

MARINE CARGO FRAUD – MARINE SECURITY – PORTS & TERMINALS CLAIMS

THE FIFTH INTERNATIONAL CONFERENCE ON
INSURANCE & MARINE TRANSPORTATION

AQABA – JORDAN

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- Middle East overview
- Background to the Judicial & Legal Systems in the Middle East
- Marine Cargo Fraud
- Marine Claims arising out of Ports Operations
- Ports' Liability regimes
- Marine Securities
- Summary

The Middle East – Overview





**Site of HFW's
Dubai Office**

**SHEIKH ZAYED ROAD
DUBAI -1988**

Development in the Middle East



**SHEIKH ZAYED ROAD
DUBAI – c2006**

Development in the Middle East



- Civil law systems (except for Saudi Arabia) - Laws codified
- Courts are structured on three stages: First Instance, Appeal and Cassation / Supreme Court.
- Supreme Courts judgments are followed, but are not mandatory (no system/rule of precedent).
- Other than Yemen and Iraq, most Middle East states are signatories to the New York Convention for Enforcement of Foreign Arbitration awards.

Laws Governing Shipping Practice in the Middle East

- "Maritime Codes"
 - It will usually cover registry of vessels, operation, charterparties, contracts of carriage and claims, arrest, collusions, general average and marine insurance.
 - Codified from various international conventions.
 - **No reference to other maritime performing parties (local agents and port operators).**
 - **No reference to carriage by containers**

- Other local laws and regulations passed to regulate ports and terminals commercial activities

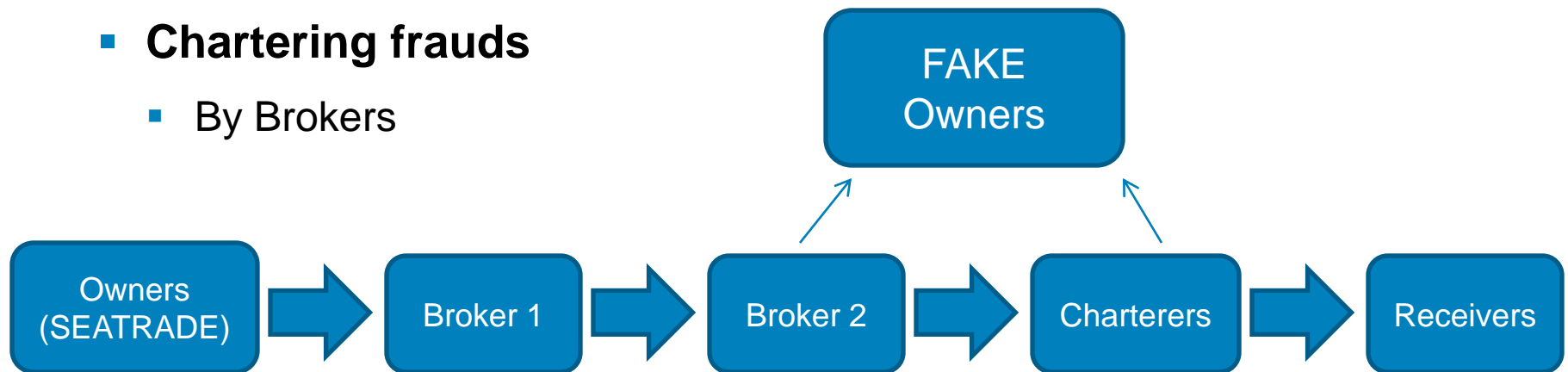
- International Maritime Conventions

- **Cargo & Document Frauds**

- Forged bills of lading to steal existing cargo
- Forged bills of lading of non-existing cargo to fraud third party
- Physical theft
- Shipper's cargo containers fraud
- Misrepresentations of Cargo Documents (quality, quantity and/or post or pre dating bills of lading)

