Georgia


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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

A definition of a party at fault is regulated by the provisions of COLRERG 1972, SOLAS – 1974. The Maritime Code of Georgia, General Law and Law of Torts, Civil Code of Georgia and the Rules of ports of Georgia regulate collision damage indemnity matters.

There is some peculiarity - if all the parties are responsible for the collision, but it is impossible to determine the degree of responsibility of each party, the responsibility is divided equally.

In the event that it is impossible to determine the causes of the collision or whether it happened in a *force majeure*, the losses are carried by each of the parties to the extent to which these have been received.

(ii) Pollution

The regulation is performed according to the provisions of the conventions: UNCLOS – 1982, MARPOL-73/78; LC-1972, with 1996 protocol; INTERVENTION – 1969, with 1973 protocol and amendments of 1991 and 1996, CLC; and Protocol 1992.

The national regulation of damage indemnity is performed according to the provisions of:

- The Maritime Code of Georgia.
- The Law on maritime areas.
- The Civil Code of Georgia - General Law and Law of Torts.

However, according to the practice proceedings on matters regarding oil spills in the sea, such matters are generally not held as common civil proceedings according to the Code of Civil Procedure. It is conducted according to the Code of administrative delinquencies.

The essence of this practice is in considerable limitation both in terms of procedures and procedural possibilities of the party, against which a protocol of administrative delinquency is drawn up. There is a sanction for marine pollution in the form of a penalty GEL 65,000. The penalty is not differentiated per the volume of the pollution.

Additionally, the amount of damage caused by marine pollution is calculated according to the Resolution of Georgian Government №54, 2014 *on the approval of technical regulations of the calculation methods for determining damage caused to the environment*. The amounts are not very high in comparison with the administrative penalty. Both sums are added up and the total invoice is issued.

(iii) Salvage / general average

The regulation of salvage on sea is performed according to the provisions of the conventions: SOLAS – 1974; SALVAGE – 1989; and SAR – 1979.

The national regulation of salvage reward is performed according to the provisions of the Maritime Code of Georgia.

Salvage activities do not give the right to get a reward if a master of vessel under risk directly and reasonably (due to some groundable reasons) prohibits such actions, or if salvage actions were performed during a towage within the terms of a contract of sea towage.

Any salvage agreement that took place at the time and under the influence of danger may, at the request of either party be invalidated or changed by a court or arbitral tribunal when the terms of the agreement were unfair.

Reward may be reduced or rejected if the salvors themselves caused the necessity of salvage or committed other deceptive acts or their actions have exacerbated the consequences of the operation.

Salvage reward for the prevention or minimisation of environmental pollution may not exceed the costs incurred by the salvor with a maximum increase up to 30 per cent, but if the court/arbitration, taking into account all the circumstances, considers it to be fair, such compensation can be increased to up to 100 per cent of the expenses incurred by the salvory. The reward may not exceed the value of the salvaged property.

The regulation of general average may be performed according to the provisions of any edition of the YORK-ANTVERP RULES, subject to the agreement of parties. In the absence of such agreement the YORK-ANTVERP RULES (1974) should be applied, to which Georgia is a party.

(iv) Wreck removal

Georgia is not a signatory of the International Convention on the Removal of Wrecks, Nairobi 2007.

National regulation of wreck removal is performed according to provisions of MC of Georgia. The owner of the property lost in the sea should immediately notify the nearest Georgian port Harbour Master who sets the time period within which the property should be removed and agrees the order of removal.

If the property constitutes an obstacle to ordinary life conditions and human health, endangers the safety of

navigation and pollution such property shall be removed as soon as possible, but if the property poses an imminent threat it shall be immediately removed under the Harbour Master's order and for the shipowner's account.

If the shipowner fails to remove the property lost in the sea within the set time or to make the appropriate statement, he loses his right to this property.

(v) Limitation of liability

Regulation of limitation of liability is performed according to the provisions of The International Convention LLMC 1976, however Georgia is not a signatory of its Protocol (1996).

The national regulation of limitation of liability is performed according to the provisions of the MC of Georgia.

The liability is limited to the limits specified in Art. 340, if they arise from:

a) death, injury, damage to property, including buildings, if these occurred in direct connection with the vessel or its salvation;

b) removal, demolition and detoxication of the vessel and the cargo;

c) damage caused by the delay in the delivery of cargo, passengers and their baggage; or

d) removal of the wreck, including the case if it has been abandoned, etc.

The list defines the conditions and limits of such liability in detail.

