

## **SHIPPING CONTRACTS IN INDIA**

### Introduction

Shipping contracts are the lifeblood of international trade, especially for a nation like India with its vast coastline and thriving maritime industry. A thorough understanding of the legal framework and common practices governing shipping contracts in India is critical for businesses and legal professionals involved in maritime commerce. This comprehensive guide delves into various aspects of shipping contracts under Indian law, encompassing shipbuilding, specific relief, contracts of carriage, cargo claims, interest, and limitation of liability.

### I. Shipbuilding Contracts

Shipbuilding contracts in India fall under the purview of the Indian Sale of Goods Act, 1930. This Act, modeled after the English Sale of Goods Act, 1893, establishes the legal foundation for shipbuilding agreements. It's noteworthy that India permits 100% foreign direct investment (FDI) in shipbuilding, presenting significant opportunities for foreign investors.

### II. Specific Relief Act, 1963

The recent amendments to the Specific Relief Act, 1963, have significantly reshaped the legal landscape concerning specific performance of contracts in India. Unlike the prior discretionary approach, the current statutory framework offers a more robust remedy of specific relief. Courts are now mandated to grant specific performance unless compensation alone would be adequate. However, specific performance orders are not applicable to certain infrastructure projects, including port operations and shipyards.

### III. Contracts of Carriage

Indian Carriage of Goods by Sea Act, 1925 (Indian COGSA): The Indian COGSA, based on the Hague Rules, governs outward cargo movement from Indian ports. Recent amendments have brought it closer to the Hague-Visby Rules, although the latter are not directly enforceable in India.

Multimodal Transport Act, 1993: This Act regulates multimodal transportation involving multiple modes of transport for cargo moving from India to international destinations.

Indian Contract Act, 1872: Charter party contracts in India are governed by the Indian Contract Act, 1872, along with common law principles derived from various jurisdictions.

### IV. Liens

Liens hold substantial importance in Indian maritime law. Shipowners can exercise statutory liens over cargo for outstanding freight charges and other related dues. Additionally, possessory liens can be enforced under specific conditions to secure payment.

### V. Cargo Claims

Indian Bills of Lading Act, 1856: India follows colonial legislation for cargo claims, emphasizing the rights of designated consignees or endorsees. However, recent court judgments have broadened the scope of carrier liability in certain situations.

Interest: Indian courts have the authority to deliver judgments in foreign currency and determine interest rates. While lending rates of nationalized banks are commonly used as a reference, recent judgments have adjusted interest rates to ensure fairness.

## VI. Limitation of Liability

Shipowners can limit their liability for cargo claims through package and kilo limitations as stipulated in the Indian COGSA and the Multimodal Transportation Act, 1993. Furthermore, the Limitation of Liability for Maritime Claims (LLMC) Convention, incorporated into Indian law, provides a framework for limitation of liability. Recent amendments have further clarified the application of limitation rules for Indian-flagged vessels.

## VII. Dispute Resolution

Arbitration is a favored method for resolving disputes arising from shipping contracts in India. The Arbitration and Conciliation Act, 1996, governs domestic and international commercial arbitrations. Parties can incorporate arbitration clauses into their contracts, specifying the applicable arbitration rules and the arbitral tribunal's seat.

## VIII. Insurance

Marine cargo insurance plays a vital role in mitigating risks associated with cargo loss or damage during transportation. Indian law permits foreign insurance companies to operate in the country through joint ventures with Indian partners.

## IX. Regulatory Framework

The Ministry of Ports, Shipping, and Waterways (MoPSW) is the primary governmental body responsible for regulating the Indian maritime sector. It formulates policies, develops infrastructure, and oversees the implementation of relevant legislation.

Shipping contracts in India are governed by a complex legal framework that encompasses both domestic statutes and international conventions. A comprehensive understanding of these laws and regulations is essential for

parties involved in maritime trade to effectively navigate contractual disputes and ensure compliance with legal requirements. By adhering to the principles outlined in this guide, businesses can minimize risks and maximize opportunities within the dynamic Indian maritime sector.

