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# THE SHIPPING LAW REVIEW

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THIRD EDITION

EDITOR

JAMES GOSLING AND TESSA JONES HUZARSKI

LAW BUSINESS RESEARCH

# THE SHIPPING LAW REVIEW

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For further information please email  
[nick.barette@lbresearch.com](mailto:nick.barette@lbresearch.com)

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Third Edition

Editors

JAMES GOSLING AND TESSA JONES HUZARSKI

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# EDITOR'S PREFACE

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This book aims to provide those involved in handling wet and dry shipping disputes in multiple jurisdictions with an overview of the key issues relevant to each jurisdiction. We have sought contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry internationally: competition and regulatory law, marine insurance, ocean logistics, piracy, shipbuilding, ports and terminals and environmental issues. We have also included a new chapter regarding international trade sanctions, which is an increasingly important area.

Each jurisdictional chapter then gives an overview of the procedures for handling shipping disputes in each country, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked each author to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, any security or counter-security requirements and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regime in force in each country, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, along with the local rules in respect of collisions, wreck removal, salvage and recycling.

Following the entry into force of the 2002 Protocol to the 1974 Athens Convention and the Maritime Labour Convention in 2013, passenger and seafarer rights are also examined, and contributors set out the current position in each jurisdiction. The authors have then looked forward and have commented on what they believe are likely to be the most important forthcoming developments in their jurisdictions over the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around

US\$380 billion in terms of global freight rates, amounting to around 5 per cent of global trade overall. More than 90 per cent of the world's freight is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book reflect that.

Last year, a key issue within the shipping industry was environmental regulation, which is becoming ever more stringent. As from January 2015, the limit for sulphur content had fallen to 0.1 per cent (down from 1.0 per cent previously). Tier II limits on nitrogen oxides emissions have been in place globally since 2011. Tier III, which represents a significantly more stringent regime than Tier II limits, is being implemented in emissions control areas from 2016. Furthermore, also from 2016, the United States Clean Air Act is introducing a target of an 80 per cent reduction in nitrogen oxides emissions from vessels by 2030.

The International Maritime Organisation (IMO) has so far not introduced similar limits on the emission of greenhouse gases, such as carbon dioxide, although it is generally perceived that the IMO is in the future likely to further regulate global carbon dioxide emissions from vessels. Outside of the IMO, the EU and individual countries are focusing on greenhouse gas reduction policies. In particular, the European Commission's current proposal is that, from 2018, vessels calling at ports in the EU should be expected to monitor, report and verify carbon dioxide emissions. The strategy is intended to evolve into carbon dioxide reduction targets and market-based measures in the longer term, in line with the EU's approach to land-based greenhouse gas emissions.

Another challenge facing the shipping industry relates to the handling of ever-larger casualties. The most recent high-profile container ship casualties, such as the MSC Napoli or the Rena, involved relatively small vessels with a maximum capacity of up to 4,688 containers; however, the latest mega-containerships can carry up to 15,000 containers. It is likely that at some stage there will be a casualty involving one of these new larger vessels and this may prove a major test for the industry. It has been suggested that the current salvage industry may find it difficult to deal with the scale of any wreckage. The regulatory environment is becoming increasingly stringent, with far stricter controls on both clean-up and wreck removal, which will also make handling any mega-container ship casualty more challenging. The London underwriting community has responded to concerns about the general average implications by evolving a new insurance product, which, it is suggested, could replace the traditional approach to general average for large container ships. It remains to be seen whether this will be accepted by the market.

Piracy remains a considerable issue for the shipping industry worldwide. There has been a decline in the number of incidents off Somalia since the peak in 2010/11, but an increase in West Africa and (to an extent) elsewhere. Although the use of armed guards and increased naval policing in recent years have undoubtedly contributed to the decline, challenges remain and the shipping industry must continue to be alive to the threat.

We would like to thank all the contributors for their assistance with producing this edition of *The Shipping Law Review*. We hope that this volume will provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

**James Gosling and Tessa Jones Huzarski**

Holman Fenwick Willan LLP

London

June 2015

## Chapter 40

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# SPAIN

*Luis de San Simón*<sup>1</sup>

### I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Spain has been struck by the global crisis in the last nine years. Despite the clear signs of recovery, the effects of the crisis are still felt, moreover bearing in mind the absence of a strong world economy and local political instability introduced by the absence of an agreement to form a coalition government between the two main parties.