(vi) The limitation fund

According to the MC of Georgia, the shipowner liability limitation fund is established in the court or other competent body where he was brought a claim. The fund is established in the amount not exceeding the limits of the owner's liability. The fund is formed by way of placing cash money on a deposit account or any other security (letter of guarantee, bank guarantee, certificate of insurance, mortgage or lien) that is deemed acceptable and enough by the court or other competent body establishing that fund.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

Maritime incidents investigation is performed by the Maritime Transport Agency according to the Regulations on Official Investigation of Maritime Incidents and Accidents – Order of the Minister of Economics and Sustainable Development of Georgia 2013.

International regulation is performed according to the provisions of IMO Resolution and the Code for the Investigation of Marine Casualties and Incidents.

The provision is aimed at detection of reasons of incidents in order to contribute to safety at sea and environment protection. In fact, the Agency fulfils an independent investigation with the assistance of a maritime administrative personnel. There are wide powers in these investigations. For example, inspectors performing administrative investigation are entitled to detain the vessel or cargo, involved in the incident.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

Georgia is a party of the UN Convention on the Carriage of Goods by Sea 1982 (Hamburg Rules). However, as a five-year transition period was not completed the Hague-Visby Rules are applied due to this casus. Hamburg Rules are applied only in the case if this special condition is stipulated for in the shipping contract.

The national regulation of carriage of goods by sea is performed according to the provisions of MC of Georgia

2.2 What are the key principles applicable to cargo claims brought against the carrier?

The title to sue belongs to a lawful holder of a bill of lading, or a party subrogated into the rights of such lawful holder of a bill of lading.

According to the Maritime Code, the term "carrier" includes the shipowner, ship-operator, bareboat charterer or any person who enters into a contract with the charterer. This does not mean all of them, but that only some of them may be so considered, who actually perform the vessel's and cargo operations and sign the: C/P; B/L; booking note; and other documents of title.

In order to bind a *bona fide* third party bill of lading holder (all the original B/L), the C/P provisions should be expressly referred to in the bill of lading. A general reference to a C/P will only bind such third party in the limits of the ordinary terms of the C/P regularly used in that particular type of carriage.

A C/P arbitration clause shall bind a bill of lading holder only if the bill of lading makes an express reference to it or it contains the details of the C/P, according to which such arbitration clause is incorporated in the B/L. Besides, in the Georgian courts' practice there is an additional condition that requires having a straight bill of lading, stating the certain person.

A *bona fide* third-party bill of lading holder (all the original B/L) has the right to:

- return the cargo prior to its shipment from the port of loading, with the payment of the appropriate compensation (MC);
- delivery of cargo at an intermediate port; and
- delivery of cargo to a person who is not indicated in the B/L, on the condition of the providing of all original B/L copies and the appropriate security, in order to reject any claims of third parties.

The carrier is obliged to ship the cargo in accordance with the agreed term, if no term is agreed – then accordance with the usual term considered as reasonable.

The carrier bears responsibility for the damage that came from the loss of or damage to the cargo or delay in delivery, if the circumstances that caused such loss, damage or delay occurred at a time when the cargo was in charge of the carrier, unless the carrier proves that the loss of or damage to the cargo were caused by the circumstances beyond his control, or by the course deviation for the rescue of humans, vessel or cargo, or by any other reasonable cause of deviation, if it was not caused by the carrier's improper actions.

In accordance with MC, the carrier is entitled to limit its liability according to a package/kilo criterion, with the limits of SDE 666.67 per package and SDR 2.00 per kilo.

The liability is not limited if it is found that the damage was caused by the carrier's actions or negligence, which took place as a result of his deliberation premeditation or presumption.

The suit against the carrier must be brought after a reasonable written claim has been preliminarily made to him.

The time limitation period for cargo claims is two years for legal entities and three years for individuals – Georgia residents. The period is from the date of delivery of the cargo or the date it was due to be delivered.

A claim in tort will be allowed against the carrier if the claim relates to damages suffered by the claimant because of the carrier's unlawful acts or omissions.

Even if a claim against the carrier is brought in tort, the carrier's liability will be subject to the same rules (exculpations and limitations) as if the claim is brought in contract.

