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The International Comparative Legal Guide to:

Shipping Law 2016

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A practical cross-border insight into shipping law

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General Chapters:

Country Question and Answer Chapters:

EDITORIAL

Welcome to the fourth edition of *The International Comparative Legal Guide to: Shipping Law*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with an overview of key issues affecting shipping law, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 36 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Ed Mills-Webb of Clyde & Co LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

The new Spanish Shipping Law 14/2014 (*Ley de Navegación Marítima*; hereinafter, LNM), which was published in the Official Gazette on 25 July 2014 and came into force on 25 September 2014, ends the duality of legal regimes in what concerns collisions that existed prior to its promulgation, as article 339 establishes that collisions will be ruled by the International Convention for the Unification of Certain Rules in Collision Matters, signed in Brussels on 23 September 1910, by other International Conventions in force (the 1952 International Convention for the Unification of Certain Rules relating to Civil Jurisdiction in Matters of Collision, the 1952 International Convention for the Unification of Certain Rules relating to Criminal Jurisdiction in Matters of Collision and Other Incidents of Navigation, and the Convention on the International Regulations for Preventing Collisions at Sea) and by articles 339 to 345 of the Spanish Shipping Law.

Pursuant to said legal regime, in the event of a collision resulting from shared fault, fault-based liability proportional to the degree of responsibility of each vessel shall apply, as established in the Convention of 1910. This lifts the objective criterion set out in the Commercial Code, which placed the responsibility for damages with both vessels, independently from the degree of fault of each of them.

It is to be noted that if the vessels involved in a collision have a pilot on-board exercising his duties, his presence does not exempt the captains of liability, but they shall have a right to receive compensation, where applicable, from the pilot.

(ii) Pollution

In terms of prevention of pollution by vessels, Spain has ratified the 1973 International Convention for the Prevention of Marine Pollution from Ships as modified by its Protocol (MARPOL 73/78).

In terms of liability for damages caused by marine pollution, we would underline the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC 92) and the International Fund for Compensation (FUND 92) as modified by its Protocol (FUND/PROT/2003), as well as the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS 2001) signed in London on 23 March 2001.

The preferred implementation of International Conventions on the matter in force in Spain (CLC 92, FUND/PROT/03 and BUNKERS 2001) is (unnecessarily) reiterated by the Spanish Shipping Law 14/2014. The LNM also regulates civil liability arising from damages resulting from pollution from vessels in cases not covered by the scope of the aforementioned Conventions. The LNM departs from the regime set out by CLC 92 in one aspect, as it channels liability towards the "*shipowner, proprietor or licensee of the vessel at the moment in which the pollution producing event takes place*" (article 385).

This liability is, of course, quasi-strict and limited, and the LNM establishes insurance as mandatory and direct action against the insurer of civil liability up to the limit of the insured sum.

Finally, in terms of environmental liability, Spain incorporated Directive 2004/35/EC to its legal system by means of Act 26/2007 of 23 October, which created an administrative regime of environmental liability characterised by unlimited liability and the principles of the European Union Treaty of "damage prevention" and "who pollutes, pays".

(iii) Salvage / general average

Pursuant to article 357 LNM, salvage is governed by the International Convention on Salvage, signed in London in April 1989, and by any Protocols or reviews that modify it, and of which Spain is part, as well as by the dispositions of the LNM itself. Law 60/1962 of 24 December, on maritime assistance, salvage, towage and extractions, is explicitly abolished, with the exception of the dispositions of Title II, which refer to *jurisdiction* and *procedure*, and which remain in force.

The LNM defines and regulates salvage in article 357 *et seq.*, establishing for this legal figure an all-encompassing concept:

> "*All acts undertaken to help or assist a ship, vessel, or craft, or to safeguard or recover any goods in danger in any type of navigable waters, with the exception of continental waters that are not communicated with sea waters and are not used by maritime navigation vessels*" (article 358 LNM).

Salvage claims shall fall under civil jurisdiction, unless the parties agree to submit to an administrative maritime arbitration system before specialised bodies of the Navy, or unless an intervention by the Navy becomes necessary because of the type of salvage concerned (salvage of goods abandoned in the sea and of unknown property), or if agreement is reached to submit to other tribunals.

