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Common time limits for trade and shipping claims – a print-out guide

Introduction A “limitation period” is the period of time within which court or arbitration proceedings must be *commenced*. *Every legal claim* will be subject to a limitation period, imposed either by the governing law or by the applicable contract terms. In addition, contractual time limits may apply to govern the time within which claims must be *notified* to another party. Time limits and limitation periods are therefore one of the first and most important points to consider whenever a dispute or potential dispute arises.

The starting point for a court or a tribunal is that if a claim is not made within the applicable time limit it cannot be made at all, and while some courts and tribunals may have discretion to permit a claim which has been made out of time, persuading courts and tribunals that claims should be allowed in such circumstances can be a lengthy and uncertain process. Missing a time limit can therefore have severe consequences.

Generally, it is for a defendant/respondent to raise the defence of limitation, a court or tribunal will not take this point against a claimant. This is why it is as important to be aware of time limits when defending claims as when commencing them: noting a time-bar point as a defendant may mean that no claim can be made against you.

This client alert sets out some of the key limitation periods to be aware of when commencing or defending commercial claims in the international trade and shipping sectors.

Starting points

English law – Limitation Act 1980 The starting point for time limits under English law is the Limitation Act 1980, which applies to both litigation and arbitration. It provides for different limitation periods in respect of different “causes of action” (usually the relevant breach of contract). The two key limitation periods for the purposes of commercial litigation or arbitration are as follows:

- Six years for actions arising out of contracts
- Twelve years for actions arising out of deeds (for example Deeds of Assignment of Receivables, or Deeds of Termination)

In both cases, time begins to run from the date on which the relevant cause of action accrued, which in respect of breach of contract claims is usually the date of the breach, and not the date on which damage is suffered.

However, the Limitation Act time-bars do not apply when a different period of limitation is specified by any other act, convention or where an additional (often more limited) period of time is specified in the relevant contract (for example a provision that demurrage claims must be made within one year or even a shorter time from the date of final discharge). Reference to other sources is therefore often required to determine the applicable limitation period or the date on which the cause of action accrued and therefore the date from which time begins to run. Some contractual time limits have the effect of barring claims which have not been properly *presented* or *notified* in time (in addition to the relevant time limit for proceedings having to be *commenced*).

Singapore law – Limitation Act Cap 163 The position under Singapore law is similar to English law in that (subject to other contractual agreement) actions arising out of contracts may not be brought after the expiration of six years from the date on which the cause of action accrued. The Singapore Limitation Act, though, does not include a longer period relating to actions arising out of deeds.

U.S. law (Texas) – Texas Civil Practices and Remedies Code Breach of contract claims generally have a four-year limitation period under Texas law according to Section 16.501 of the Texas Civil Practices and Remedies Code. Parties may contract for a shorter limitation period, but may not create a limitation period of less than two years. This limitation period is only applicable if no other act or convention applies to the relevant contract and no additional period of time is specified in the contract (e.g., any claim of a breach of a contract for the sale of goods that is subject to the Texas Uniform Commercial Code must be brought within four years of the breach, and while the parties may agree to a shorter length of time, that length of time may not be less than one year).

U.S. law (New York) – New York Civil Practice Law and Rules (CPLR) Under New York law, breach of contract claims generally have a six-year limitation period under CPLR 213. Fraud claims must be commenced within the longer of six years or two years from the time the plaintiff could reasonably have discovered the fraud, pursuant to CPLR 213. Other tort claims, for example, for injury to property, must be commenced within three years, pursuant to CPLR 214. For all claims that fall under the New York statute of limitations for Uniform Commercial Code claims relating to a sale of goods, the parties may agree to a claim period of not less than one year but may not extend the standard four year limitations term.

Different time limits for different types of claim It is also important to make a swift and accurate analysis of the type of claim that has arisen or that may arise, as different time limits can apply to different types of claim. For example, under GAFTA/FOSFA terms, the time limits within which claims in respect of the *quality and/or condition* of a cargo must be brought are often significantly shorter than for other types of claim. The nature of the claim must therefore be analysed and identified at the outset of any dispute scenario, to ensure parties take steps to protect the correct rights and remedies, within time. Often the safest course is to

start protective proceedings (particularly in arbitration) immediately.