The time limitation period for claims in tort is three years from the time when the aggrieved party became aware of the damage or of the person responsible for the damage.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

In accordance with Maritime Code of Georgia:

- The consignor is obliged to provide the carrier with the following:
  a. All the documents relating to the cargo, drawn up in accordance with the requirements of the port, Customs', sanitary and other administrative authorities.
  b. Instructions for the cargo transportation with indication of special shipment and storage conditions.
- The consignor is responsible for damage caused to the carrier in the case of:
  a. Late delivery of documents for their improper and incomplete drawing.
  b. For loading illegal, prohibited, or smuggled cargo, if at the time of loading the carrier was not aware of such nature of the cargo.
- The consignor is responsible for the accurate labeling of flammable, explosive, or other dangerous goods, if now receiving the carrier could not determine the nature of the goods; otherwise the carrier has the right, in accordance with the circumstances to discharge or dispose such cargo at any time without compensation to the consignor.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Georgia is a party of Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, but not a signatory of 1976, 1990 and 2002 Protocols.

Domestic regulation of the transport of passengers and luggage is reflected in Maritime Code and in principle follows the provisions of the Athens Convention.

According to the MC, the carrier's liability is limited in the following cases:

- Death or injury of a passenger - 46666 (SDR).
- Damage or loss of a vehicle (with luggage) - 3333 (SDR) for each vehicle.
- Damage to or loss of luggage in the cabin - 833 (SDR) for each passenger.
- Damage to or loss of luggage, not falling into the above categories - up to 1,200 (SDR).

The time limitation period for passengers and luggage claims is three years.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Georgia is not a signatory of the International Convention for the Unification of Certain

Rules relating to the Arrest of Sea-going Ships (Brussels 1952) and UN International Convention on Arrest of Ships (1999), but has implemented provisions of the Conventions into maritime legislation.

Ship arrest is regulated by the following instruments:

1. 1982 UN Convention on Law of the Sea.
2. Domestic legal instruments:
   - Maritime Code of Georgia (1997r.).
   - The Law of Georgia On maritime areas (1998).
   - The Law of Georgia On international private law (1998r.).
   - The Law of Georgia On State Boundary 1998.
   - Georgia Code of Civil Procedure (1997r.).

The only competent authorities that may consider the arrest and release of a vessel are the general courts. The actual procedure of arrest and release is conducted as a form of security for a claim that in a particular case can only be a maritime claim.

The application for the arrest of a vessel may be taken for consideration by the courts of Georgia, if the court has international jurisdiction or if the interim measures are to be executed in Georgia, respectively, in both cases, the vessel itself must be in the jurisdiction of Georgia. This provision extends the jurisdiction of the authorised courts of Georgia and gives them the right to consider the request for the arrest of a vessel in those cases where the dispute on the merits is brought to the arbitration outside Georgia.

It should be noted that the legislation does not provide a list of specific maritime claims. But the features have been set forth by which the claim can be recognised as maritime.

The unfavorable practice of Georgian courts is the fact that the arrest of a vessel is considered as a form of the standard claim security. The essence of the claim, either of maritime or private law nature, is not taken into account. Therefore the value of the vessel's arrest as a separate international institution for securing maritime claims has been restricted to securing an ordinary civil claim. Such practice limits a vessel's arrest when the claim is brought not against the owner of the vessel, but a "shipowner" as broadly defined: operator; manager; and charterer (including time charterer). The essence of such restrictions is that according to the Code of the Civil Procedure, the restrictive measures can only be taken against the debtor's property not to restrict the interests of *bona fide* third parties.

The plaintiff can arrest not only the particular vessel, but also any other vessel of the same owner.

The arrest may be requested before or during court or arbitration proceedings (prior to delivering a judgment). The preliminary arrest is imposed for 10 days, within this period the plaintiff should provide the court that enacted the arrest with the document proving that the suit (for the security of which the vessel was arrested) was brought to a competent court or arbitration.

The following should be stated in the application for the arrest:

- the claim on which the dispute has arisen;
- provision of a rationale for the fact that if the vessel has not been arrested, enforcement of the decision on the merits will be made difficult or impossible; and

- provision of a rationale for the fact that the defendant may avoid liability by disposing of the vessel, or transferring the right of ownership to the third parties, or imposing a mortgage (or other obligations), or using it as a security for some other claim.

An arrest involves withdrawal of the ship's documents by the Harbour Master. Making the arrest of a vessel as the legislation provides the protection of the shipowner's interests. In particular, the court may satisfy the claim for a security measure, but require the applicant party to provide the compensation for expected losses.

The arrest remains in force until the completion of proceedings on the merits and before the start of the forced sale of the vessel. The arrest may be lifted in the provision of proper money or other security (with the consent of the claimant) to meet the claim, together with interest and legal costs.

