



**COUNTRY  
COMPARATIVE  
GUIDES 2020**

# **The Legal 500 Country Comparative Guides**

## **Marshall Islands**

### **SHIPPING**

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Marshall Islands.

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## MARSHALL ISLANDS SHIPPING



### 1. What system of port state control applies in your jurisdiction? What are their powers?

In general, as the Marshall Islands is not a major hub of commercial shipping activity, the jurisdiction is better known for the responsible exercise of its authority as a flag state.

That said, under the Ports of Entry Act, the Secretary of Transportation and Communications has the authority and responsibility for the conduct of inspections and port state control operations, including enforcing applicable international conventions to which the Marshall Islands is a party, e.g., the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International Ship & Port Facility Security (ISPS) Code. Vessels generally must enter and obtain clearance from an official port of entry as enumerated in that Act.

Under the Ports of Entry Act, all vessels on entry, departure, or at any other time as deemed necessary by the Secretary of Transportation and Communications, are subject to inspections and port State control operations including: the boarding and inspection of vessels to determine the validity of required international convention certificates and other required documents; to assess the overall condition of the vessel, its equipment, and its crew; to verify the condition of the vessel and its equipment comply with international requirements; to verify that the vessel is manned in accordance with international requirements; to identify and make note of any deficiencies in the condition of the vessel, its equipment, or its crew; and to apply appropriate control action and/or corrective measures as necessary.

### 2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

With respect to wreck removal, the Marshall Islands has

adopted the Nairobi International Convention on the Removal of Wrecks (Wreck Removal Convention) 2007.

With respect to pollution, currently, the Marshall Islands is a signatory to the following international conventions: (1) International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78 and amendments, i.e., Annexes I, II, III, IV, V and VI, wherein the provisions of Regulation 13 are retroactive to 01 January 2000; (2) the 1996 Protocol to the Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (LC PROT 1996); (3) the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969); (4) the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973, as amended (INTERVENTION PROT 1973); (5) the Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976); (6) the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992); (7) the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1976); (8) the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, (FUND PROT 92); (9) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001); (10) the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS 2001); and (11) International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM 2004).

### 3. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

The Marshall Islands has adopted the Convention on the International Regulations for Preventing Collisions at

Sea, 1972 as amended, (COLREG 1972). With respect to salvage, the Marshall Islands has adopted the International Convention on Salvage, 1989.

**4. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?**

The Marshall Islands is a party to the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) and the 1996 Protocol to the Limitation Convention. The RMI also adopted the LLMC Convention 1976 as Chapter 5 of the Maritime Act. Pursuant to Chapter 5, "shipowners" (including owners, charterers, managers and operators) and salvors are entitled to limit their liability in respect of certain claims in accordance with the rules set forth in the legislation.

**5. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?**

The Marshall Islands is not a signatory to international conventions with respect to ship arrest. In the Marshall Islands, actions involving ship arrests are governed under the substantive law of the Republic and the Marshall Islands Rules of Civil Procedure (the "MIRCP"). All causes of action arising under the Maritime Act fall within the jurisdiction of the High Court of the Marshall Islands, sitting in Admiralty. And under Section 113 of the Maritime Act, the Marshall Islands has adopted the non-statutory general maritime law of the United States of America as the general maritime law of the Republic.

Accordingly, US admiralty law will govern many questions in the absence of a statute on point.

Maritime lien creditors and those with statutory rights may enforce their rights in rem against a vessel. Such arrested vessels are governed under the MIRCP by Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (the "Supplemental Rules"), which provides that a vessel may be arrested to enforce any maritime lien or where a statute provides for in rem proceedings.

There is no associated or sister ship arrest regime under U.S. general maritime law. However, property of the defendant may be attached under Rule B of the Supplemental Rules and, where the defendant owns a vessel and if the requirements of Rule B are met, that vessel may be seized.

**6. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?**

The MIRCP parallel in many respects the US Federal Rules of Civil Procedure, including the adoption of Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture actions. Accordingly, in a Rule B action, seeking *in personam* attachment or garnishment - which may include vessel seizures - the Court requires a verified complaint by the plaintiff setting forth a prima facie valid admiralty claim at the time of the filing of the Complaint, and an accompanying affidavit signed by the plaintiff or the plaintiff's attorney stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the Republic.

In a Rule C *in rem* arrest action, the Court likewise requires a verified complaint that describes with reasonable particularity the property that is the subject of the action; and that the property is within the Republic or will be within the Republic while the action is pending.

**7. What maritime liens are recognised?**

Maritime liens are recognized under the Marshall Islands Maritime Act, to recover damages arising from (1) maritime tort, (2) crew wage claims, (3) contract claims, including for breach of a charterparty, claims for cargo loss or damage, or unpaid freight and demurrage, (4) general average, (5) salvage, (6) unpaid tonnage taxes, fees, penalties and other charges arising under Marshall Islands Maritime Act or its implementing regulations and (7) the supply of necessities.

