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# Shipping

## Italy

Francesco S. Lauro, Ernesto Ardia,  
Giannicola Forte and Anna Vernillo  
**Studio Legale Lauro**

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## Law and Practice

*Contributed by:*

*Francesco S. Lauro, Ernesto Ardia,  
Giannicola Forte and Anna Vernillo  
Studio Legale Lauro see p.11*



## Contents

<b>1. Overview</b>	<b>p.3</b>	<b>5. Maritime Labour</b>	<b>p.6</b>
1.1 Regulatory Bodies	p.3	5.1 Labour Laws and Conventions	p.6
1.2 Competition Laws and Regulation	p.3	5.2 Local Seafarers	p.7
1.3 Top Ten Flag States	p.3	5.3 Minimum Wage Requirements and Overtime	p.7
1.4 Maritime Conventions	p.3	5.4 Justified Dismissal	p.7
1.5 Classification Societies	p.4	5.5 Occupational Injuries and Insurance	p.7
1.6 Types of Registrations	p.4	5.6 Maritime Disputes	p.7
1.7 Types of Discounts	p.4	5.7 Repatriation	p.7
1.8 Citizenship Requirements for Registration	p.4	5.8 International Bargaining Forum (ITF) Agreements	p.7
1.9 Cabotage Laws	p.4		
<b>2. Ship Finance and Securities</b>	<b>p.4</b>	<b>6. Maritime Courts</b>	<b>p.8</b>
2.1 Ship Finance Centre	p.4	6.1 Courts of First Instance and Appeal	p.8
2.2 Document Registration	p.5	6.2 Determining a Maritime Dispute	p.8
2.3 Preferred Modes of Ship Finance Registrations	p.5	6.3 Arbitration and Mediation	p.8
2.4 Collateral Guarantees	p.5	6.4 Judicial Sale of Vessels	p.8
2.5 Public Registry	p.5	6.5 Execution of Foreign Resolutions	p.8
2.6 Certified Information	p.5	6.6 Order of Priority of Maritime Claims	p.9
2.7 Reflagging	p.5	6.7 Sister Ships or Vessels Owned by Affiliates	p.9
2.8 Costs of Registering a Ship Mortgage	p.5	6.8 Limitations of Liability	p.9
2.9 Multiple Mortgages	p.5	6.9 Exceptional Actions for Ending a Maritime Claim	p.10
2.10 Pledge Agreements	p.5		
2.11 Maritime Liens	p.5	<b>7. Legislation on Corporations and Tax System</b>	<b>p.10</b>
2.12 Duly Recorded Mortgages	p.5	7.1 New Corporate or Tax Legislation	p.10
		7.2 Tax System	p.10
<b>3. Government Requisition of Vessels</b>	<b>p.6</b>	7.3 Settling Matters Once a Company Ceases to Exist	p.10
3.1 Authority to Requisition Vessels	p.6	7.4 International Tax Treaties	p.10
<b>4. Capital Markets</b>	<b>p.6</b>		
4.1 Typical Means of Raising Capital	p.6		
4.2 Fleet Mortgages and Syndicated Loans	p.6		
4.3 Role of the Flag of the Vessel	p.6		
4.4 Securitisation	p.6		
4.5 Participation of Capital Markets in Shipping Transactions	p.6		

## 1. Overview

### 1.1 Regulatory Bodies

Maritime activities in Italy are generally conducted under the overall supervision of the Ministry of Infrastructure and Transport, whose many functions are carried out by the General Command of the Coast Guard (see Article 13, paragraph 2, of the Prime Minister's Decree 11 72, February 2014), in some areas through its dependent offices.

To enhance competition, efficient management and costs savings for stakeholders, companies and consumers, the Transport Regulatory Authority was established in Italy to guarantee fair and non-discriminatory conditions for access to railways, ports and airport infrastructures.

There are bodies duly authorised by the Ministry for certification of ships, to carry out inspections on board ships and to issue necessary certification (certificates under authorisation).

### 1.2 Competition Laws and Regulation

Under Italian law and applicable European rules effective in Italy, maritime transport is subject to the principles of protection of competition and the freedom to provide services.

The Competition and Market Authority can authorise agreements or categories of prohibited agreements, such as under the EU, and Block Regulations for Shipping Consortia, which:

- give rise to improvements in the conditions offered in the market;
- have effects such as to entail a substantial benefit for consumers; and
- take into account the need to ensure the necessary international competitiveness for companies, connected in particular with increases in production, or with qualitative improvements of the production itself or of the distribution or with technical or technological progress.

