



## Discharging Cargo in Tunisia : What to expect

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Calling at North African ports to discharge bagged, bulk and even project cargo, brings challenges that our Assureds should be prepared to encounter; In Tunisia, especially, receivers often demand a bank guarantee to secure their claims for either shortage and/or cargo damage even before the vessel has finished discharging operations. As a result, we advise Owners to be prepared for these types of frequent security demands and to equip themselves to limit their exposure to these claims before the vessel calls at a Tunisian port.

### **How can the receiver make a demand for security before discharge is complete?**

Simply put, there is nothing in local law to prevent them from doing so. Usually, the demand is made for security at an amount equal to the total value of the cargo. Once the shortage amount or the value of the damage to the cargo has been established on completion of discharge operations, the amount of security may be reduced.

### **What if the vessel is not at fault?**

This generally makes little difference to the receiver. Under Tunisian law, the vessel is responsible for stevedore damage, even if they were appointed by charterers. Similarly, the “on deck” cargo clause generally included on the face of the bill of lading when cargo is carried on deck at the charterers’ risk has no effect in Tunisia by way of defence to these types of claim.

### **In shortage claims, do the courts take trade allowances into account?**

A trade allowance of 0.5% of the amount of cargo stated on the bill of lading is stipulated by article 145 of the Tunisian Maritime. There is also case law to support this notion and local cargo underwriters take this into account when insuring bulk cargo. This allowance is not, however, accepted by every judge in the local courts, hence there is uncertainty in this area.

### **Procedural characteristics**

Time bar: two years from the date of delivery of the cargo. Once an enforceable court judgment is rendered, the receiver has twenty years from the date of issue in which to enforce the award.

Once a claimant obtains a favourable judgment, they notify the same to owners through their local agent. Owners then have twenty days from the date of notification in which to lodge an appeal. The judgement at first instance cannot be enforced against owners within that period but if owners do not exercise their right to appeal, the receivers may enforce the judgment against the security issued.



### **How Owners can limit their exposure**

- Before arriving at a Tunisian port, contact British Marine's local correspondent;
- Our local correspondent will appoint a court surveyor to determine the amount of shortage / damage. A court surveyor's figures are accepted as evidence by local courts whereas figures determined by an independent surveyor's figures are (generally) not.
- If carrying bulk or bagged cargo, we recommend that the holds are sealed at loading port and unsealed at discharge port in the presence of the receiver's representative. We doubt that this will avoid a claim if a shortage is observed, however, if the charterers are responsible for cargo shortages not attributable to the vessel, this can be used to compel charterers to reimburse owners for any claims they pay in this respect. In the same way, owners should consider conducting a draft survey of the cargo.
- Owners should also consider the clausing of the charterparty. We advise owners to ensure that the risk of trading in Tunisia is passed to charterers by making this clear in the charterparty. For example, they may include a clause stating that charterers will reimburse owners for all and any cargo claims that arise out of discharge operations in Tunisian ports. They may wish to include a requirement that charterers deal with all cargo claims in Tunisia directly on owners' behalf. In practical terms, owners may wish to deal with the claim directly in the first instance to ensure that any delay to the vessel is avoided. By including such provisions, however, owners will be able to pass on to charterers, any costs incurred as a result of breaching these obligations.

In short, our experience has shown that owners are highly likely to face shortage claims, demands for security and legal proceedings each and every time they discharge bulk or bagged cargo in Tunisia. They are also likely to face cargo damage claims due to the handling of project cargo. Receivers tend to demand bank guarantees for the full value of the cargo but British Marine's correspondents are generally able to issue an interim letter of undertaking until the actual shortage amount is agreed. Even though owners may undertake a number of measures to prove that the shortage occurred post discharge, it is essential that a court surveyor is appointed as only their report will be accepted as evidence by the courts and as such, it can be used against the receiver to either reject the claim or to reduce the amount of security requested.

Francesca Santoro

**For further advice, please contact us.**