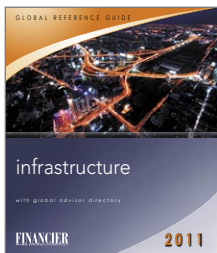


INFRASTRUCTURE 2011 **EL-KHOURY & PARTNERS**  
legal counsel

---

# CARRIAGE OF GOODS BY SEA – AN OVERVIEW



REPRINTED FROM:

## GLOBAL REFERENCE GUIDE: INFRASTRUCTURE 2011

© 2011 Financier Worldwide Limited.  
Permission to use this reprint has been granted by the publisher.

[www.financierworldwide.com](http://www.financierworldwide.com)

## MIDDLE EAST &amp; AFRICA

**Carriage of goods by sea – an overview**

---

---

by *Sabar Saad* | *El-Khoury & Partners Legal Counsel in association with Squire Sanders & Dempsey*

TOTAL SEABORNE TRADE has increased exponentially over the past 50 years, today accounting for 90 percent of goods produced and consumed worldwide. Indeed, shipping has become the backbone of international trade and a key component of the global economy. Conventions on the carriage of goods by sea provide a legal framework to regulate this vital means of transportation and represent a major strategic tool of governments around the world.

Over the last century, international maritime shipping has been governed by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Brussels, August 1924); the United Nations Convention on the Carriage of Goods by Sea (Hamburg, March 1978); and the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam, December 2008).

The 1924 rules, commonly known as the Hague Convention, were the first codification on international maritime shipping. They were adopted to redress the imbalance between the dominant position of ship-owners and the fragile situation of shippers. In 1968, liability limits, which had become outdated and inadequate, mainly due to currency depreciation and the onset of containerisation techniques, led to the amendment of the Hague Convention. The new rules became known as the Hague/Visby Rules. Eleven years later, the SDR Protocol modified the provisions related to liability limits and the unit used to measure damages.

The Hague Rules, which some countries still use, apply to what is known as the ‘maritime phase’, beginning with the loading of goods to the ship and ending when they are unloaded, and excluding the transportation of live animals and deck cargo. It imposes a presumption of liability on the carrier for any loss or damage to the goods, but also sets 17 grounds exempting a carrier from liability on a cargo claim. The Hague Rules tend to protect the interests of carriers rather than shippers and consignees. The resultant pressure from developing countries in response to this imbalance led to the adoption of the Hamburg Rules in 1978.

According to these new rules, the maritime phase is no longer limited to the period of transport from ‘tackle to tackle’, but commences the moment the carrier takes charge of the goods until the time of delivery or ‘port to port’. The applicable rules regarding a carrier’s liability were therefore changed to a system based on a presumption of fault or negligence on the part of the carrier for

any loss or damage to the cargo, and for any delay in delivery, unless the carrier proves that it and its agents took all measures that could be reasonably required to avoid the loss or damage.

The Hamburg Rules also eliminate the long list of liability exemptions provided by the Hague Convention. Only two situations remain where a carrier may be exempted from liability, fire, and assistance to another vessel. Notably, the most prominent difference lies in the removal of the concept of nautical fault, which prevented carriers and crewmen from being held liable for negligence relating to a ship's management and navigation.

Although in force since 1992, the Hamburg Rules have not been received with enthusiasm by the major shipping companies around the world. The basic concern is that these rules tend to increase a carrier's liability, negatively affecting the cost of insurance and the overall cost of shipping. As a result of these concerns, a number of states have unilaterally adopted a hybrid of the Hague/Visby-Hamburg Rules. In an attempt to prevent further fragmentation among maritime nations, the Rotterdam Rules were promulgated to provide a legal framework that takes into account the many technological and commercial developments in the maritime transport industry, namely the growth of containerisation, the development of electronic transport documents, and the desire for door-to-door carriage that includes an international sea leg under a single contract.

The Rotterdam Rules combine the principles of a presumption of liability and responsibility and the request that fault be proven with at least 15 clear exemptions of carrier liability. Unlike the Hague-Visby Rules and the Hamburg Rules, whose provisions are strictly applied and cannot be removed or overridden by a contrary clause, the Rotterdam Rules allow parties to certain 'volume' contracts to opt-out of some liability rules set in the Rotterdam Rules. Having obtained the approvals of major maritime countries such as the US and France, only the political and economic interests of non-signatory countries remain to determine the fate of this convention.

Maritime transportation offers many advantages, including safety and reliability at a low cost. With an approximate contribution of \$380bn in freight rates within the global economy, the adoption of clear and uniform rules regulating maritime transport is a key pillar of a stable global economy. ■

## El-Khoury & Partners Legal Counsel

law firm

- Address:** Sami Solh Avenue, Hechaime Building, 5th Floor P.O. Box 116-2083, Beirut, Lebanon
- Other offices:** Cleveland United States, Budapest Hungary, Frankfurt Germany, London United Kingdom, Los Angeles United States, New York United States, Tokyo Japan, Perth Australia, Rio de Janeiro Brazil, Washington DC United States, Riyadh, Saudi Arabia.
- Area of specialisation:** Infrastructure; Privatisation & PPPs; Banking & Institutional Finance & Microfinance; Corporate, Corporate Finance and M&A; IP/IT; Labour & Employment; Compensation & Benefits Plans; Legislative & Regulatory Services; Litigation & Dispute Resolution; Real Estate; Hospitality
- Firm biography:** El-Khoury & Partners (EKP) in association with Squire, Sanders and Dempsey (Squire Sanders) provides a wide range of strategic legal support in Lebanon, Saudi Arabia and the Middle East combining sound legal counsel, creative vision and efficient service. With established offices in Beirut and Riyadh, we represent a diverse mix of regional and global clients and efficiently work at achieving our clients' business goals.
- Website:** [www.ekplegal.com](http://www.ekplegal.com) & [www.ssd.com](http://www.ssd.com)
- Key contact:** Ziad El-Khoury, EKP's Managing Partner, Beirut, Lebanon  
+961 1 387778, [Ziad.Elkhoy@ssd.com](mailto:Ziad.Elkhoy@ssd.com)
- Other contacts:** Kevin Connor (Squire Sanders' coordinating Partner Middle East)

**EL-KHOURY  
& PARTNERS**  
legal counsel

**SQUIRE  
SANDERS** | LEGAL  
COUNSEL  
WORLDWIDE