Such authorisation cannot, however, allow restrictions not strictly necessary to achieve the purposes referred to in this paragraph, nor can it allow competition to be eliminated from a substantial part of the market.

### 1.3 Top Ten Flag States

Globally, Italy ranks 15th for cargo tonnage (GT 15,396,260) and 18th for registered ships (1430).

### 1.4 Maritime Conventions

The following Maritime Conventions have been ratified by Italy:

- the Convention for the unification of certain rules of law respecting collisions between vessels, 1910;
- the International Convention for the Unification of certain Rules relating to Bills of Lading (Hague-Visby Rules) 1924 and 1979 Protocol;
- the International Convention for the Unification of certain Rules relating to Maritime Liens and Mortgages and Protocol of Signature, 1926;
- the International Convention for the Unification of certain Rules concerning the Immunity of State-owned ships, 1926 and the Supplementary Protocol, 1934;
- the Convention on the International Maritime Organization (IMO Convention), 1948;
- the International Convention for the Unification of certain Rules relating to Arrest of Sea-going Ships (Arrest Convention), 1952;
- the International Convention for the Unification of certain Rules relating to Penal Jurisdiction in matters of Collision or other Incidents of Navigation, 1952;
- the International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision, 1952;
- the Convention on Facilitation of International Maritime Traffic (FAL), 1965;
- the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR Convention), 1971;
- the International Convention for Safe Containers (CSC Convention), 1972;
- the 1976 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- the United Nations Convention on a Code of Conduct for Liner Conferences, 1974; 1982;
- the United Nations Convention on the Law of the Sea (Montego-Bay Convention), 1982;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) 1972 and the London Convention Protocol 1996;
- the Protocol of 1993 relating to the Convention for the Safety of Fishing Vessels (SFV Protocol), 1993;
- the Convention on the International Maritime Satellite Organization (IMSO Convention), 1976 and INMARSAT OA, 1976;
- the United Nations Convention on the Law of the Sea (UNCLOS), 1982;
- the International Convention for the Safety of Life at Sea (SOLAS), 1974 and SOLAS Protocol 1978 and 1988; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms

Located on the Continental Shelf (SUA Convention), 1988 and 1988 Protocol;

- the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention), 1990;
- the International Convention on maritime search and rescue, 1979 (SAR Convention);
- the International Convention for the Prevention of Pollution from Ships (MARPOL Convention 1973/78) and 1997 Protocol;
- the Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978/95);
- the International Convention on Maximum Load Lines (ILLC Convention), 1966;
- the Load Lines Protocol 1988;
- the International Convention on Tonnage Measurement of Ships, 1969;
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG);
- the International Convention on Salvage, 1989;
- the Maritime Labour Convention (MLC Convention), 2006;
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and Intervention Protocol 1973;
- the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 and Protocols 1976 and 1992;
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IFC Convention), 1971 and Supplementary Fund Protocol;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention), 2001
- the International Convention on the Control of Harmful Anti-fouling Systems on Ships (Anti-fouling), 2001; and
- the Convention on the Protection of the Underwater Cultural Heritage, 2001.

## 1.5 Classification Societies

The classification societies recognised in Italy are:

- Lloyd's Register Group Limited;
- the American Bureau of Shipping;
- Bureau Veritas Marine & Offshore SAS;
- RINA Services;
- Det Norske Veritas.

## 1.6 Types of Registrations

Since 1998, a vessel can be registered in the Italian so-called "international" registry, which has three sections dedicated to different eligibility requirements, as follows: a section for Italian or EU ship-owners, another section dedicated to new buildings or vessels coming from foreign registers belonging to non-EU subjects, who directly manage vessels through a permanent

organisation in Italy, and a third section for vessels belonging to non-EU subjects which are suspended from a foreign (non-EU) register following a bareboat charter in favour of Italian or European subjects.

## 1.7 Types of Discounts

As other EU Countries have done, Italy has implemented the regulatory provisions for the application of tonnage tax. A vessel-operator has the option to compute taxable income derived from use of vessels in international trade on a conventional basis, by multiplying permitted aspects of the vessel's net tonnage and adjusting the resulting amount by factors related to the vessel's age. Income fixed according to that scheme is taxable at the statutory corporate income tax rate of 24%, without any allowance for deductions.

Entry in one of the international registry's "three sections" brings with it access to social security relief and tax credits toward crew members' wages.

## 1.8 Citizenship Requirements for Registration

Ship-owners from European Union countries are allowed to register vessels in Italy. Non-EU ship-owners can register a vessel in Italy coming from a non-EU registry only if they have a permanent establishment in Italy. A non-EU ship-owner can also register a vessel in Italy by suspending the flag of the foreign underlining register and chartering her on a bareboat basis to an Italian or EU ship-owner and flying the Italian flag.