One new aspect is that the relevant bodies of the Navy that will deal with actions and prizes resulting from salvage operations and the remunerations for towage will be the

Council of Maritime Arbitration and the Maritime Arbitration Audit Office, although, until these bodies are constituted, the Maritime Central Court and the Permanent Maritime Court will continue to carry out their tasks in accordance with the dispositions of the Law 60/1962.

One important technical improvement, and perhaps the most relevant one in what concerns salvage, is the power granted to both the master and the shipowner to sign salvage contracts on behalf of the owner of the goods on board.

Another important aspect is the acknowledgment of the salvor's right of retention over the salvaged ship and goods where no sufficient guarantee of payment has been given, without prejudice of recourse to a possible pre-emptive arrest of those items.

In order to guarantee environmental protection, the LNM regulates the intervention of the Maritime Authority in salvage operations.

As far as the regulation of general average is concerned, the LNM states that the interested parties in the voyage "*can freely agree the rules regulating the ways in which a settlement will take place and, if not otherwise specified, the most recent York-Antwerp Rules shall apply*".

The LNM foresees a procedure for cases in which there is no agreement between the interested parties on the settlement of the general average, and establishes that in such cases, a public notary will be charged with its processing and resolution.

(iv) Wreck removal

The LNM establishes and regulates the procedures aimed at the removal of shipwrecks and other goods on the seabed, but such regulation does not apply in the case of underwater cultural heritage goods situated in the areas contiguous with Spain, in the exclusive economic area and in the continental platform, governed by the Convention on the Protection of the Underwater Cultural Heritage of 2 November 2001, and by other treaties signed by Spain, as well as by specific legislation.

In accordance with the LNM, shipwrecked or sunken state vessels, as well as their remains, equipment and cargo are state public property, inalienable, not subject to limitation periods, and enjoying immunity from jurisdiction, regardless of when they were lost, or where they find themselves.

When a vessel impedes or obstructs free access to a port, canal or navigable route, or free transit throughout the same, the Marine Authority may adopt any necessary measures, including issuing orders to the captain of the vessel. Liability for removal of wrecks cannot be limited, in conformity with the 1996 Convention. In addition, the Spanish Ports Act 2/2011 gives a maritime lien on the wreck to Marine and Harbour Authorities.

The Director General of the Merchant Navy is the Authority responsible for adopting any necessary measures in order to take in a vessel which needs refuge, and it may even impose refuge if this is considered the best option for the protection of both human life and the environment.

In 2009, Spain ratified the UNESCO's 2001 Convention on the Protection of Underwater Cultural Heritage.

However, Spain has not ratified the Nairobi International Convention on the Removal of Wrecks.

(v) Limitation of liability

In terms of liability for damages caused by marine pollution, it is to be said that Spain is party to the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC 92) and to the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 92), both in force in Spain since 1996, and its Protocol of 2003. Spain is also party to the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS 2001) signed in London on 23 March 2001.

In the case of carriage of goods by sea under a bill of lading, the carrier has the right to limit its liability for damages caused to the cargo pursuant to the Hague-Visby Rules.

(vi) The limitation fund

The regulation by the LNM of a detailed procedure to limit the liability constitutes a clear novelty.

Pursuant to article 487 *et seq.* LNM, Commercial Courts are the competent ones to deal with the constitution of the limitation fund. The most remarkable new aspect in the aforementioned procedure for the limitation of liability is the requirement of constituting the fund within a maximum period of 10 days from its invocation. Additionally, civil liability deriving from a criminal procedure will be limited in accordance with the applicable International Conventions.

The Courts' decision declaring the fund duly constituted will be enough to release the vessel and/or assets or other guarantees from arrest/attachment. Said decision will contain the appointment of an adjuster/liquidator of the fund. The liquidator will open three files: creditors' files; debtors' files; and proposed rules for the distribution of the fund.

Proposal of distribution should be approved by the Commercial Court dealing with the procedure.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

A public body, *Comisión Permanente de Investigación de Accidentes e Incidentes Marítimos* (CIAM), is the competent Authority for the investigation of the marine casualties in Spain. Said Commission is ruled by the Spanish Royal Decree 800/2011 of 10 June ruling the investigation of marine casualties and incidents. Said Royal Decree incorporated into the Spanish legislation Directive 2009/18/CE of the European Parliament.