The scarce demand for transportation in domestic traffic together with extremely low charter levels experienced in recent years has been enhanced through the increase in the exports side in the past year, with a record increase of 96 Mt (4.5 per cent).

On 17 December 2015, the General Court of the EU annulled the European Commission's decision declaring that part of the Spanish tax lease system constituted state aid incompatible with the internal market.

Moreover, the new tax lease system, approved by the Commission in November 2012, designed to facilitate the shipbuilding industry in Spain, started to operate effectively. This new scheme allows for a tax deduction for the cost of certain assets purchased by means of finance lease as from the commencement of their construction, prior to their commercial use, and regardless of whether the asset is in Spain or not. For the scheme to be applicable, goods cannot be mass-produced, and the manufacturing period cannot be less than one year.

According to the Spanish Ministry of Development<sup>2</sup> and ANAVE,<sup>3</sup> as for the feet size, the total fleet of merchant ships controlled by Spanish companies, both under Spanish and foreign flags, comprised a total of 203 vessels, which means a notable decrease bearing in mind the 211 merchant vessels counted last year. Of the total merchant vessels counted, 117 merchant vessels operate with Spanish flag instead of the 121 merchant vessels a year before, and 86 merchant vessels under foreign flags.

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1 Luis de San Simón is a partner at San Simón & Duch.

2 Puertos del Estado.

3 ANAVE.



In addition, the Spanish Register has suffered its deepest decline since its creation, made up by 119 merchant vessels, which means a decrease of seven units compared with the previous year.

The Spanish flag flies on 57.6 per cent of the overall units controlled by the Spanish shipowners. The remaining units that make up the overall merchant fleet controlled by Spanish shipowners are distributed among registries such as Malta, Panama, Madeira, Cyprus and the Bahamas.

At the end of 2015, the Spanish maritime trade registered an overall port traffic of 488 Mt of goods (+4.26 per cent). Liquid bulk totalled 167 Mt (4.33 per cent), solid bulk totalled 96 Mt (7.2 per cent) and general merchandise totalled 224 Mt (3.01 per cent).

The ranking of the busiest Spanish ports still headed by Algeciras, whose traffic increased in 2015 by a 2.6 per cent, consolidating as the first Mediterranean port. Valencia grew 6.7 per cent, and Barcelona increased a remarkable 1.5 per cent to 47 Mt. The main Spanish ports are Algeciras, Valencia, Barcelona, Bilbao, Las Palmas, Cartagena, Alicante, Castellón, Tarragona, Pasajes, Santander, Gijón, Avilés, A Coruña, Santa Cruz de Tenerife and Vigo.

Among the principal trade routes being operated by the Spanish fleet are the ones connecting North Africa and Southern Europe, one of the main routes being that linking Morocco-South of Spain-Canary Islands; the Mediterranean routes, particularly the route Italy-Spain, and those connecting to eastern Europe; and the routes in northern Spain linking Spain and Portugal to northern Europe.

Seventeen Spanish ports are connected to the rail freight transportation network. Spain is also currently supporting short-sea shipping.

## **II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK**

The basic legal framework of Spanish maritime law is the Shipping Law 14/2014 (LNM), which was published in the Official Gazette on 25 July 2014 and came into force on 25 September 2014.

This Law covers almost all aspects of shipping, supersedes Book III of the Commercial Code and other relevant laws and gives Spain a modern general maritime legal regime.

The most relevant public law rules are the Ports Act 2/2011, the Coast Act 2/2013 and Royal Decree 1027/1989 of 28 July on Flagging Out and Ship Registration.

Regulations and directives issued by the EC are also applicable in Spain. Most international maritime conventions have also been ratified by Spain, including the Arrest of Ships Convention and the Maritime Liens and Mortgages Convention. The large number of existing conventions related to maritime safety and pollution, including SOLAS, MARPOL 73/78, the CSC, the IMDG Code, the SAR and the Colregs, are of direct applicability.

## **III FORUM AND JURISDICTION**

### **i Courts**

As a general principle, the commercial courts are competent in maritime issues.

Pursuant to the LNM notaries public have 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, damage or in danger of imminent damage.