## 1.9 Cabotage Laws

Cabotage in Italy is implemented according to EU Regulation No 3577/92, with permitted restrictions - in particular, concerning the citizenship of crew and ship-owners (Italian or EU).

# 2. Ship Finance and Securities

## 2.1 Ship Finance Centre

Assuming that a ship finance centre is viewed not only as a place characterised by a heavy concentration of demand and supply of ship finance, but also as a hub for cross-border financing around the world, then Italy cannot, sensibly, be considered a ship finance centre, as such. However, for Italian owners and shipping companies, a restricted number of the Italian Banks and foreign banks with subsidiaries in Italy provide adequate ship finance services, both in terms of long-term loans based on ship mortgages and short/medium-term loans and lines of credit to the shipping companies based on reputation, rating and the collaterals that can be provided (eg, shares pledge, other collaterals, freight contract assignment, personal guarantees, etc).

## 2.2 Document Registration

Financial facilities or other agreements between the parties can either be privately executed by the parties or this can be done before a public notary. Public notary execution is, anyway, needed in case of registration of mortgages or other encumbrances. Mortgages and encumbrances over the subject vessel - in order to securitise the obligations of the financial facility toward a third party - ought to be registered in the Italian Ship Register held by the Harbour Master's office at the port of registration of the vessel.

The registration of a mortgage or an encumbrance needs to be done in the Italian language and, therefore, any financing documentation in a foreign language will have to be translated into Italian.

## 2.3 Preferred Modes of Ship Finance Registrations

Traditional bank lending, backed by a security package achieved primarily by a first lien mortgage, has traditionally been the most prominent source of funding for shipping industry. During the last decade, the tightening on capital adequacy has produced a banking disengagement in terms of loans to the maritime industry that has led to changes in the financing structure of shipping business (see **2.4 Collateral Guarantees**).

## 2.4 Collateral Guarantees

Typical forms of collateral over ships, other than mortgages, used in Italian financing transactions are as follows:

- a "pledge" over a shipping company's shares;
- present and future receivables arising under a contract can be pledged or assigned;
- cross-collateralisation (collateral for one debt is used as collateral for another debt with the same creditor) is sometimes used to improve the quality of credit;
- the security package for a shipping loan might include a personal guarantee provided by the individual ship-owner.

## 2.5 Public Registry

All information relating to the ownership of a ship, any real rights, mortgages, liens or other encumbrances on it is publicly available. This information is held in each competent office of each port Authority for inspection but is not available online.

## 2.6 Certified Information

Only the vessel's statutory documentation required by international conventions is issued in Italian and English. All certificates requested by the competent authorities, ie, the Ministry of transportation or by Harbour Masters, are issued in Italian only. This certified information pertains to the technical characteristics and ownership of the ship.

## 2.7 Reflagging

In general, when a vessel is reflagged from Italy to a different jurisdiction, the Italian registry operates in isolation. Co-ordination of information and documentation between national registries is usually handled by the ship-owners involved. Where a vessel is bareboat-chartered, the Ministry of Transportation may exchange information and documentation with the central authority of the bareboat registry.

## 2.8 Costs of Registering a Ship Mortgage

The main costs of registering a ship mortgage in Italy relate to public notary activities, sworn translations, apostille of documentation, stamp and tax duties for registration and depend upon the value of the mortgage.

## 2.9 Multiple Mortgages

It is possible to register further mortgages over a vessel after the first mortgage. The first mortgage establishes a priority right over subsequent mortgages. A vessel can be deleted from the Italian ship register only after the deletion of any/all mortgages.

## 2.10 Pledge Agreements

A pledge over a vessel can be registered in the ship register in the same way as a mortgage over a vessel.

## 2.11 Maritime Liens

Liens (in Italian *privilegi*) over a vessel or freight secure a claim against the vessel or her operator for:

- judicial expenses due to the administration, anchorage tax, port duties and other taxes, pilots;
- seafarers' employment credits;
- credits for seafarers' repatriation and for social security bodies;
- expenses for the custody and maintenance of the vessel;
- salvage rewards and general average contributions;
- costs of collision or casualties;
- damages to berths and ports;
- damages for death or injuries to passengers and crew;
- damages or loss to cargo or luggage;
- credits for contracts signed by the Master for the ship.

Liens are different from mortgages and can be registered separately to secure the above claims.

## 2.12 Duly Recorded Mortgages

A vessel cannot be sold or deleted from the Italian registry without the deletion of any mortgage or lien duly registered. A mortgage, which is granted for a secured amount, can be deleted with the full repayment of any secured obligations by formal application for deletion to the register.