**8. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?**

There is no requirement of *in personam* owner or demise charter liability in order for a vessel to be arrested. Under Section 319 of the Maritime Act, vessel arrests may proceed *in rem* against the vessel so long as necessities are supplied on the order of the owner or a person authorized by the owner. Under the statute, charterers are generally presumed to have authority to procure necessities for the vessel and suppliers of necessities are also generally presumed to rely on the credit of the vessel unless they have notice of or by the exercise of reasonable diligence could have ascertained, the presence of a “no lien” clause in the charter.

Notably, a vessel owner has a potential defence under Section 319(3) of the Marshall Islands’ Maritime Act, which provides that no lien will arise “when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering necessities was without authority to bind the vessel therefor.” Unlike in the analogous U.S. statute, which was amended in 1971 to eliminate any duty of inquiry imposed on suppliers to examine charter parties for “no lien” clauses, owners may argue under Marshall Islands law that a necessities supplier could have ascertained by due diligence that the charterer was not authorized to bind the vessel to a lien.

**9. Are sister ship or associated ship arrests possible?**

“Sister ship” or associated ship arrests are not a valid ground upon which to commence an *in rem* arrest action, but maritime attachment is available under Rule B where a plaintiff has a maritime claim (not necessarily a lien claim) and such plaintiff can attach property of the defendant, provided that the defendant is not found within the Republic where the property is located for jurisdictional and service of process purposes. Some parties may seek to “pierce the corporate veil” in arrest proceedings to reach associated vessels.

**10. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be**

**liable for damages if the arrest is set aside?**

The circumstances under which security or counter-security may be required are governed by Rule E of the Supplemental Rules and in the discretion of the Court. Unless otherwise ordered by the court, no security is required in connection with the issuance and execution of process to arrest a vessel. This includes the possibility of a counter-security award should a counterclaim be asserted in the arrest or attachment proceeding under Rule E(7). In all events, expenses in connection with seizing and keeping property, or of any substitute custodian appointed, must also be covered and frequently are paid in advance at the time of the arrest.

A claim for wrongful arrest requires a showing of no *bona fide* claim and of bad faith, malice, or gross negligence on the part of the arresting party.

**11. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?**

The procedure to secure the release of a vessel is set out under Rule E(5) and permits the parties to stipulate to “the amount and nature of such security” by way of a special or general bond conditioned to answer the judgment of the court or of any appellate court. Accordingly, a Club LOU or other third-party surety bond may be acceptable, if the parties can agree. In the absence of agreement, the court may fix the principal sum of the bond at an amount sufficient to cover the plaintiff’s claim fairly stated with accrued interest and costs, up to a maximum of the smaller of twice the amount of the plaintiff’s claim, or its value upon due appraisal, with interest thereon at 6 per cent per annum. Motions to reduce or enhance the amount of security may subsequently be made for good cause shown under Rule E(6). The release of a vessel is likewise conditioned on the payment of all costs and charges of the court and custodian of the property.

**12. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

It should be noted that very few foreclosures of commercial vessels have taken place in the Marshall Islands. The Maritime Act confers jurisdiction on the High Court of the Marshall Islands with respect to foreclosures of mortgages. And, in accordance with the Admiralty Jurisdiction Act, when the Court determines an arrested vessel is subject to speedy decay, the Court may, on an

application made by the Chief of Revenue of the Marshall Islands, direct that the vessel be sold and the proceeds deposited in court, pending the determination of the action.

In the event of a judicial sale, any party to an action or the custodian of the vessel may apply for sale of the vessel. It is usually the mortgagee bank or the single largest creditor that would move to have the vessel sold. And under Rule E(9), a court is expressly authorized to order a sale if: (A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action; (B) the expense of keeping the property is excessive or disproportionate; or (C) there is an unreasonable delay in securing release of the property.

With respect to the rank and priority of claims, although it may vary from jurisdiction to jurisdiction, the general order of priority under the general maritime law is as follows:

- Expenses, fees and costs allowed by the court, including those incurred while the vessel is in custody;
- wages of the vessel crew;
- maritime liens arising before a preferred mortgage was filed;
- maritime tort liens;
- salvage and general average claims;
- preferred mortgage liens on U.S.-flagged vessels;
- liens for necessities;
- preferred mortgage liens on foreign-flagged vessels;
- general maritime contract liens;
- claims on non-maritime liens; and
- non-lien maritime claims.

Where liens accrue at different times, the rule under the general maritime law is that liens that arrive last in time take precedence. In practice, in distressed situations, any claimant coming after the mortgagee is unlikely to recover.