Without prejudice to the provisions of the European Union, clauses of submission to a foreign jurisdiction or arbitration abroad are not valid if they have not been negotiated.

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.

When the law does not provide for a specific time limit, the general time bar is five years. In the case of tort actions, the general time bar is one year. In both cases, the term starts from the date on which actions could have been brought.

Claims relating to payment of freight, demurrage, expenses and contributions to the general average have a time bar of one year. The same time limit applies to claims arising from a failure to comply with a contract of carriage in the event of loss, fault or delay. Recovery actions of the contractual carrier against the effective carrier for indemnities have also a time bar of one year from the payment of the indemnity. Claims related to towage contract have also a time bar of one year. Claims arising from salvage and collisions are time barred after two years. The same time limit applies to claims related to marine insurance. Port handling claims for damage, loss or delay of the handled cargo have also a time bar of two years. Claims related to the shipbuilding contract and the navel Hypotéque have a time bar of three years. The same period applies in the case of the pollution actions contemplated under the Convention CLC 92 and the 2001 Bunkers Convention.

### *Arbitration and ADR*

There is no specific maritime arbitration procedure in Spain other than that established by Act 60/2003 on Arbitration, modelled on the UNCITRAL Model Law 1985. 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.

### *Enforcement of foreign judgments and arbitral awards*

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. If the judgment is issued by a member state of the European Free Trade Association, the Lugano Convention will apply.

Apart from these scenarios, in the event that there is no bilateral treaty with the state in which the judgment was issued, the judgment will be recognised in Spain provided that it is issued pursuant to a personal action, that it has not been issued in default and that the object of the claim is valid in Spain; however, if the judgment has been issued in a state whose courts do not recognise Spanish judgments, it shall not be recognised in Spain.

The time limit to request recognition and enforcement of judgments and awards is five years.

## **IV SHIPPING CONTRACTS**

### **i Ship building**

Ship building contracts must always be made in writing. In the event of discrepancy between the construction contract and the technical specifications, the former shall prevail over the latter, and the technical specifications over the blueprints.

Ownership of the vessel under construction as well as the risk is with the builder until the moment of the delivery.

The LNM sets out indemnities for delays in the delivery beyond 30 days and the right to cancel the contract if the delay lasts more than 180 days and there is no justified cause for such delay.

Apparent defects must be repaired by the builder. Hidden defects must be declared by the client within one year of the delivery.

## ii Contracts of carriage

After detailed regulation of the contract of carriage, which sets out the obligations of the parties, the LNM provides a lien on the cargo for the freight and other expenses resulting from its transport during the fifteen 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 notary public 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.

As for carriage under a bill of lading regime, this is the one set out in the Hague-Visby Rules and there is 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 bill of lading is *ius cogens* and cannot be revoked by the parties (given the little negotiation 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.

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

The LNM regulates also the passage contract, 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.

## iii Cargo claims

As important novelty introduced by the 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 demands the formulation of complaints from damages and losses to cargo, as well as for delays in its delivery. The legal consequence of a lack of complaint is the presumption that 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 receiver, the need to formulate a complaint shall be lifted.

Jurisdiction and arbitration clauses in the bill of lading do not bind the acquirer of the bill of lading. Consent to this is required.

If underwriters indemnify the assured they become subrogated in the rights and actions of the assured and therefore are the party with title to sue against those liable for the damage or loss.

The burden of proof is on 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. The 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.

#### **iv Limitation of liability**

Spain is party to the LLMC, as amended by the 1996/1999 Protocols. However, some decisions of the Spanish Supreme Court establish grounds under which the limitation of liability will not be applicable in cases where a contractual relationship between claimant and defendant exists.

The new Shipping Law (14/2014 (LNM) provides a detailed procedure to limit liability. Commercial courts are the competent ones to deal with the constitution of the limitation fund.

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.

Spain is also party to the CLC, the Fund Convention and the Bunkers Convention.

## **V REMEDIES**

### **i Ship arrest**

Spain is party to the Arrest of Ships Convention. The internal legal framework and procedure for an arrest is contained in the Shipping Law 14/2014 and the Civil Procedure Act. Ships sailing under the flag of a country that has not ratified the Geneva Convention of 1999 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 purpose, 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 per cent 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.

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 ship owner 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.

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.

## ii Court orders for sale of a vessel

The judicial sale of vessels is ruled by the 1993 Maritime Liens and Mortgages Convention, the Civil Procedure Act and the LNM.