### 3. Government Requisition of Vessels

#### 3.1 Authority to Requisition Vessels

An Italian ship is subject to requisition in the event that a state of war is declared, or in the case of national general or partial mobilisation, or in the event of a serious international crisis.

### 4. Capital Markets

#### 4.1 Typical Means of Raising Capital

Italian companies rely on banks as a source of financing. Borrowing has historically covered the largest part of a shipping company's financial CAPEX requirements. The residual amount was, typically, provided by ship-owners' equity contribution, retained earnings and, in some cases, by privately placed high-yield bond issuing.

In the last decade, structural and cyclical factors led to the development of different financing sources for shipping companies. Nevertheless, in Italy, evidence suggest that alternative forms of financing have not really taken off. In particular, use of the stock market and the private placement of debt to raise capital remain a low-volume option. Private equity can usually be considered a possible alternative only in special situations.

#### 4.2 Fleet Mortgages and Syndicated Loans

Fleet mortgages and syndicated loans represent almost 90% of Italian shipping-sector loans.

#### 4.3 Role of the Flag of the Vessel

Ship registration and the flag of the vessel are crucial elements in the overall valuation and pricing of ship-finance transactions, since international banks prefer countries where legislation assures efficiency and straightforward enforcement of a ship mortgage. Italian legislation has been improved recently but it is still characterised by some inefficiency.

#### 4.4 Securitisation

Securitisation has not been a viable solution in traditional shipping sectors, except for some peculiar structures to securitise NPLs/UTPs (bad loans).

In 2019, Law Decree 34/2019 (Decree 34) introduced some changes in the Italian Securitisation Law (Law 130 of 1999) intended to enhance the activity range of securitisation vehicles (SPVs) and overcome some legal rigidities which had made difficult or inefficient either the securitisation of revenues arising from the disposal of real estate or other registered assets.

The main changes to Italian securitisation law can be summarised as follows:

- the transfer to SPVs of credit facilities in connection with securitisation of non-performing loans (NPLs) to facilitate disposals of so-called "unlikely to pay" loans (UTPs). In the case of securitisations of NPLs held by banks or financial intermediaries, the seller of the NPLs will now be able to couple the assignment of the receivables to the SPV with the transfer of the underlying contractual obligations as lender to another bank or a financial intermediary;
- change in Italian securitisation, introducing provisions aimed at facilitating securitisation structures involving real estate or other registered assets.

The strategies of management and recovery of Italian mortgage NPLs have led investors to develop dedicated companies to be used as purchaser of the mortgaged assets in the context of enforcement proceedings whenever the auction value of the asset was about to go below the allocated purchase price for the corresponding securitised loans.

#### 4.5 Participation of Capital Markets in Shipping Transactions

Historically, Italian Capital Markets have been quite "tight" and "dry" both for equity and debt instruments. In Italy, the attractiveness of the shipping industry for private and institutional investors is quite low since shipping is generally considered a volatile, higher-risk business. For instance, there were only three Italian listed shipping companies in the 80s/90s. Now, only one of those remains listed (which is d'Amico International Shipping-DIS). Listing is not attractive for the issuer, since shares generally have to be priced below the NAV (Net Asset Value) of the company, due to lack of interest from investors.

Recent legislation has opened up the Italian loan market to other categories of participants, such as Italian securitisation companies, insurance companies, pension funds and closed-end investment funds. This could in time result in more activity, especially amongst banks, by creating a more unified and efficient private placement market and establishing standardised transaction models for private placement transactions.

### 5. Maritime Labour

#### 5.1 Labour Laws and Conventions

The MLC 2006 sets out shipping companies' obligations regarding seafarers' contractual arrangements, oversight of manning agencies, working hours, health and safety, crew accommodation, catering standards and seafarers' welfare. Training requirements are ruled by the STCW Convention 95 as amended by

the 2010 Manila Amendments. Also, the Code of Navigation, Council Regulation (EEC) No 3572/92 concerning maritime cabotage and a number on internal laws (L. 135/77, L. 30/98, L. 271/99, L. 272/99 applicable for ships at dry dock), plus Collective Labour Agreements, CLA for EU seafarers, CBA for non-domiciled seafarers embarked on cargo vessels listed in the Italian International Registry and the SEC POEA Rules (governing the employment of Filipino seafarers on board ocean-going ships) will be applicable.

## 5.2 Local Seafarers

Article 318 of the Code of Navigation states that crew members of Italian-flagged ships must all be Italian or from EU States but allows the CLA to waive this ruling to allow non-Italian crew members.

