

# TLC

## *Cross-border Questionnaire*

2<sup>nd</sup> edition

2023

Dear TLC Members,

After a first successful questionnaire with 15 jurisdictions covering the topic of arrest of vessels, we are happy to launch the 2nd edition of the questionnaire, as anticipated in the TLC Webinar last March.

This TLC Cross-border Questionnaire aims to bring a comparative analysis from different jurisdictions with diverse legal backgrounds on topics that are relevant for the global transportation industry.

After an online poll among the TLC members, the topic selected by majority of votes for this edition of the questionnaire is “Liabilities in Contracts of Carriage”.

We will be happy to hear about multiple jurisdictions and encourage you to share your contributions to the questionnaire. We expect to publish the questionnaire by the end of the year and subsequently organize a webinar on the topic, for the beginning of 2024.

Suggestions of topics and improvements for the future editions may be sent to our communication team at [tlcnews.aija@gmail.com](mailto:tlcnews.aija@gmail.com) and/or [the editors below](#).

Cheers!

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2<sup>nd</sup> edition – 2023

## LIABILITIES IN CONTRACTS OF CARRIAGE

**Name of the contributor:** Ganado Advocates

**Country:** Malta

### **Which international conventions regarding contracts of carriage are in force in your jurisdiction?**

The Hague Rules (HR) are applied in Malta through the Chapter 140 of the Laws of Malta, namely the Carriage of Goods by Sea Act (COGSA). Malta is not a party to the Hague Visby Rules (HVR), however these are applied in cases dealing with bills of lading incorporating the HVR, as also held in Article 10 of the HVR.

Malta is a party to the Montreal Convention which it applies by means of Subsidiary Legislation 499.24, namely the Carriage By Air (International And Non-International Carriage) Order and also party to the CMR Convention which governs the liability in international road transportation of goods which Malta enforces through Chapter 486 of the Laws of Malta, namely the International Carriage of Goods by Road Act.

Malta has not as of yet ratified the Rotterdam Rules.

### **What are the basic responsibilities that lies on the shipper in a contract of carriage?**

The shipper is responsible for ensuring that the goods are appropriately packaged, labelled, and accurately marked. The shipper is also responsible for any loss or damage to the goods carried in those instances when the carrier is not responsible. Generally, the shipper is also responsible to provide all the necessary documentation, including a shipping order, invoice, and any required customs documents which may also include export licenses and certificates of origin. This of course varies based on the arrangements agreed upon by the parties.

### **What are the basic liabilities that lie on the carrier in a contract of carriage?**

The carrier is essentially liable for any loss or damage to the goods carried, non-issuance or incorrect issuance of the Bill of Lading and for the failure to deliver the goods to the place indicated by the other parties to the contract of carriage.

The COGSA states that the carrier is to exercise due diligence before and at the commencement of the voyage, to ensure that the vessel is seaworthy, properly equipped and that the parts of the vessel used to store cargo are safe for the preservation and carriage of goods. The carrier is also bound to carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

In those instances when the requisite due diligence has not been exercised, the carrier may not rely on the seventeen exceptions found in Article 4 (2) of the HR and the HVR. Article 4(a) – (q) of the HV and the HVR, are also incorporated into the COGSA.

### **Are shipowners liable for cargo losses arising out of carriages in which they are not the contractual carrier, when charterers or NVOCCs may be involved?**

Maltese law makes no specific mention to '*non-vessel operating common carriers*' and it must be noted that under the COGSA, the term "carrier" also includes the shipowner and the charterer who enter into contracts of carriage with the shipper. Generally, the liability for loss rests on the contractual carrier under the terms and conditions laid out in the contract of carriage. However, this may vary from contractual liability to tortious liability there is no strict prohibition disallowing actions in tort against entities which physically carry the goods and do not appear as carrier on the bill of lading. Generally speaking, there is no prohibition

in suing both Owners and Charterers under a bill of lading. Ultimately, there is no prohibition in suing both owner and charterer under a bill of lading.

