



Choice of law and jurisdiction upon drawing up a maritime contract

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While drafting a maritime contract in the Middle East, the parties to the agreement tend to choose the law and jurisdiction as per their convenience. Most sea traders solicit the help of lawyers who might not be Arabic speakers, but wish to apply friendly stipulations. However, none of the parties or their lawyers have assessed carefully whether such stipulation is enforceable.

To assess a choice of law and jurisdiction, a lawyer should first consult the judge's rules of conflict, and verify carefully the territory of execution of the agreement, as the judge's rules concerning conflict of laws and jurisdictions, might eliminate the parties' choice and apply the national legislation in force. The above stated, finds its justification in the appeal No 143/2010, issued by Dubai Supreme Court on 2nd of January 2011. The Supreme Court rejected the insurance company's claim to apply the English law taking into consideration the nationality of the Defendant (the insurance company was a UAE registered company) and considered that the choice of law is a matter of public order and the parties cannot eliminate the national law of the UAE.

As per the stipulation of Article 219 of UAE Federal Law No 26 for 1981, a 'Charter party of a vessel shall be subject to the law of his/her flag unless the stipulation therein are against the Sharia'ah and public order'. Article Charter Party of 339 of the same legislation considered null and void every stipulation designating a foreign jurisdiction or arbitration with regards to salvage or rescue works carried out in the territorial waters of UAE when the rescued and the rescuing vessel are under UAE flag.

We need to highlight that, upon qualifying an act, the UAE judge is bound to UAE rules, and should eliminate any foreign qualification tool. For example if the parties to an agreement defined that agreement as supply time agreement but the stipulations therein are qualified under UAE law to be a maritime freight forwarding, the judge is supposed to ignore the parties' definition and to apply the law in force to that agreement and consider such as a freight forwarding agreement.

Pursuant to the above, the choice of law and jurisdiction is a delicate matter and to decide over such, the following should be taken into consideration:

- 1- The nature of the vessel
- 2- The defined scope of service
- 3- The flag state of the vessels, especially when the vessel holds a GCC flag
- 4- The navigation water
- 5- The registration of the ship owner, charter, ship manager and operator
- 6- The parties domicile
- 7- The material obligation of the agreement
- 8- Where the agreement was signed

After contemplating the above, the agreement shall comply with the immediate applicable rules, and the parties should assess the litigation cost and feasibility, the enforceability of a judgment or award, how fast a dispute can be resolved, and of course how to avoid unnecessary legal complication and litigation because from a business law perspective a litigation is lose-lose situation.●