Pursuant to Law 30/1998, for vessels on bareboat charter and listed in the Italian International Registry, a minimum of six EU crew members must be retained: the CLA can further allow that only the Master is from the EU, provided that he or she passes the national examination for language at the Harbour Master's office of the port of Registry of the vessel. One cadet is also mandatory.

If the vessel is engaged in cabotage trade, 100% of the crew members must be from the EU.

## 5.3 Minimum Wage Requirements and Overtime

Minimum wage, daily working hours and rest periods are governed by Legislative Decree 27 July 1999 No 271 (DLGS 271/1999) and the CLA.

## 5.4 Justified Dismissal

Following a decision of the Italian Constitutional Court in 1991, dismissal of seafarers is allowed where there is just cause (ie, when a situation arises such that the employment relationship cannot be continued, even temporarily), or where there are justifiable reasons for dismissal (which can be "subjective", consisting of a serious non-fulfilment of the employee's contractual obligations and "objective", which occurs when dismissal is justified by reasons inherent in the production activity, the organisation of work and its proper functioning). This area is governed by the CLA for EU personnel and the CBA for non-EU personnel.

## 5.5 Occupational Injuries and Insurance

The Italian Workers' Compensation Authority, INAIL, the nationally appointed social insurer, is responsible for providing compulsory insurance on behalf of all Italian crew members and shore staff against accidents at work and occupational diseases. The current system of compensation in favour of workers provides for a public insurance scheme covering work-related acci-

dents and occupational diseases. In the event that a crewman or woman is injured at work, he or she is entitled to payment in proportion to the percentage of permanent disability (and in some circumstances, the level of his or her salary). The value of the permanent disability differs for the purposes of:

- compensation payable pursuant to the INAIL insurance scheme; and
- third-party liability claims which are pursued in the Italian courts against the offender or the employer.

However, the compensation payable pursuant to the INAIL insurance scheme is limited and there might be a sizeable difference between the compensation that a worker receives pursuant to the INAIL criteria and the amount he or she would be entitled to receive following a successful claim in court, applying the general principles of Italian tort law: the employer remains liable in law to compensate its crew member for that shortfall.

Ship-owners' private insurance generally covers either liability to the social insurers (who has the right to seek payment by indemnity against the employer (if the latter is held liable for a crime) or the difference required to compensate the injured seafarer beyond the INAIL insurance criteria.

## 5.6 Maritime Disputes

Maritime labour disputes (as well all employment complaints) are dealt with by Labour Courts and are subject to a special procedure which is faster than standard court procedure - although the amount of time it takes to decide employment-related disputes differs amongst territorial locations.

## 5.7 Repatriation

Repatriation of seafarers is governed by the CLA, the rules of which are in line with the CCNL. Provisions are made in line with MLC regulations as far as entitlement to repatriation, maximum duration of service periods on board and repatriation arrangement/costs are concerned.

## 5.8 International Bargaining Forum (ITF) Agreements

An Italian "non-dom" collective bargaining agreement (CBA) is a national bargaining agreement recognised by the ITF and applicable to all non-EU seafarers on board Italian-flagged vessels. Ship-owners have the option to apply for the international Total Crew Cost Agreement (TCC) signed by the ITF with trade unions of the country of origin of the seafarers. Based on Confitarma (Italian Ship-owners Association) data, approximately 80% of seafarers are employed under a "non-dom" CBA.

## 6. Maritime Courts

### 6.1 Courts of First Instance and Appeal

In Italy there are no specific courts designed to handle maritime disputes. Maritime disputes are handled by the general civil courts.

### 6.2 Determining a Maritime Dispute

The Italian Code of Navigation, in force since 1942, lists as maritime disputes, “Cause maritime”:

- maritime labour disputes;
- claims for damage caused by collisions or which occurred during anchoring, mooring operations and manoeuvres in ports or at other waiting places, or connected to the loading, unloading and handling of goods in ports;
- damage to fishing nets or tools, or compensation/cost reimbursement in respect of salvage, vessels’ removals, assistance and recovery and premiums for wreck recoveries.

These “maritime proceedings” are decided before the civil courts, but the competent court can appoint experts to assist on technical issues. If the parties agree, they may request that a decision be taken by an arbitration tribunal made up of those appointed experts.

### 6.3 Arbitration and Mediation

Italian law provides for (i) mandatory mediations and (ii) facultative mediations, depending on the dispute matter. If mandatory mediation applies (eg, for insurance, banking and financial agreements, joint ownership, property rights, lease agreements and gratuitous loans) the parties must try a prior mediation procedure: in this case, the written mediation request has to be filed before serving a writ of summons since mediation is a pre-condition of judicial action. The mediation procedure is managed by bodies that must be registered in a special register regulated by specific decrees of the Ministry of Justice.