The CIAM shall investigate the marine casualties to determine their causes and to provide the competent Authorities with their technical proposals to prevent its occurrence, but their role would not be to determine liabilities in the causalities.

The CIAM must investigate those accidents affecting vessels flagged in Spain which occurred within Spanish territorial waters and any others that could affect Spanish interests, irrespective of the flag of the vessel or where the accident took place.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The LNM regulates, in articles 203 and following, the contract for the carriage of cargo.

As for a carriage under a bill of lading regime (articles 246 and following LNM), the current regulation remains applicable, since what is outlined is already set out in the Hague-Visby Rules. This results in a unification of the regime of liability of the carrier, be it for national or international transport.

It is worth noting that carriers' legal liability regime in carriages under bills of lading is *ius cogens* and cannot be revoked by the parties (given the little negotiative capability for carriers operating under this form of transport), whereas the legal liability of carriers

in the case of charterparties is revocable, since it is assumed that shipowners and charterparties share an equally strong negotiating position.

Bills of lading in electronic form are also referred to as the possibility of its issuance, if both shipper and carrier have agreed to it in writing before the uploading of the cargo onto the vessel is outlined (article 262 LNM). Similarly, the option of issuing maritime waybills is addressed, as article 268 LNM states that, although having the same evidential value as bills of lading, such bills, like any other non-negotiable document, are not considered securities.

It is to be mentioned that Spain was the first country to ratify the United Convention on Contract for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules).

2.2 What are the key principles applicable to cargo claims brought against the carrier?

The holder of a bill of lading would be entitled to sue for loss or damages to the cargo. However, title to sue on an order bill of lading would be on the endorsee and on the named party in the case of a named bill of lading.

The terms and conditions of the transport agreement are formalised by means of a charterparty or a bill of lading. The terms of a charterparty will be considered to be incorporated into the bill of lading when the latter contains an express and clear reference to the charterparty. Accordingly, if the charterparty incorporates a jurisdiction clause and the bill of lading appropriately incorporates the terms of the charterparty, any dispute derived from the execution of the transport agreement covered by the bill of lading should be subject to the jurisdiction choice set forth in the jurisdiction clause incorporated to the charterparty. However, jurisdiction and arbitration clauses in the bills of lading do not bind the acquirer of the bill of lading. Consent of this is required.

An important novelty introduced in articles 280 and 283 LNM is the express regulation, alongside the regulation of the carrier's liability for losses and damages to the cargo, of the carrier's liability for delays in the delivery of the cargo, which, like the liability for losses and damages, is limited in nature.

The LNM continues to demand the formulation of complaints (article 258) for damages and losses to cargo, as well as for delays in its delivery. The legal consequence of a lack of complaint is, in a departure from the Commercial Code, the presumption that the cargo has been delivered in accordance with the contents of the bill of lading. In the event of expert opinion or joint inspection of the cargo by the carrier and the recipient, the need to formulate a complaint shall be lifted.

If the cargo insurer indemnifies the party with title to sue for damages or losses, the underwriter subrogated to claim against the party is liable for the damages or the losses.

The burden of proof is in the carrier which must demonstrate that it acted with due diligence, and that the damage, loss or delay was caused due to inherent vice, *force majeure* or nautical fault on the part of the dependents of the carrier.

The claim can be against the issuer and signor of the bill of lading as contracting party, and against the owner by means of a tort action. Spanish Courts do not accept the demise clause if alleged to reject liability; however, it is occasionally admitted as grounds to pursue the joint liability of the owner and the effective carrier.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

Pursuant to article 260 LNM, the shipper would be liable towards the carrier in respect of the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars.

Agreements between shipper and carrier or the undertaking assumed by the shipper to indemnify the carrier for misdeclaration of the cargo are admitted, but they will not be binding to third parties/the acquirer of the bill of lading.

In the case of dangerous goods, the shipper would be liable not only towards the carrier but also towards cargo owners shipped on board.

On 1 July 2016, an amendment to the International Convention for the Safety of Life at Sea (SOLAS) will take effect, requiring verification of the gross mass of packed containers prior to loading on board ships.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

The LNM also regulates the passage contract (articles 287–300), granting the carrier a right of retention and subsequent sale over the hold baggage in the event of failure to pay the price of the passage. As for the liability regime of the carrier, insurance, etc., the LNM refers expressly to EU rules, as well as to the International Conventions in force in Spain.

Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning maritime passengers' rights when travelling by sea and inland waterway entered into force in Spain on 18 December 2012. The carriage of passengers by international routes is also ruled by the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as modified by its Protocol made in London on 19 November 1976.

From 31 December 2012, Regulation (EC) No. 392/2009 of the European Parliament and the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents is also applicable. As a consequence of the entry into force of this Regulation, the Royal Decree 270/2013 of 19 April on the certificate of insurance or bank guarantee for civil liability in passenger carriage in case of collision was passed.

According to Regulation (EC) No. 392/2009, the liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation, by the applicable provisions of the Athens Convention by the provisions of the IMO Guidelines set out in its Annex II. This Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the 1976 International Convention on Limitation of Liability for Maritime Claims, as amended by its Protocol of 1996.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Spain is party to the 1999 Geneva International Convention on the Arrest of Ships. The internal legal framework and procedure for an arrest is contained in the LNM and the Civil Procedure Act. Ships sailing under the flag of a country that has not ratified the 1999 Geneva Convention can, in principle, be seized for any type of credit. Spanish ships can be also seized for any type of credit if the creditor is Spanish.

An application must be filed by the claimant before the Commercial Courts of the port at which the vessel is located or expected. For such purposes, an application requesting the arrest of the vessel and stating the existence of the claim will suffice, together with a general power of attorney for litigation. The application must also offer the provision of countersecurity, the amount of which shall be determined by the tribunal at its sole discretion. The LNM establishes a minimum bail of 15% of the total amount of the alleged claim. Once the application has been filed, the Court will issue an arrest order, fixing the amount of the countersecurity to be provided by the claimant. The countersecurity is held by the Court in order to cover any damages and expenses resulting from the arrest were it to be declared null and void.

Once the counter-guarantee has been provided, the arrest is notified to the vessel. The arrest order provides the creditor a term (between 30 and 90 days) within which to validate the arrest by presenting evidence that the main proceedings have been brought before the relevant judicial or arbitral tribunal.

Arrest for bunker supplies is possible pursuant to article 1, section I of the Arrest of Ships Convention; however, claims are limited to those bunkers supplied to the shipowner since, under article 3.3, arrest of a vessel that is not owned by the person liable for the claim will be allowed only if, under the law of the state in which the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that vessel, and the 1993 Geneva Convention on Maritime Liens and Mortgages does not consider the claim for bunkers as a lien.

The debtor may oppose the arrest and, in the event that the arrest is held to be illegal, the claimant may be made to pay damages and expenses. The LNM does not contain a particular procedure to be followed by the debtor to oppose to the arrest. Hence, in principle, general rules contained in the Spanish Civil Procedure Act ruling precautionary measures shall be of application.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Arrest for bunker supplies is possible pursuant to article 1, section I of the Arrest of Ships Convention; however, claims are limited to those bunkers supplied to the shipowner since, under article 3.3, arrest of a vessel that is not owned by the person liable for the claim will be allowed only if, under the law of the state in which the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that vessel, and the Maritime Liens and Mortgages Convention does not consider the claim for bunkers as a lien.

4.3 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

Articles 236, 237 and 238 LNM provide a lien on the cargo for the freight and other expenses resulting from its transport, but within a fixed period: during the 15 days following its delivery. The legal characterisation of this fixed period of 15 days is not straightforward, but it could perhaps be considered as a limitation period for the expiry of a "privilege". This provision grants the carrier a right of retention and subsequent sale before a public notary of the cargo subject to the freight charge. The LNM makes a useful distinction between the retention of cargo belonging to the charterer, and of cargo belonging to third parties. This innovation – retention and sale before the public notary – means that in future, it will no longer be necessary to consult old voluntary jurisdiction proceedings.

Articles 512 *et seq*. LNM describe the procedure for the deposit and sale of the cargo before the public notary.

4.4 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

The easier way to provide security before Spanish Courts would be with a deposit in cash made with the special bank accounts held by the Courts. Bank guarantees are also accepted, provided that signatures appearing in such a bank document are always duly ratified before the Court.