Renewal of proceedings It is also important to note that commencing proceedings within time is not necessarily the end of the story: often, trade arbitration rules will require such claims, if commenced, to be “renewed” after a period of say one year, by the giving of written notice, if claim submissions have not been served in the meantime. It may also be the case that such renewals are only permitted a limited number of times, for example, FOSFA now only permits one annual renewal (Rule 3), making it even more important to be aware of and to actively monitor applicable time limits.

Enforcement It should also be borne in mind that a time limit may apply in relation to the *enforcement* of any award or judgment rendered. Different limitation periods will apply in different countries. Foreign law advice should therefore always be taken (and promptly after an award or judgment) when seeking to enforce a judgment or award in a different jurisdiction.

English law – Under the Limitation Act, an action to enforce an arbitration award or court judgment in England must be made within six years of the date of the award.

Singapore law – An action upon any judgment must be brought within 12 years from the date on which the judgment became enforceable. An action to enforce an arbitration award must be made within six years of the date of the award.

U.S. law (Texas) – The time limit for enforcement will vary depending on the choice of law provision agreed by the parties and whether the claim is litigated in court or at arbitration. For example, the U.S. Federal Arbitration Act, which governs arbitration in contracts that involve interstate commerce in both state and federal courts, imposes a three-year time limit on actions to recognise and enforce the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The New York Convention, which entered into force on 7 June 1959, requires courts of contracting states to give effect to private agreements to arbitrate and to recognise and enforce arbitration awards made in other contracting states. The New York Convention has 149 member countries as of 2013.

U.S. law (New York) – The provisions of the Federal Arbitration Act described above are also generally applicable under New York law. However, the CPLR provides at section 215 that an action to enforce an arbitration award must be commenced within one year. By contrast, an action to enforce a money judgment must be commenced within 20 years, pursuant to CPLR 211. At least some courts have ruled that actions to enforce foreign arbitration awards fall under the 20-year period in CPLR 211.

Limitation periods for commencing trade and shipping-related claims Below is a non-exhaustive guidance list of key time limits for commencing claims in the international trade and shipping industries, valid at the date of this alert. These time limits are of course subject to amendment or contrary agreement by the parties – always check the contract, plus any applicable updated rules.

General rules applicable to litigation and arbitration (subject to contractual amendment)

Commercial Court litigation (in the English High Court) – the standard six-year time limit for contracts (or 12 years for deeds) will apply, unless the contract provides for a shorter time limit.

LCIA/ICC/UNCITRAL/SIAC/HKIAC/LMAA/SCMA – the standard six-year time limit applies where English law is the governing law of the contract (and in the case of SIAC, SCMA or HKIAC respectively if Singapore law or Hong Kong law is the governing law of the contract, a six-year time limit also applies).

American Arbitration Association – under the laws of the state of New York, the American Arbitration Association Rules provide for a limitation period of six years for contract claims.

London Metals Exchange arbitration – the standard six-year time limit applies.

Sugar Association arbitration – the standard six-year time limit applies.

NAEGA – the NAEGA II contract provides for disputes to be settled in accordance with the American Arbitration Association Rules, which is therefore a six-year period.

Marine insurance – the standard six-year time limit for contracts applies. In the marine insurance context, the date on which the relevant “cause of action” accrues and time begins to run will usually be the date of the loss. This means as soon as the insured event has occurred – even though the loss might not be quantifiable at the time of the occurrence and the insurers might not have received notification of the loss.

Judicial review – promptly, and in any event within three months from the date when grounds for the application first arose.

Examples of specific amendments to the general rules – Commodities time limits

FOSFA Rules of Arbitration (Revised and effective from 1 January 2012)

Claim	Time limit	Reference
Quality and/or condition claims		
Where not supported by certificate/s of contractual analysis/es	21 consecutive days from the date of completion of discharge (or, under FOB, ex mill and ex store contracts, delivery).	Rule 2(a)(i)
Where supported by certificate/s of contractual analysis/es	14 consecutive days from the date of the final analysis certificate.	Rule 2(a)(ii)
Claims that are not for quality/condition		
CIF, CIP, C&F and similar	120 consecutive days after expiry of the shipment period or the date of completion of final discharge, whichever is later.	Rule 2(b)(i)(1)
FOB	120 consecutive days after the expiry of the contract period of shipment.	Rule 2(b)(i)(2)
Any other terms	120 consecutive days after the last day of the contractual delivery period.	Rule 2(b)(i)(3)
Claims for monies due	60 consecutive days after the dispute has arisen.	Rule 2(b)(ii)