Italian arbitration proceedings are governed the Italian Code of Civil Procedure. Disputes over labour matters may be decided by arbitrators only if so provided by law or by collective labour contracts. Italian arbitration proceedings result in an enforceable award with the same effect as a judgment rendered by the judicial authority pursuant to Article 824-bis of the Italian Code of Civil Proceedings and can be appealed.

Separately, Article 808-ter of the Italian Code of Civil Proceedings provides for “Arbitrato Irrituale”, which is a procedure leading to a decision that has the nature of a settlement agreement and consequently can be appealed only for the same causes for which it could be invoked for a contract to be null and void.

### 6.4 Judicial Sale of Vessels

The procedure to sell a vessel by judicial sale is closely supervised by the competent civil court, which is that of the place where the vessel is located. Sale proceedings can be initiated if the claimant has an enforceable entitlement, such as an enforceable Italian or foreign award and/or judgment, or an acknowledgment of debt contained in a notarial deed. A vessel cannot be sold privately by a mortgagee and the only remedy for a creditor to satisfy its claim on a vessel is a judicial sale at public auction. A creditor without an enforceable entitlement can start proceedings to obtain such an entitlement; pending the time to get this, its claim can be secured by way of an arrest of the vessel.

### 6.5 Execution of Foreign Resolutions

For EU judgments, the Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters replaced Regulation 44/2001 and ensures that judgments rendered in one EU Member State in civil or commercial matters can be enforced in other EU Member States without formalities.

The enforcement of non-EU judgments is governed by the Italian International Private Law (Law 218/1995). In the absence of any special applicable convention, foreign judgments are recognised in Italy pursuant to Articles 64, 65 and 66 of the Italian International Private Law. In particular, pursuant to Article 64, a judgment rendered by a foreign authority shall be recognised in Italy without requiring any further proceedings if:

- the foreign judge rendering the judgment had jurisdiction according to Italian jurisdictional principles;
- the defendant was served with the documents instituting the proceedings pursuant to the law in force in the place where the proceedings were carried out, and the fundamental rights of the defence were complied with;
- the parties appeared in accordance with forum law, or default was declared in accordance with that law;
- the judgment has become final (*res judicata*) according to the law in force in the place where it was pronounced;
- the judgment is not in conflict with another judgment rendered by an Italian judge which is *res judicata*;
- no further proceedings are pending before an Italian court between the same parties on the same subject, which began before the foreign proceedings; and
- the effects of the judgment are not contrary to Italian public policy.

Italy is party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), according to which rules each contracting state must recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award

is relied on. In Italy, a court order declaring the effectiveness of a foreign arbitration award will be issued without the other party having been heard, provided that the requirements stipulated by Article 839 of the Code of Civil Procedure are complied with. In Italy, the New York Convention is applied in respect of both contracting and non-contracting states. Italy made no reservations to the New York Convention when adopting it. A party wishing to enforce a foreign award in Italy must file a petition with the Court of Appeal of the district in which the other party has its domicile; if that party has no domicile in Italy, the Court of Appeal of Rome has default jurisdiction. The President of the Court of Appeal, after having ascertained the formal regularity of the award, shall declare by decree the enforceability of the foreign award, unless:

- the dispute cannot be the subject of an arbitration agreement under Italian law; or
- the award contains provisions contrary to public policy.

## 6.6 Order of Priority of Maritime Claims

The order of priority of maritime liens is determined by the law of the flag of the vessel. In the event that the flag of the vessel is changed, maritime liens are governed by the law of the flag at the time when the lien arose with regard to the existence/validity of that lien and by the law of the vessel flag at the time the security is enforced in respect of enforcement and the realisation of the security provided by the lien. Maritime liens sources are the Italian Code of Navigation, which applies to Italian flag vessels, and by the 1926 Brussels Convention on Maritime Liens and Mortgages which Italy ratified in 1928, which applies to non-Italian flag vessels. The types of liens listed by both sources are substantially the same.

According to Article 575 of the Navigation Code, a ship mortgage is next in the order of priority of maritime liens. Pursuant to Article 548, the liens set out in the Navigation Code are preferred over any other general or special lien set out by Italian law. The priority status of ship mortgages depends on the date of the registration of the mortgage in the public register.