The general rule is that the holder of the claim against the ship or the ship owner, declared as such by a final judgment or arbitral award, may request the sale of the vessel. The competent court will be the court corresponding to the location of the vessel. The court will make a valuation of the vessel and request a certificate of liens and encumbrances granted over the vessel from the registry, since creditors have legal standing to attend the judicial sale and exercise their right of priority (third-party rights). The order of priority of the creditors over the ship is established in Articles 4, 5, 6 and 12 of the 1993 Maritime Liens and Mortgages Convention, or under the law of the vessel's flag state. Creditors of the same priority will be paid *pro rata*. The ship will be sold through public auction to the highest bidder or through a specialised company. Liens and other rights over the vessel will in principle be cancelled with the sale.

Additionally, the Spanish authorities can request the judicial sale of any ship that represents a risk to the population or to the port, or that obstructs in-port traffic or traffic in the waters under Spain's jurisdiction.

## VI REGULATION

### i Safety

Spain has consistently ratified amendments made to the SOLAS since its entry into force in 1980, as well as all other conventions and directives regarding safety, such as the IMDG Code, the CSC and EU Directive 93/75.

The Shipping Law and the 2011 Ports Act establish that the General Directorate of the Merchant Navy is the competent body to organise and manage general safety. The organisation and execution of the obligations undertaken by the state in relation to SOLAS and any other related national or international rules are among its competences.

### ii Port state control

The inspection of foreign ships is regulated under Royal Decree 1737/2010, which incorporates Directive 2009/16/EC into the Spanish legal system.

The Spanish authority responsible for the inspection of vessels is the Ministry of Public Works, which exercises its authority through the General Directorate of the Merchant Navy.

Spain has undertaken to perform annual inspections, and must inspect all vessels that have been assigned priority level 1 that call or anchor in Spanish jurisdictional waters. Any deficiencies that are found set in motion an infringement procedure and lead to the adoption

of precautionary measures, normally consisting of the retention of the ship. In such cases, a guarantee must be set up in order to lift the precautionary measures and prevent the retention of the ship.

The Paris MoU sets out a classification in which Spain is again among the flags included on the white list.

Over the past few years, 55 per cent of inspections have been related to certification and documentation, anti-fire measures, sailing safety, and onboard working and living conditions. Deficiencies related to certificates, crew and documentation have fallen by 35.5 per cent, while deficiencies related to sailing safety have fallen by 24.6 per cent. Pollution deficiencies related to MARPOL Annex I also fell, while those related to MARPOL Annex VI rose by 22.2 per cent.

Most inspections were performed on multipurpose vessels (6,374), followed by bulk carrier vessels (3,204) and container vessels (2,066). In relation to these three types of vessel, deficiencies were found in 66 per cent, 56 per cent and 48 per cent of cases, respectively.

### **iii Registration and classification**

Spain operates a dual registration system. Property and any civil legal circumstances are registered in the Property Registry, which is part of the Directorate General of Registries and Notaries; administrative registration or ordinary registration is effected by the Maritime Registry, which is part of the Directorate General of the Merchant Navy. Additionally, the Canarian Special Registry of Vessels and Shipowners, domiciled in the Canary Islands, offers obvious tax, labour, social, environmental and quality advantages, and is considered an official registry by port state control, putting it 'in competition' with other offshore registries.

For ordinary registration under the Spanish flag, it is mandatory to be a Spanish or EU resident. In the latter case, it is also necessary to appoint a representative in Spain. Residence is not necessary for non-commercial ships.

Shipowner companies effectively managed from the Canary Islands may request registration in the Canarian Special Registry of Ships and Shipping Companies. Shipping companies or owners must be the owners or financial lessees of the vessels for which registration is requested, or be in possession of them under a bareboat charter or any other title that entails the control of the nautical and commercial management of the ships. Furthermore, if originating from another registry, they must demonstrate compliance with the applicable Spanish safety legal provisions and with the international conventions signed by Spain. They may be thus subject to inspection prior to registration in the Special Registry, under conditions as may be determined by the Ministry of Public Works.

Vessels under the Spanish flag subject to inspections may be deregistered from the Ordinary Registry of Ships or, where applicable, from the Special Registry of Ships and Shipping Companies, if the ship has been stopped three or more times during the past 36 months, or if the ship is more than 18 years old and has been stopped twice or more in the past 36 months.