GAFTA Arbitration Rules 125 (Effective for contracts dated from 1 April 2012)

Claim	Time limit	Reference
Quality and/or condition claims		
Disputes arising out of the "Rye Terms" clause	10th consecutive day after the date of completion of final discharge.	Rule 2.1(a)
Claims arising out of certificates of analysis where allowances are not fixed by the terms of the contract	21st consecutive day after the date on which the claimant receives the final certificate of analysis.	Rule 2.1(b)
All other quality and/or condition disputes	21st consecutive day after the date of completion of final discharge/delivery/unstuffing of the container(s).	Rule 2.1(c)
Other disputes		
CIF, CIP, C&F and similar	1 year after (i) the date of the last bill of lading or (ii) the expiry of the contract period of delivery (including extension if any) whichever is earlier.	Rule 2.2(a)
FOB	1 year after (i) the date of the last bill of lading or (ii) the expiry of the contract period of delivery (including extension if any) whichever is earlier.	Rule 2.2(b)
Any other terms	1 year after the last day of the contractual delivery, collection or arrival period.	Rule 2.2(c)
Non-payment of amounts payable	60 consecutive days from the notice that a dispute has arisen (as provided for in the payment clause in the contract).	Rule 2.2(d)

Refined Sugar Association – Rules Relating to Contracts

(Effective 1 December 2012)

Claim	Time limit	Reference
Packing, weight, shortfall and quality claims	7 days after completion of discharge.	Rule 6(i)
All other claims	Usual 6-year time limit applies.	

International Cotton Association Bylaws Relating to Arbitration

(September 2013 edition)

Claim	Time limit	Reference
If the cotton is country-damaged when it arrives	7 days after weighing or devanning, whichever is later.	Rule 207/208
Claim for false packed, mixed packed or plated bales	6 months from the date of arrival of the cotton.	Rule 227(1)
Unmerchantable cotton	6 months from the date of arrival of the cotton.	Rule 227(3)
Foreign matter in the cotton	6 months from the date of arrival of the cotton.	Rule 227(4)
Internal moisture	42 days from the date of arrival of the cotton.	Rule 230

PORAM Rules of Arbitration (Effective for contracts dated from 1 April 2012)

Claim	Time limit	Reference
Quality dispute	21 calendar days from date of receipt of goods at the place at which quality is deemed to be final in accordance with the contract.	Rule 2(i)
Any other dispute	120 calendar days after the expiry of the shipment period or the Bill of Lading date, whichever is later.	Rule 2(iii)

Green Coffee Association (Contract effective 1 May 2012)

Claim	Time limit	Reference
Quality dispute	30 days from the date that sealed samples are received by the association.	Page 26, contract terms
Technical arbitrations	1 year from the date that the controversy arose.	Page 26, contract terms

BP GTCs – Petroleum Products (2007 edition)

Claim	Time limit	Reference
Demurrage Claims against the Seller for FOB deliveries	To be received by the Seller in writing within 45 days of the connection of loading hoses, with reasonable detail of the specific facts upon which the claim is based. Any supporting documentation which is not at that time available to the Buyer must be received by the Seller within 180 days of the date of disconnection of the loading hoses. If the Buyer fails to comply with these time limits, the Seller's liability for demurrage is extinguished.	Part One Clause 6.1.4
Demurrage Claims against the Buyer for CFR, CIF and Ex Ship deliveries	Fully documented claims must be received by the Buyer in writing within 180 days of the date of disconnection of discharging hoses, failing which the liability of the Buyer for demurrage is extinguished.	Part Two Clause 13.2.4
Demurrage Claims in respect of deliveries by Barge (FOB, CFR and CIF)	Demurrage is payable in accordance with TTB Rules. If the delivery is FOB, the demurrage claim must be submitted to the Seller in writing within 30 days of the alleged occurrence, with reasonable detail of the specific facts upon which the claim is based.	Part Three Clause 18.4
Quality and/or quantity dispute	To be notified in writing to the seller within 45 days of the completion of discharge date, accompanied by evidence fully supporting the complaint.	Part Six Clause 25.2.1
Other claims	Within 2 years of the date on which the Product was delivered, or in the case of a total loss, the date upon which the Product should have been delivered, failing which the claim shall be time barred and the liability or alleged liability of the other party shall be finally extinguished.	Part Six Clause 33.3