## 6.7 Sister Ships or Vessels Owned by Affiliates

Vessels under the flag of states which ratified the 1952 Brussels Convention on Arrest of Sea-going Ships (ratified by Italy in 1979) can only be arrested in respect of the Maritime Claims stipulated by this Convention, whilst vessels of states which did not ratify the Convention can be arrested in respect of the Convention Maritime Claims under the rules of the Convention (which permit sister-ship arrests) as well as under the Italian conservative arrest rules (although an Italian claimant can arrest an Italian vessel only under those internal conservative arrest rules).

Sister ships can be arrested under the Convention rules, with the exception of those for maritime claims listed under o) and q) in Article 1 of the 1952 Brussels Convention and those owned by the owner of the arrested vessel when he or she is not the debtor of the Maritime Claim. Also, under national conservative arrest rules a sister ship can be arrested. However, vessels owned by affiliates cannot generally be arrested.

## 6.8 Limitations of Liability

The Italian Navigation Code provides that a ship-owner may limit his or her overall liability to an amount equal to the value of the ship and the amount of the freight and any voyage proceeds. If the value of the ship at the time when limitation is requested is less than one fifth of the value of the ship at the beginning of the voyage, the limitation amount is equal to that amount of one fifth; but if the value of the ship is higher than two fifths of the value of the ship at the beginning of the voyage, the limit is equal to two fifths of the value. Article 7-8 of the Legislative Decree 111/2012 applies the limitation figures of the 76 LLMC Convention, 96 Protocol to Italian vessels over 300 GRT, whilst the Code of Navigation limitation rules remain in place only for vessels under 300 GRT.

However, a “problem” exists in Italian jurisprudence, because the Decree was issued as the enactment in Italy of the European Directive 2009/20 on compulsory insurance for marine claim liability and presumes the application of the LLMC Convention, as amended by the 96 Protocol, on the assumption that the LLMC Convention would be adopted by Italy shortly thereafter. However, Italy has not yet fully adopted the LLMC Convention, resulting in a lacuna.

The matter is also complicated by a recent judgment of the Court of Nola, which applied the old Code of Navigation system to a vessel over 300 GRT. However, this judgment is considered to be incorrect (Italian court judgments are not binding precedent). The majority of Italian maritime law practitioners and experts consider that the limitation figures of the 76 LLMC Convention, 96 Protocol, apply to vessels over 300 GRT, at least as an Italian internal regulation. It is also considered, notwithstanding some dissenting opinions, that the provisions concerning the limitation proceedings of the Code of Navigation should be adapted to the new limitation figures. The matter, however, remains unresolved currently under Italian law.

Whilst the Decree does not expressly provide any exception to limitation, there is a consensus that the late Professor Francesco Berlingieri’s opinion that the personal wilful misconduct or gross negligence of the owner would exclude the right to limitation - in view of the judgment of the Italian Constitutional Court No 199/2005 that excludes, in these cases, package/unit limitation provided by the Italian Code of Navigation for the

Carrier. Italy also applies the Hague-Visby Rules for maritime carriage.

## 6.9 Exceptional Actions for Ending a Maritime Claim

This is not applicable in Italy.

## 7. Legislation on Corporations and Tax System

### 7.1 New Corporate or Tax Legislation

The tax facilities for shipping companies are:

- IRES (*imposta sul reddito sulle società*) is the Italian corporate income tax (universal tax - worldwide taxation principle). Companies are subject to IRES based on their statutory income, adjusted for non-taxable revenues and/or non-deductible costs according to IRES provisions. IRES is levied at the ordinary rate of 24%;
- companies are also subject to IRAP (*imposta regionale sulle attività produttive*), a regional tax on business activities, which is determined by applying a tax rate of 3.9% to the income statement "operating margin" (without deducting, however, labour costs, bad debts and accruals for risks). Regions have the power to increase or decrease IRAP rates slightly.

As of the tax year 2005, shipping companies have been able to opt for Tonnage Tax. Italian tax-resident shipping companies, as well as non-resident shipping companies operating in Italy through a permanent establishment, can qualify for and then elect to be subject to the Italian tonnage tax regime. The regime basically allows for the determination of presumptive income based on the net tonnage of the qualifying ships, apportioned to the effective shipping days (tonnage income). The tonnage income is subject to IRES only.

To qualify for the tonnage tax, a ship must:

- have a net tonnage of more than 100 net tons;
- be used for goods transportation, passenger transportation, salvage, towing, and other services; and

- operate in international shipping as defined by the rules regulating the Italian International Registry. Ships which are bareboat chartered are excluded. Chartered ships with crew are included in the tonnage tax regime if their global net tonnage is less than 50% of the total net tonnage.

Capital gains and losses on transactions on qualified vessels are included in the above fixed income.