Arrest of other assets owned by the shipowner is also possible (bank account, freight, including the requirements for it, due reward for saving and other legal assets that may be adopted in the material form to fulfill obligations, except for general average contribution.

However, there is a separate provision in MC according to which the Harbour Master can detain a vessel and cargo against any maritime claim requirements for 72 hours, for clarifying all the circumstances of the case and preparing the relevant documents.

Maritime Lien and Mortgage

Georgian law and courts recognise maritime liens for the debtor's property irrespective of the damage claim base – breach of obligations (law or contract) or delict. The provisions of the International Convention on Maritime Liens and Mortgages Geneva, 6 May 1993 are incorporated into Art. 350–355 of MC of Georgia.

Georgia is not a signatory to the following International Conventions:

- For the unification of certain rules of law relating to maritime liens and mortgages 1926.
- For the Unification of Certain Rules relating to Maritime Liens and Mortgages (Brussels 1967).

4.2 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

In accordance with Article 152 (3) of MC, the carrier has the right to retain the cargo until full payment of the transportation cost and the provision of appropriate security have been provided. In addition to the transportation cost, the Maritime Code provides that the cargo may be considered as a security of any claim against the cargo owner (consignor or consignee) arising out of: demurrage; late submission of cargo for loading or non-submission; violation of terms of cargo handling, if it is carried out by the cargo owner;, any claims arisen out of breaching the terms of contract of carriage by a consignee or a consignor; storage cost of unclaimed cargo; also the claims regarding legal expenses and/or judicial procedures for selling the cargo; general average; and payment of salvage reward as per the salvage contract.

Imposing a lien on the cargo is performed according to the International Convention on Maritime Liens and Mortgages, 1993, the General rules of property law, and the Civil Code by appealing to the authorised Court of First Instance for the security of claim. All other issues are regulated by the procedures as outlined in question 4.1.

4.3 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

According to MC (343), the shipowner has the right to limit his liability, to establish a fund in the court or other competent body in the amount not exceeding the limits of his liability on the claims, for limitation of which he refers to.

In all other cases, the bank or insurance company letter of guarantee is accepted or any other form of security which is determined by the court or for which the claimant agrees.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

In the case of risk of loss or destruction of evidence, or the inability to obtain it at a later stage, the interested party may apply to the Court of First Instance to provide the so-called securing of evidence. A petition of this nature may be brought at the stage of the proceedings, too.

The Code of Civil Procedure of Georgia regulates the procedure.

5.2 What are the general disclosure obligations in court proceedings?

Court proceedings in Georgia are based on equality, optionality and an adversary nature, the claimant and the defendant themselves determine the content of the claim/objection to claims/counterclaims and evidence that they intend to prove the disputed facts with. All evidence must be presented in court and forwarded to another party no later than the main court session. After that, the parties may present new evidence only if they can prove to the court that they were unable to provide such proof before the main court session, or that the need to provide new evidence emerged in the process of identifying new circumstances which could not have been predicted at the initial stage of the proceedings.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

There are three instances in the Georgian justice system: the Court of first instance; the Court of appeal; and the Court of cassation (Supreme Court). According to the Law of *Private Law* all maritime claims that have arisen, in which the Georgian courts have jurisdiction, are to be considered in general courts of Georgia. There are no specialised commercial courts in Georgia.

Maritime claims in the first instance fall within the jurisdiction of the Batumi and Poti courts. The appeal is brought to the Kutaisi Court of Appeals.

The time limitation period for the claims in each instance is two months from the date of the claim bringing. Especially difficult cases can be considered for no more than five months.

Court fees: first instance - 3 per cent from the claim amount; appeal - 4 per cent; cassation - 5 per cent. The minimum/maximum value of the fee for physical/legal entities is set forth.

The time limitation period for submission of a complaint: appeal - 14 days from the date of pronouncement of a decision, if the party is present or from the date of handing the decision of the first instance; and cassation - 21 days from the date of pronouncement of a decision, if the party is present or from the date of handing the decision of appeal.

Commercial arbitration between residents/non-residents in Georgia is regulated by the Arbitration Act, (2010), which is based *on the model law UNCITRAL (1985) On International Commercial Arbitration*.

Cases and volumes of judicial intervention in arbitration proceedings (competence, security measures, appointment of an arbitrator, withdrawal/replacement of arbitrators, providing evidence) and the recognition and enforcement of arbitration awards is done by a competent court in accordance with the Code of Civil Procedure

The maximum time limitation period for arbitration proceeding prior to decision is 180 days, it can be prolonged to180 days more. From this period, the law provides separate time limitations for certain procedural actions.