P&I letters of undertaking of guarantees issued by underwriters would not be – in principle – accepted by the Court unless it is agreed between parties into proceedings.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

The Spanish Civil Procedural Act (Act 1/2000) regulates the procedure to obtain evidence prior to the commencement of legal proceedings, as well as the procedure to adopt measures to seize evidence (articles 293 *et seq.*).

The party which intends to initiate this may request the Court to examine the evidence in advance, when there is grounded fear that, due to the persons or due to the state of things, these acts cannot take place at the generally stipulated procedural time. If the Court upholds the request, it shall agree to it, and, through a procedural Court order, it shall provide that the procedure be carried out when it is considered to be necessary prior to the proceedings or the hearing, and an appropriate date shall be set by the Court.

As far as available measures for the seizure of evidence are concerned, before the commencement of any proceedings, the party which intends to initiate these or any of the litigants during the course of the proceedings may request that the Court adopt useful measures to ensure that through human conduct or natural events which might destroy or alter physical objects or states of things in order to prevent it becoming impossible to carry out a relevant taking of evidence.

Articles 504 and 505 LNM rule the procedure for issuing sea protests. After an incident, the master must issue a sea protest upon its arrival to a Spanish port, including in the file a certified copy of the log book.

5.2 What are the general disclosure obligations in court proceedings?

There is no obligation under Spanish Law to disclose any document and/or evidence.

Although any Court could request parties into proceedings or even to a third party to produce a document before the Court, there is no penalty in cases where such a party would not produce the requested document and/or evidence.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

Since 1 September 2004, disputes related to Maritime Law are to be conducted by the Commercial Courts. Proceedings before Commercial Courts commence by lodging a writ of summons together with a power of attorney and the documents supporting the claim. The Court will then grant defendants a 20-day period to submit their points of defence together with the main available evidence. The Judge will call parties to a preliminary hearing in which parties are invited to settle; failing which, procedural questions are discussed and the relevant evidence is proposed. The trial will then take place to evaluate the evidence and to summarise arguments and defences. The judgment would subsequently be rendered. Such a first instance judgment could be appealed before the Appellate Court and, in particular cases, judgment from the Appellate Courts could be further appealed before the Supreme Court.

The time-scale would mainly depend on the particular Court dealing with the matter, being reasonable to expect nine months to see the first judgment rendered and another year to obtain a judgment from the Court of Appeal.

Pursuant to the LNM, the public notaries have the competence to deal with sea protests, proof of incidents, liquidation of the general average, deposits and sale of cargo and luggage for payment of freight, other expenses and passage, loss, theft, or destruction of the bills of lading and sale of cargo altered, damaged or in danger of imminent damage.

Spanish Courts will apply the law expressly chosen by the parties to contractual obligations, provided that such law is connected in some way to the matter in question. A party who invokes a foreign legal provision must show evidence of its content and validity, for which the most common instrument used is the presentation of affidavits. Act 29/2015 of 30 July on international cooperation in civil matters rules that exceptionally, and in cases where the parties cannot evidence the contents and validity of foreign law, Spanish Courts may apply Spanish Law.

Act 5/2012 of 5 March regulates mediation in civil and commercial matters but, due to a poor tradition in Spain, in mediation and the little time which has elapsed since the Royal Decree-Act entered into force, no decisions of mediators on maritime matters would be available yet.

There is no specific maritime arbitration procedure in Spain other than that established by Act 60/2003 on Arbitration, modelled on the 1985 UNCITRAL Model Law. Mediation is contemplated in Act 5/2012 on Mediation in Civil and Commercial Matters, but there is no specific procedure in place for maritime controversies. Mediation has not often been used in Spain.

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind?

The main pros would be that candidates must pass exhaustive examinations to become judges, being therefore high-qualified professionals.

It is also to be mentioned as a pro that, in general terms, costs could be recoverable for the "losing party".

Cons to be mentioned would be the following formalisms: power of attorney granted before the public notary (and even legalised in the case of a foreign document) must be produced before the Court to instigate proceedings; all documents produced before the Court must be originals or authenticated copies; and all documents must be in Spanish or duly translated.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Act 29/2015 of 30 July on international cooperation in civil matters acts as a general framework on a subsidiary basis to European Law and International Treaties as well as to specific sectorial legislation.

Procedures on recognition and enforcement of foreign judgments would depend on the state where the judgment is rendered. If the foreign judgment is issued within the European Union, its recognition and enforcement in Spain will be governed by Council Regulation (EC) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters. Preventive measures are regulated in said Council Regulation and are admitted by the Spanish Civil Procedural Act.