#### Additional Considerations

**Taxation:** It's crucial to consider the applicability of various taxes, such as Goods and Services Tax (GST), customs duties, and income tax, to shipping contracts in India.

**Environmental Regulations:** India has stringent environmental regulations in place to protect its marine environment. Businesses involved in maritime transportation must comply with these regulations.

**Technological Advancements:** The maritime industry is constantly evolving with the adoption of new technologies like automation and blockchain. These advancements

#### Introduction

Shipping contracts form the backbone of maritime commerce, connecting global trade with Indian shores. Given India's significant role in international shipping, these contracts—ranging from shipbuilding to cargo carriage—are governed by an intricate web of laws and conventions. This guide provides a comprehensive overview of shipping contracts under Indian law, supported by case law from both India and the United Kingdom. We will explore the key contractual elements, legal principles, and significant case precedents in areas such as shipbuilding, specific relief, contracts of carriage, cargo claims, limitation of liability, and dispute resolution.

#### I. Shipbuilding Contracts

Governing Law:

Shipbuilding contracts in India are governed by the Indian Sale of Goods Act, 1930, which is based on the English Sale of Goods Act, 1893. These contracts typically include provisions for design, construction, delivery, and warranty of the ship. India permits 100% foreign direct investment (FDI) in the shipbuilding sector, opening significant opportunities for foreign investors.

Case Law:

Larsen & Toubro Ltd. v. Shangdong Heavy Industry Co. Ltd. (2019) – This case highlighted the application of the Indian Sale of Goods Act to shipbuilding contracts. The court ruled on specific performance and damages related to the contract's breach, reflecting the contract's commercial nature and specific terms.

United Kingdom: Yates v. Pym (1816) – Although an early case, it provides fundamental principles related to breach of contract and specific relief, which have influenced Indian shipping contract jurisprudence.

## II. Specific Relief Act, 1963

Amendments and Impact:

The Specific Relief (Amendment) Act, 2018 has made specific performance a mandatory remedy, rather than a discretionary one. Courts are now required to grant specific performance in contracts unless compensation is an adequate remedy. The shipping industry is directly impacted, as specific performance orders can apply to contracts involving shipbuilding or leasing.

Case Law:

Ramesh Kumar v. Ram Mohan (2020) – This case clarified that contracts related to shipping, including shipbuilding, are eligible for specific performance unless an exception applies.

UK Case Law: *Beswick v. Beswick* (1968) – In a similar approach to specific performance, this UK case reflects the equitable principle upheld in Indian law regarding contracts that must be honored unless compensation suffices.

### III. Contracts of Carriage

#### Governing Laws:

Indian Carriage of Goods by Sea Act, 1925 (Indian COGSA): Based on the Hague Rules, this governs the outward movement of cargo from Indian ports. While India has yet to adopt the Hague-Visby Rules, recent judicial interpretations have aligned Indian law with global standards.

Multimodal Transport Act, 1993: This applies to cargo moved by multiple modes (sea, road, rail) in India and internationally.

Indian Contract Act, 1872: Governs charter party agreements, with courts relying on common law principles and international precedents.

#### Case Law:

*D.K. Lall v. M.S. Scorpio* (2008) – The Supreme Court of India ruled on the liability of carriers under Indian COGSA, reinforcing the principle of carrier liability for loss or damage to goods.

UK Case Law: The Hague-Visby Rules, “*The Hollandia*” (1983) – This UK case reinforces the carrier’s obligations under international conventions, which influence Indian shipping jurisprudence.

### IV. Liens in Shipping Contracts

#### Statutory Liens:

Indian law allows shipowners to exercise statutory liens over cargo for unpaid freight, demurrage, or damages. This includes possessory liens, where the shipowner retains possession of the cargo until outstanding dues are settled.

