

Reform of German Maritime Law



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- Modernisation of German Maritime Law ensures that the legal rules are up to date with international conventions and practice
- Hague Visby limits remain as the basic principles of liability for cargo claims in Germany
- Arrest of ships in Germany has been made easier.

The article below considers some of the key changes to German Maritime Law brought about as a result of the relevant amendments to the German Commercial Code.

Charterparties

For the first time, specific rules on charterparties have been implemented, covering both bareboat and time charterparties. The rules generally follow the common international standards in maritime business and are non-mandatory.

Liability

Three changes are noteworthy. Firstly, there will no longer be a general exception from liability in respect of errors of navigation and fire. However, the new law allows a carrier to include provisions to that effect in the contract of carriage and the bill of lading, which is recommended to be observed.

Secondly, a special liability of the actual carrier with regard to the shipper/consignee is introduced, making the

The year 2013 proved to be an important milestone in the modernisation of German Maritime Law.

actual carrier responsible for cargo damage in the same way as the contractual carrier. Thirdly, certain provisions concerning the parties' liability, in particular for cargo loss or damage, cannot be deviated from by way of general terms of business but only by individual agreement.

Cargo Claims

As Germany will remain a contracting state to the Hague Rules amended by the Visby Protocol, no changes have been made in respect of the limits for cargo claims.

Bill of Lading

Contrary to international practice is the new German provision regarding the bill of lading. A charterparty can no longer be included in the bill of lading by way of an incorporation clause. In order to have a binding effect, all provisions must be included in the bill of lading itself.

Ship Arrest

Fundamental changes are to be noted by way of a coincidental alteration of the German Code of Civil Procedure in 2013. Previously, ship arrests in Germany were restricted to rarely met cases. Following these amendments, German maritime law is now similar to those of neighbouring countries such as the Netherlands and Belgium.

Under the new rules in Germany, various claims against the vessel owners can be secured by way of an

arrest. However, in cases where the Arrest Convention 1952 applies, an arrest may only be brought in respect of a 'maritime claim' as defined in Art. 1 (1) of the convention. The court may require the applicant to provide counter-security to cover possible damage claims in case the arrest is subsequently lifted following a challenge.

As arrest of ships in Germany has become easier, the protection against a potential arrest has come into focus. Thus, a shipowner who believes his vessel may be arrested in Germany has the possibility to act pre-emptively by filing protective submissions with the court of the vessel's port of call, disputing the relevant claim and requesting the court to deal with any arrest application inter partes in a hearing, rather than ex parte as is otherwise usual. The court is bound to take such protective submissions into account, though it is not bound to accede to any applications they may contain.