In respect of judgments issued within the European Free Trade Association, the Lugano Convention shall apply.

With regard to the judgments rendered out of the EU and the EFTA's space, it should be checked whether or not there is a bilateral treaty between Spain and the country where the judgment was rendered and in the absence of such an applicable bilateral treaty, internal provisions of the Spanish Civil Procedural Act shall apply. The reciprocity regime would be taken into consideration to grant the *exequatur* of a foreign judgment.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Recognition and enforcement of foreign arbitration awards are ruled by the Spanish Arbitration Act 60/2003 (as amended by the Act 11/2011) and by the Act 29/2015 on international cooperation in civil matters. These Acts, providing *exequatur* of foreign arbitration

award, shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Application for the recognition of a foreign award should be lodged before the *Tribunales Superiores de Justicia* (High Courts located in each Spanish Self-Governing Community).

Once the decision recognising the award is issued by the so-called *Tribunales Superiores de Justicia*, enforcement proceedings shall be instigated before the Courts of First Instance. It is to be said that pursuant to article 8.3 Spanish Act 11/2011, provisional measures could be asked to the Courts of First Instance regarding the defendants' domicile or subsidiary to the Court of the place whether assets to be arrested/frozen are located.

Proceedings to adopt preventive measures would be the one ruled by the Spanish Civil Procedural Law which requests to lodge with the Court enough evidence of the existence of *fumus bonis iuris* and *periculum in mora*. In addition, it is to be noted that Spanish Civil Procedural Law requests that the party asking for preventive measures offers put with the arresting Court a countersecurity to answer for the eventual damages that could arise from a wrongful preventive measure. The amount of such counter-guarantee would be left to the discretion of the Court.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

The Shipping Law 14/2014, a long-awaited and very comprehensive law, has now been in force in Spain since September 2014, and it is a milestone in Spain's Maritime Law.

It brings together national Maritime Law with International Conventions and European Union Regulations in Shipping, and renders Spain one of the few countries in the world that has the vast majority of its Maritime Law regulated by the same legislative document, providing legal certainty.

Act 15/2015 ruling the voluntary-non contentious proceedings has been in force since July 2015.

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Practising lawyer for more than 20 years, her experience encompasses Maritime Law as well as Insurance Law. She has experience of advising and litigating in shipping maters, particularly involving cargo claims. She also has remarkable experience in land transport matters, one of her areas of expertise.

Her professional activities involve in-court and out-of-court issues and arbitration. She also provides advice on international trade matters.

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Practising lawyer since 1978, specialising in Maritime, Transport and Insurance Law. Teacher of several Master's degrees in Maritime Law. Full Member of the International Maritime Committee (IMC). Member of the Spanish Association of Maritime Law. Member of the International Bar Association (IBA) and former chairman of the A1 Subcommittee. Former advisor to the Kingdom of Spain at the International Maritime Organisation (IMO).

Professional activity, experience and prestige make him present in all types of Court and judicial affairs, arbitration and conduction of extensive work of a national and international advisory nature.

In addition, as a lawyer, he has dealt with a wide range of cases like "*Sea Harrier*", "*Castillo de Bellver*", "*la Galga y el Juno*", and "*Prestige*", among others.

Languages: Spanish and English.

SAN SIMÓN & DUCH

SAN SIMÓN & DUCH provides legal advice on national and international issues in all areas of Maritime Law, Transport Law and Insurance Law, as well as on every aspect of international trade.

Their maritime lawyers are active in all areas affecting the various participants in the maritime industry. From the Maritime Law desk, they offer comprehensive legal advice to builders, owners, charterers, salvors, P&I Clubs, brokers and financial institutions, port terminals and public administrations, as well as those specialising in international trade, transport and logistics.

The firm has one of the most extensive global networks of the best maritime lawyers around the world, allowing us to offer our services to any jurisdiction when the need arises, enabling SAN SIMÓN & DUCH to provide its services both at the national and international level in an immediate and expeditious way.

Nowadays, it has a sound network of offices scattered throughout the major cities of Spain.

The firm has adapted to the continuous changes in the fields of Maritime Law and Transport Law, achieving a remarkable standing at international level.

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