### **13. Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

Chapter 4, Part I of the Marshall Islands Maritime Act sets forth the Carriage by Sea Act, which governs contracts for carriage of goods by sea. Section 404 thereof sets for the responsibilities and liabilities of the carrier, which is defined to include “the owner or the charterer who enters into a contract of carriage with a

shipper.”

Importantly, the Carriage by Sea Act in the Marshall Islands is only applicable to goods carried on Marshall Islands vessels in foreign trade or on other vessels to or from ports of the Marshall Islands in foreign trade. Section 402(f) of the Maritime Act defines ‘foreign trade’ as the transportation of goods between the Marshall Islands and foreign countries or between foreign countries. Therefore, as a practical matter it is principally relevant with respect to Marshall Islands-flagged vessels in international commerce.

### **14. Is the proper law of the bill of lading relevant? If so, how is it determined?**

Contracts for carriage of goods by sea must be construed like any other contracts: by their terms and consistent with the intent of the parties. As such, where parties clearly specify in their contractual agreement which law will apply, admiralty courts will generally give effect to that choice.

### **15. Are jurisdiction clauses recognised and enforced?**

Non-exclusive jurisdiction clauses are valid and binding and do not contravene Marshall Islands law if they are properly incorporated into the bill of lading.

### **16. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

Under the general maritime law, the terms of a charter party can be incorporated into a bill of lading, provided it is clearly done on the face of the bill of lading. Foreign forum selection clauses and foreign arbitration clauses found in incorporated charter parties are enforced if the charter party is properly incorporated in the bill of lading. To enforce an arbitration clause against a third-party holder, a bill of lading should specifically identify the charter party and clearly incorporate the arbitration clause.

### **17. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been**



**adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

The Marshall Islands has not adopted either the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) or the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules).

The Marshall Islands applies a version of the Hague Rules through the Carriage by Sea Act, which parallels US COGSA. This provides a reasonable and predictable cargo loss and damage liability regime.

**18. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

The Republic of the Marshall Islands is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Only the limited enumerated exceptions or defences set forth in Article V of the New York Convention may be available grounds to resist enforcement.

**19. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

Statutes apply to limit actions on many types of maritime claims. Under the Carriage by Sea Act, in parallel to the U.S. COGSA statute, there is a one-year limitations period for cargo claims. Maritime Act § 404(6). Actions for indemnity against a third person may be brought beyond this period, if brought within the period for claims sounding in contract, and within three months commencing from the day when the person bringing such action has settled the claim or has been served with process in the action against himself. Maritime Act § 404(7); *see also* Civil Procedures Act § 120 (six-year general limitation period). Salvage claims are governed by a two-year statute of limitations, unless there has not been "reasonable opportunity for securing jurisdiction of the vessel, person or corporation to be charged," in which case there is a ninety-day period to bring a claim after there has been a reasonable opportunity to secure jurisdiction. Maritime Act § 707.

Under the Merchant Seafarer's Act, suits arising from the Shipping Articles are subject to a one-year time bar, suits for damages for personal injury or death arising out of a maritime tort must be commenced within two years after the cause of action arose, and a catchall provides for a three-year time bar against "all other claims" measured from the date that the right of action accrues. Maritime Act § 862. With respect to passenger claims, actions for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years, with a statute of repose of three years from the date of disembarkation, unless extended by written declaration of the carrier or agreement of the parties. Maritime Act § 435.

Where no statute applies, the General Maritime Law provides that suits for enforcement of a maritime lien or other maritime claim are typically governed by the equitable doctrine of laches. Under this doctrine, courts will ask whether there has been "inexcusable delay" and resulting prejudice to the party against whom the claim is brought. In making this determination, a court sitting in admiralty will often use analogous local limitation statutes as a rule-of-thumb. If outside of the analogous limitations period, the burden will fall on plaintiff to show that laches does not apply. If within an analogous limitations period, a presumption of laches would not attach and the burden of showing inexcusable delay would fall on the defendant.

**20. What restrictions, if any, has your jurisdiction imposed on crew changes in the wake of the Coronavirus pandemic?**

Crew changes are unlikely to happen at a port in the Marshall Islands, but we are not aware of any specific restrictions imposed as a result of the Coronavirus pandemic. As far as seafarers employed to work on Marshall Islands-flagged ships go, the Marshall Islands has allowed for extended seafarer employment agreements in recognition of the difficulties in arranging crew changes and repatriating seafarers when their employment agreements expire.

**21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?**

As a general matter, force majeure as a concept negotiated in a contract should be recognized under Marshall Islands law, and any right of relief or claim

protection will depend on the terms of the contract

negotiated and governing law of the contract.

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