BP GTCs – Crude (2007 edition)

Claim	Time limit	Reference
Demurrage Claims against the Seller for FOB deliveries	To be received by the Seller in writing within 45 days of the connection of loading hoses, with reasonable detail of the specific facts upon which the claim is based. Any supporting documentation which is not at that time available to the Buyer must be received by the Seller within 180 days of the date of disconnection of the loading hoses. If the Buyer fails to comply with these time limits, the Seller's liability for demurrage is extinguished.	Part One Clause 6.1.4
Demurrage Claims against the Buyer for CFR, CIF and ex-ship deliveries	Fully documented claims must be received by the Buyer in writing within 180 days of the date of disconnection of discharging hoses, failing which the liability of the buyer for demurrage is extinguished.	Part Two Clause 13.2.4
Other claims	Within 2 years of the date on which the crude oil was delivered, or in the case of a total loss, the date upon which the oil should have been delivered, failing which the claim shall be time barred and the liability or alleged liability of the other party shall be finally extinguished.	Part Five Clause 32.3

Standard Iron Ore Trading Agreement (SIOTA) (Current version as of date of this Alert)

Claim	Time limit	Reference
Demurrage and/or Despatch claims	To be notified to the other Party by Notice in Writing (as defined) within 45 days of completion of the Vessel unloading. Any supporting documentation not then available must be provided to the other Party in a timely manner, and in any event no later than 90 days of completion of the Vessel unloading. Failure to meet these time limits will mean that any claim for Demurrage or Despatch in respect of that Shipment shall be deemed to be waived and no liability shall attach to the other Party in respect of the same.	Clause 4.10
Analysis/Quality claims	Although not strictly a “time limit” within the meaning of this alert, very short time limits for notification of a challenge to analysis results or of a willingness to reject a cargo may apply in certain circumstances.	Clauses 8.8 and 9.3.1

Standard Coal Trading Agreement (SCoTA) (globalCOAL® Version 8)

Claim	Time limit	Reference
Demurrage and/or Despatch claims	To be notified to the other Party by Notice in Writing within 45 days of completion of the Vessel loading. Any supporting documentation not then available shall be provided to the other Party in a timely manner, and in any event no later than 90 days after completion of the Vessel loading. Failure to meet these time limits will mean that any claim for Demurrage or Despatch in respect of that Shipment shall be deemed to be waived and no liability shall attach to the other Party in respect of the same.	Relevant Standard Specification (RSS) “ARA Version 1” Clause 2.11
Analysis/Quality claims	Similarly to the position under the SIOTA, very short time limits for notification of a challenge to analysis results or of a willingness to reject a cargo may apply in certain circumstances	Clauses 9.5 and 10.3

