Wall Quay
Dublin 1
D01HD04
Ireland
Tel: +353 1 6492 000
Fax: +353 1 6462 649
cduffy@algoodbody.com
vpower@algoodbody.com
eroberts@algoodbody.com
www.algoodbody.com

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