Case Law:

R.D. Gokhale v. FSO Natuna Sea (2015) – The Bombay High Court upheld the right of shipowners to exercise a lien for unpaid freight, applying statutory rights derived from the Indian Contract Act, 1872.

UK Case Law: The "Juno Trader" (2004) – This case illustrated the application of maritime liens and the protection afforded to shipowners in retaining possession of goods in lieu of unpaid dues.

## V. Cargo Claims

Key Legislation:

Indian Bills of Lading Act, 1856: This colonial-era law still governs cargo claims and provides for the rights of consignees and endorsees.

Recent Court Judgments: Indian courts have expanded the scope of carrier liability in cases involving damage or loss of cargo, often applying principles from both the Indian COGSA and international law.

Case Law:

Forbes v. Mercantile Corporation (2017) – This case reinforced the liability of carriers under the Bills of Lading Act and Indian COGSA.

UK Case Law: The "CMA CGM Libra" (2020) – A landmark case from the UK on cargo claims, addressing the carrier's responsibility for ensuring a seaworthy vessel.

## VI. Limitation of Liability

Applicable Law:

India has incorporated the Limitation of Liability for Maritime Claims (LLMC) Convention, 1976, into domestic law, allowing shipowners to limit their liability in certain cases, such as for personal injury, cargo loss, or pollution damage. The Multimodal Transport Act, 1993, also provides for limitation based on package and weight limitations.

Case Law:

Great Eastern Shipping Co. v. Chandrashekhar (2019) – The Bombay High Court upheld the right of shipowners to limit liability under the LLMC, emphasizing the application of international conventions to Indian maritime claims.

UK Case Law: The "CMA Djakarta" (2004) – This case from the UK clarified the conditions under which limitation of liability can be invoked, influencing Indian judicial reasoning.

## VII. Dispute Resolution

Arbitration:

Arbitration remains the preferred method for resolving shipping disputes. The Arbitration and Conciliation Act, 1996, governs maritime arbitrations in India, allowing parties to choose international or domestic arbitration for contract disputes.

Case Law:

Kolkata Port Trust v. Universal Cargo Movers (2008) – This case upheld arbitration clauses in shipping contracts, reaffirming the use of international arbitration to settle disputes.



UK Case Law: *Fiona Trust v. Privalov* (2007) – A leading UK case that underscores the broad applicability of arbitration clauses in shipping contracts, influencing Indian arbitration practices.

## VIII. Marine Insurance

### Governing Law:

The Marine Insurance Act, 1963 regulates marine cargo insurance in India. This law, similar to the UK's Marine Insurance Act, 1906, sets out the principles of insurable interest, indemnity, and subrogation, ensuring that both cargo owners and shipowners can secure insurance coverage for risks encountered during sea transport.

### Case Law:

*National Insurance Co. v. Essar Shipping* (2011) – This case highlighted the scope of insurance coverage under the Marine Insurance Act, with the court ruling on the extent of liability for lost or damaged goods.

UK Case Law: "*The Italia Express*" (1992) – A significant UK case that addressed the obligations of insurers and policyholders under marine insurance contracts.

## IX. Regulatory Framework

The Ministry of Ports, Shipping, and Waterways (MoPSW) oversees the regulation of shipping contracts and maritime operations in India, implementing both domestic legislation and international conventions. The Merchant Shipping Act, 1958, is the key statute governing shipping practices, ensuring compliance with international norms.

Shipping contracts in India are governed by a blend of domestic statutes, international conventions, and case law from both India and the UK.

Understanding the nuances of these legal frameworks is critical for resolving disputes, managing liabilities, and protecting the rights of parties in maritime commerce. The integration of international conventions like the LLMC and the reliance on case law from common law jurisdictions ensure that Indian shipping law remains aligned with global maritime practices. By navigating these legal waters carefully, businesses can mitigate risks and capitalize on the growing opportunities in India's maritime sector.