Furthermore, IRAP does not apply to qualified vessels.

Italian companies must submit the following documents in their financial statements: a balance sheet, profit and loss statement, notes to the accounts and an annual report.

Annual reports are not required for smaller companies, which can instead prepare short-form balance sheets if financial and economic parameters are met for two consecutive financial years. Such companies cannot adopt IAS/IFRS accounting principles.

### 7.2 Tax System

As noted in 7.1 **New Corporate or Tax Legislation**, the tax system is a mix of universal and territorial rules and regulations.

### 7.3 Settling Matters Once a Company Ceases to Exist

A company ceases to exist upon its formal deletion from the Companies' Register.

In the case of debts outstanding after deletion, the creditors have a right to proceed against the liquidators of the company, or against its shareholders in respect of distributed proceeds. Such an action must be commenced within one year following the deletion of the company from the Register.

### 7.4 International Tax Treaties

Although Italy has a large network of tax treaties and bilateral agreements with the EU and other countries to avoid double taxation of income and capital, Italy is not party to any international treaty on taxation regulating or dealing with shipping income.

**Studio Legale Lauro** is an Italian law firm, established in 1993 in Naples, which provides a wide range of legal services in maritime, commercial and international law matters to the global maritime business sector and industries. The firm consistently deals with all aspects of law relating to the shipping industry, assisting owners, charterers, P&I clubs, marine underwriters, banks and financial institutions in various fields, such as ship and other asset arrest, charterparties and bills of lading disputes, ship-building contracts, collisions, salvage, marine pollution, international trade and commodity trading, cross-border transactions, and loan agreements, as well as criminal and labour law. Having strong relationships with leading ship-owners and financial institutions, the firm has developed significant expertise in M&A operations, joint-venture agreements, insurance, taxation, bankruptcy proceedings, corporate

matters, administrative regulations and competition law. Since 2010, Studio Legale Lauro has hosted many of the world major shipping-sector leaders at “Shipping & the Law” the conference held in Naples, organised by SLL every year to discuss the current hottest topics in the shipping industry ([www.shippingandthelaw.org](http://www.shippingandthelaw.org)).

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## Authors



**Francesco S. Lauro** is the managing partner of Studio Legale Lauro. He graduated in Law at Federico II University, Naples, qualifying first in his class, and continued postgraduate Maritime Law studies at University College London. In 1993 he founded Studio Legale Lauro with

Ernesto Ardia. He was President of the Port Authority of Naples from 1996 to 2000. He is, or has been, chairman and a board member of well-known shipping and state-owned companies in Italy, Greece and Malta. A supporting member of LMAA, Francesco handles important marine accident cases, ship-building contracts and M&A deals for owners, P&I clubs, underwriters, banks and other clients.



**Ernesto Ardia** is a founding partner of Studio Legale Lauro, and was admitted to the Italian Bar in 1995. He represents clients in court and in international arbitrations, as well as before the Supreme Court. He is active in shipping,

commercial and corporate law. Ernesto is known for representing ship-owners in collisions, salvage and marine pollution. He also receives instructions from clients worldwide, to enforce domestic and foreign court and arbitration judgments in Italian courts. He has on occasion dealt with bankruptcy proceedings. He is a member of the International Propeller Club.



**Giannicola Forte** advises Italian and foreign clients on ship sale and purchase, ship finance and leasing transactions, corporate structures and joint ventures, contracts, corporate matters, cargo claims and other P&I matters, H&M matters and casualties, ships/bunkers arrest and release,

aviation and agreements for commercial and business aircraft, commercial litigation, environmental and pollution matters. Admitted to the Italian Bar, Naples’ Section, Giannicola is active in charity and cultural projects, is a member of the IBA and through a professional network co-ordinates multi-jurisdictional litigation, court decisions/arbitration award enforcements and worldwide actions to secure claims.



**Anna Vernillo** graduated in Law from the University of Naples Federico II cum laude and was admitted to the Italian Bar in 2011. Anna trained at well-known law firms in Italy and in the UK, where she acquired extensive expertise in EU Law and international trade law. Since joining

Studio Legale Lauro in 2013, she has further developed her experience in shipping and commercial law, international law, international private law and transport matters. She is involved in a wide range of the firm’s litigation and international arbitration cases.

## **Studio Legale Lauro**

Via Cardinale Guglielmo Sanfelice, 8  
80134 Napoli  
Italy

Tel: +39 081 5800199

Email: [info@studiolegalelauro.it](mailto:info@studiolegalelauro.it)

Web: [www.studiolegalelauro.it](http://www.studiolegalelauro.it)