Shipping Time Limits

Claim	Time limit	Reference
Charterparties	<p>Check the charterparty contract thoroughly for time limits, both specific to the type of claim (e.g. stevedore damage) and general (e.g. in the Centrocon arbitration clause).</p> <p>Demurrage claims: as above for commencement of court or arbitration proceedings for recovery of unpaid demurrage. However, there is often an additional express time limit for presenting a claim which is specified expressly in the charterparty e.g. within 60 days of final discharge. Claims are usually required to be presented accompanied by specific (and often complete) documentation.</p> <p>Claims against the carrier relating to the carriage of the goods and where a Clause Paramount incorporates the Hague/Hague-Visby Rules into the charterparty: proceedings to be commenced within 1 year from the date of delivery of the goods or the date when they should have been delivered.</p> <p>As above, where the Rotterdam Rules are incorporated: proceedings to be commenced within 2 years from the date of delivery of the goods or the date when they should have been delivered.</p> <p>As above, where the Hamburg Rules are incorporated: proceedings to be commenced within 2 years from the date of delivery of the goods or the date when they should have been delivered.</p> <p>Where the Inter-Club Agreement (“ICA”) is incorporated: claims must be notified within 24 months from the date of delivery of the goods or the date when they should have been delivered, and this takes precedence over other express time limits (including the Hague/Hague-Visby Rules). This period is extended to 36 months where the Hamburg Rules apply by force of law.</p> <p>In general, where there is no other express or implied time limit and the contract is governed by English law: 6 years from the date of the breach of contract.</p>	<p>As per charterparty</p> <p>Charterparty demurrage provisions</p> <p>Article III Rule 6, Hague/Hague-Visby Rules</p> <p>Article 62, Rotterdam Rules</p> <p>Article 20.1, Hamburg Rules</p> <p>Inter-Club Agreement, <i>The “GENIUS STAR 1”</i> [2012] 1 Lloyd’s Rep 222</p> <p>Section 5, Limitation Act, 1980</p>
Bills of Lading	<p>Check both sides of the bill of lading thoroughly for express references to time limits and for references to incorporated terms including:</p> <ul style="list-style-type: none"> • international conventions (e.g. Hague Rules), • carrier’s standard terms of business, and • incorporated charterparties, <p>which may themselves contain time limits. Note that, depending on the jurisdiction in which claims are brought and other factors such as the place of shipment, certain international conventions containing time limits may have force of law.</p> <p>Where the Hague/Hague-Visby Rules are incorporated by contract or apply by force of law: proceedings against the carrier for loss or damage to the goods to be commenced within 1 year from the date of delivery of the goods or the date when they should have been delivered.</p> <p>Where the Rotterdam Rules are incorporated by contract or apply by force of law: proceedings to be commenced within 2 years from the date of delivery of the goods or the date when they should have been delivered.</p> <p>As above, where the Hamburg Rules are incorporated by contract or apply by force of law: proceedings to be commenced within 2 years from the date of delivery of the goods or the date when they should have been delivered.</p> <p>In general, where there is no other express or implied time limit and the contract is governed by English law: 6 years from the date of the breach of contract.</p>	<p>Article III Rule 6, Hague/Hague-Visby Rules</p> <p>Article 62, Rotterdam Rules</p> <p>Article 20.1, Hamburg Rules</p> <p>Section 5, Limitation Act, 1980</p>

Claim	Time limit	Reference
General Average	<p>Within 6 years from the time when expenditure is incurred or sacrifice is made unless a shorter express time limit applies e.g. where there is a shorter applicable time limit in the contract of carriage.</p> <p>Where the York-Antwerp Rules 2004 apply: 1 year after the General Average adjustment is issued (but within 6 years from the date of termination of the common maritime adventure).</p> <p>However, where the claim for a contribution is made under a General Average bond, guarantee or letter of undertaking, time limits in the charterparty or contract of carriage will not apply unless expressly incorporated.</p>	<p>Section 5, Limitation Act, 1980</p> <p>York-Antwerp Rules 2004</p>
Collisions	Claims must be commenced within 2 years of the date of the casualty.	Section 190, Merchant Shipping Act 1995 and Article 7, Collision Convention 1910
Salvage	Claims for salvage contributions (other than under a charterparty or contract of carriage): 2 years from the date on which salvage operations were terminated.	Article 23, International Convention on Salvage 1989 and Schedule 11, Merchant Shipping Act 1995

U.S. law shipping time limits

Claim	Time limit	Reference
Any claim in respect of goods moved from or to the United States	<p>1 year from the date of delivery of the cargo or, in the case of loss of cargo, the date that the cargo should have been delivered.</p> <p><i>(Please note that if there is a separate bill of lading for the shipment once it has reached the United States that covers the shipment within the United States, then the limitation periods under the Interstate Commerce Commission Termination Act (formerly known as the Carmack Amendment) may apply. The Interstate Commerce Commission Termination Act has a 2-year limitation period and a minimum 9-month notice period for all cargo claims.)</i></p>	COGSA
Claims for personal injury to crew members	Within 3 years if brought under the Merchant Marine Act of 1920 (also known as the Jones Act) which is a federal statute which governs goods shipped by water within the United States. If the claim arises from intrastate transport then the applicable state's limitation period will apply.	§ 30106 Merchant Marine Act of 1920 46 U.S.C. § 30104
Claims for salvage	Within 2 years if brought under the International Convention on Salvage ("1989 Convention"). The 1989 Convention is a treaty that has been ratified by 63 states as of 2013. The parties may agree to extend the limitation period under the 1989 Convention.	Article 23 International Convention on Salvage (1989)

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