**What claims can be raised against a cargo damage (indemnity for the cargo value, loss of earnings, punitive damages or others)?**

In terms of the HR, liability is limited to the actual loss or damage to the goods as limited by the package limitation. A higher value to the goods or indeed punitive damages may be attributed provided this is inserted in the bill of lading or is agreed upon separately by the shipper and the carrier.

Saving the above, in the event of a tortious claim, the damages may exceed the above and may consist of the actual loss caused, the expenses incurred as a consequence of the damage and the loss of future earnings.

**What basic defences are available for the carriers against cargo claims?**

The key defence available is the proving, by the carrier, of the exercise of the requisite due diligence to provide a seaworthy vessel prior to and at the commencement of the voyage. Additionally, the carrier may rely on the seventeen exculpatory exceptions in the COGSA which mirror Article 4(2) of the HV and HVR. Other defences include any applicable clauses in the bill of lading which can aid the determination of liability and the prescription of the action.

**Is there any limitation of liability regime applicable to contracts of carriage in your country? If so, what is the legal basis, what claims can be limited, which parties can make use of limitation, what are the limits available and what are the procedures for establishing limitation?**

The COGSA limits the carrier's liability for any loss of or damage to the goods in an amount exceeding €232.94 per package/unit, or the equivalent of that sum in another currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

**Are there any restrictions for the applicability of the terms of the bills of lading? What if the defendant is not the contractual carrier?**

Clauses within bills of lading which exclude or limit liability unreasonably are generally not upheld by the courts, in line with general contract law. The defendant who is not the contractual carrier may however be held liable in tort.

**Is there any liability to the carrier in the event of delivery of cargo at the place of destination to a party that does not present the original bill of lading?**

In the event that upon the delivery of cargo the carrier does not present the original bill of lading, this would result in mis-delivery. In this case, the holder of the bill of lading will be able to sue the carrier for breach of contract, and the carrier would be held liable for all damaged without possibility of limiting liability.

**What is the time limit for a claim based on cargo damage? Is it possible to extend the time limit? If so, what is the proper procedure?**

The COGSA provides that the carrier and the ship shall be discharged from all liability in respect of the loss or damage unless a suit is filed within one year of delivery of the goods or the date when the goods should have been delivered.

Moreover, it is not possible to extend the time limit to bring a claim, nor can the Court or arbitral tribunal extend the time limits prescribed by law for the filing of a claim. However, by the filing and notification of any judicial act, the prescription period can be interrupted.

**What is an average of time for a cargo claim to be decided by the courts/arbitration in your country?**

This depends on many factors surrounding the facts of the case including the efficiency of the parties involved in the dispute. As a general observation maritime related disputes before the courts tend to move at a faster pace than others.

**Any other relevant information, news or decision regarding the topic you would like to share?**

Malta currently does not have a specialized maritime law court, however players in the industry have proposed a specialized maritime litigation court. Although this is not yet in existence, there is an element of consistency with respect to the judges that preside cases of a maritime nature.



## NEWS ABOUT THE COMMISSION

Although guided by a dedicated team of Officers, the TLC encourages the participation of all members in planning the activities of our commission.

If you have any suggestion, ideas or do not know exactly how you can contribute but definitely want to be engaged, feel free to get in touch with any of the commission officers or the TLC Communication Team at [tlcnews.aija@gmail.com](mailto:tlcnews.aija@gmail.com)

## TLC LINKEDIN GROUP

Stay tuned for the activities of the TLC Commission group on LinkedIn [[TLC LinkedIn page](#)], where you will be able to receive information and posts that are not exactly newsletter material, in addition to exchanging information with other members, following the commission's plans, initiatives, events and speaking opportunities.

## Want to contribute?

Our members are always welcome to send contributions and suggestions to the activities performed by the Commission. If you have ideas or questions you would like to share, please feel free to reach any of the Officers or the Communication Team through the email below:

[tlcnews.aija@gmail.com](mailto:tlcnews.aija@gmail.com)

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**2020-2023**



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