There is no separate law on mediation in Georgia. However, the Code of Civil Procedure provides the procedure of judicial mediation, which covers all procedural issues.

Mediation centres, existing at institutional Arbitrations, perform the mediation procedure taking into account the discretionary standards of mandatory (civil) law and the principles of judicial mediation.

6.2 Highlight any notable pros and cons related to Georgia that any potential party should bear in mind?

Cons: Georgian judges have little experience in handling maritime claims. International legal standards reflected in the Conventions and multilateral agreements to which Georgia is a signatory are not fully implemented in the relevant national standards. Often international rules are in conflict with national regulations on the same subjects. Having a lack of experience in the application of international standards, the courts prefer to use relevant domestic provisions, and this reduces the quality of the court review.

Pros: The court fees are low. Georgia also has a transparent, understandable and non-corrupt justice system, excluding the subjective intervention.

Small claims processing is more efficient compared to other jurisdictions. All instances may take a maximum of 15 months.

There is also an effective system of recognition and final decision enforcement.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

International standards regulating such procedures with the CIS countries are provided by the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993, as amended in 1997.

As regards other countries such procedure is regulated under bilateral agreements, which provide legal assistance and the mutual recognition of judicial decisions. The list of such countries is published by the Ministry of Foreign Affairs of Georgia.

National regulating standards are provided in the Law "On the private international law of Georgia".

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Georgia is a signatory of UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

The Supreme Court of Georgia is the competent court considering the application for recognition and enforcement of foreign arbitral awards, which gives the writ of execution, to be enforced as a decision of the domestic court in accordance with the Law on Enforcement Proceedings 1999.

The problem may occur in the recognition of legal validity of the arbitration clause, which according to the practice of Georgian courts is assessed quite limitedly. In particular, from all known forms of the arbitration agreement under the Convention, preference is given to only a separate agreement or clause in the contract signed by the parties. The positive factor is that the court interprets quite narrowly the reasons for refusing in recognition.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

The provisions of property law in Georgia are mainly of a consensual nature, thus priority is given to the parties' agreement unless it directly contradicts the mandatory requirements of the law. That is, for the purpose of resolving the dispute by amicable agreement, any agreement between the parties is enforceable unless it directly contradicts the public law and the laws of ethics.

Taking this into consideration any amicable agreement in the framework of maritime dispute may cover not only the resolution of the dispute, but also the actual achievement of the results, to which the parties agree in this agreement. This means that Georgian jurisdiction allows the so-called alternative enforcement, in particular sale of the vessel or other property of the debtor as agreed by the parties without judicial procedures. The result achieved is identical to the result to be achieved by legal enforcement by the governmental enforcement authority.

The strict system of penalties was provided by the Code of Administrative Delinquencies. The penalties are to be paid in USD according to the exchange rate:

- Ships called to occupied territories in the Northern part of Georgia (port Sukhumi) – the penalty is 400 GEL for the first call, for the second call the penalty is - prison and a further penalty.
- Vessel 72H pre-arrival notice delay, the penalty is 100 GEL.
- GEOREP information delay, the penalty is the Master's salary x 2.
- For launching of a lifeboat without Harbour Master permission, the penalty is 50,000 GEL.
- For a Traffic Separation Zone regulation violation the penalty is 50,000 GEL.
- For garbage/sewage pollution the penalty is 65,000 GEL.
- For entry to Restricted Area N.31– Maltakva, or Sarpi – the Gonio penalty is 200,000 GEL.

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From 1991 to 1993, he was the Senior Marine Superintendent of AGS Co. (London). He was also the author of Georgian maritime legislation (1994-2011). From 1994 to 11/2010 he worked within the Maritime Administration of Georgia as Head of Legal and Foreign Affairs, Flag State Implementation, Ships Registry and National Maritime Security Competent Person. In 2011 he became a Partner at "**Marine Legal Adviser Co. Ltd**".

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The company was established in 2011 as the first maritime legal company in Georgia, which represents maritime lawyers/advocates and consulting services in Georgia to forwarders, ships agents, consignees, consignors and shipowners, in Shipping and trade claims, Ship's detention and arrest, arbitration, cargo claims, marine casualty, ship finance, sale and purchase, charter parties, insurance, salvage, ships, yacht registration and analytical reports.