- **Chartering frauds**

- By Brokers



- *All Risks*
- Limitations & Exclusions
- Duration of Risk
- Cargo & Document Frauds
 - Forged bills of lading to steal existing cargo - **Covered**
 - Forged bills of lading of non-existing cargo to fraud third party - **Not covered**
 - Physical theft - **Covered**
 - Shipper's cargo containers fraud – **Not covered**
 - Misrepresentations of Cargo Documents (quality, quantity, post or pre dating bills of lading, origin of cargo ..etc) - **Can be avoided**
- Investigation methods
 - Container seal
 - Protecting agent / surveyor - Project cargo
 - Involve local authorities

Legal Framework for Ports and Operators Terms & Conditions

- Local law / Regulations
 - Terms & conditions are passed in the form of local law or regulations.
 - Governs all port users/operations .
 - Applicable to the Port Authority and any operator .
- Contract
 - Ship-owners/ operators or their local agent are requested to sign.
- Declaration
 - Could be included within the tariffs or in separate declaration to users.
- Unclear understanding of the relationship between the Port Authority and any operator working under a contract, lease or concession.

- Common T&Cs
 - Applicable to all users and operations within the port.
 - Strict liability of ship-owner and Master.
 - Indemnity Clauses.
 - No liability for any damages sustained by vessels using the port facilities.
 - No liability for any loss of life of Master and crew.
 - No liability for towage or pilotage errors. The tug is considered chartered by the port's user and all operations "in theory" are considered to be taken under the supervision and control of the Master of the towed vessel.
 - No liability for delay in discharging or loading cargo.
 - Limited liability for loss of cargo in the event of gross or intentional negligence.
 - No liability for indirect loss / loss of profits.
 - Abandoned Cargos clauses.
- Are these valid & upheld?

- Limitations & Exclusions of Liability
 - Limitation of liability clauses.
 - Exclusions clauses.

- Time limitation / time bar
 - Claims against port for cargo loss / damage is NOT subject to the time limits for claims arising out of the contract of carriage / BOL.
 - Default position is 10 years if a contract is assumed or 3 years if based on tort.
 - Terms may include shorter time. However, there will be validity arguments depending on the framework.

- Special procedures
 - Specific time limitation to notify the Port Authority/operator.
 - Special requirement to proceed against governmental entities.

■ Security Arrests

- A vessel can be arrested for a “maritime debt/claim”
- Maritime debts/claims are defined similarly to the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952).
- Sister-ships can be arrested only if owned by the same **debtor**
- Vessel being in the state will give jurisdiction to arrest
- Practical issues: POA, translation of documents, fees and counter-security. Usually ready within 48-62 hours.
- Filing main action to keep the arrest order valid.
- Vessel can be released by a: (i) Bank Guarantee or Cash Deposit; (ii) Security accepted by the claimant (P&I/local correspondent’s Lou); or (iii) successful objection/grievance against.

■ Attachments

- Most civil procedures laws in the region limit the possibility of precautionary attachments on assets to certain circumstances, the most relevant of which include:
 1. If the defendant is not resident in the country; and/or
 2. If the applicant is concerned/believes that there is a risk that the defendant will dissipate assets; and/or
 3. If there is a risk over the collateral of the debt; and/or
 4. If the applicant holds an unconditional, valued and due debt document (for example a bounced cheque or a due promissory note).
- The applicant should provide sufficient evidence to prove a prima facie case.
- Assets must be identified.
- The application is heard by the Urgent Matters Judge ex parte.
- The substantive proceedings must be filed within 8 days following any successful attachments.
- Most countries have laws directing courts to issue an attachment order if the applicant possesses a substantive judgment/award against the defendant even if such judgment/award is not final, i.e. still subject to appeal.

- Letters of Undertaking
 - Not recognised by most local courts in the region
 - Secured when issued by IG P&I Club

- Bank Guarantees
 - Challenging to arrange
 - Costly

- New and developing jurisdictions – make precedent!
- Marine Cargo Fraud comes in different forms
- Act early and use the right local and international experts
- Most Maritime Codes in the Middle East do not deal with ports' liabilities
- Different frameworks have been adopted by shipping legislators which sometime effect the enforceability the terms
- Secure your claim

Any questions?