Pursuant to Article 106 of the LNM, classification societies will be contractually liable to those who contract with them for any damage or loss as a consequence of the absence of diligence in inspecting vessels and issuing certificates.

### **iv Environmental regulation**

Spain has ratified the various conventions related to the protection of waters and to water pollution.

In terms of prevention of pollution by vessels, Spain has ratified MARPOL 73/78. In terms of liability for damages caused by marine pollution, we would highlight the CLC 92 and the Fund Convention as modified by its Protocol, as well as the Bunkers Convention, signed in London on 23 March 2001.

With respect to national legislation, the LNM regulates also civil liability arising from damages resulting from pollution from vessels in cases not covered by the scope of the above-mentioned conventions.

This liability is strict and the LNM establishes insurance as mandatory and direct actions against the insurer of civil liability up to the limit of the insured sum.

The LNM departs from the regime set by the Convention CLC/72 in one aspect as it channels liability towards the shipowners and the proprietor of the vessel at the moment in which the pollution event takes place.

Finally, in terms of environmental liability, Spain incorporated Directive 2004/35/EC into 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 damage prevention and polluter-pays.

#### **v Collisions, salvage and wrecks**

Collisions are regulated by the International Convention for the unification of certain rules in collision matters, signed in Brussels on 23 September 1910.

If the vessels have pilots onboard exercising their duties, their presence does not exempt the captains from liability, but the captains have a right to receive compensation, where applicable, from the pilots.

Salvage is governed by the International Convention of Salvage of 1989 and the LNM.

Salvage claims fall under the civil jurisdiction of the Commercial Courts 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 an agreement is reached to submit to other tribunals.

The LNM grants power to both the master and the shipowner to sign salvage contracts on behalf of the owner of the goods on board. Salvors have a right of retention over the salvage ship and goods where no sufficient guarantee of payment has been given.

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

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 LLMC Protocol of 1996.

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

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

**vi Passengers' rights**

Regulation (EU) No. 1177/2010 on maritime passengers' rights entered into force in Spain on 18 December 2012. The carriage of passengers by international routes is also ruled by the Athens Convention, as modified by its 1976 Protocol.

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

Royal Decree 270/2013 establishes that class A ships that only navigate routes between ports over which Spain has sovereignty or jurisdiction will not be bound by the obligation of having liability cover until 31 December 2014; and that class B ships, in the same circumstances, will not be bound until 31 December 2018.

**vii Seafarers' rights**

Spain has ratified the MLC, which entered into force on 20 August 2013. To date, 10 vessels have been stopped in Spanish ports for non-compliance with the obligations set out in the MLC.

Internally, and in compliance with the binding principles of the MLC, the legal provisions applicable to labour at sea are consistent with general labour rules. Accordingly, Royal Decree 1/1995 on the Statute of Employees, which is very protective of workers' rights, applies.

Additionally, various collective bargaining agreements contain specific rules that apply to particular sectors, companies or institutions.

Spanish law will apply for a vessel flying the Spanish flag; however, the parties may agree to apply a foreign law provided that the imperative Spanish law principles are observed.

The captain and the first watch officer must be nationals of a European Economic Area country. As for the crew, in some sectors certain nationality quotas must be observed.

The Ports Act of 2011 governs the human resources regime in state ports and the labour regime applicable to the employees of the port services that deal with merchandise and pilotage.

Claims of the crew are liens against the ship.

**VII OUTLOOK**

The LNM, a long-awaited and very comprehensive law, has now been in force since September 2014 and is a milestone in Spain's maritime law.

It brings together national maritime law with international conventions and European Union regulations on shipping and makes Spain one of the few countries in the world to have the vast majority of its maritime law regulated by the same legislative document, which provides legal certainty.

It is hoped that in the future this law covering almost all aspects of shipping will be developed by the courts with an appropriate interpretation of its provisions.



## Appendix 1

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# ABOUT THE AUTHORS

### **LUIS DE SAN SIMÓN**

#### *San Simón & Duch*

Luis de San Simón has been a practising lawyer since 1978, specialising in maritime, transport and insurance law. He has dealt with a wide range of cases, including the *Sea Harrier*, *Castillo de Bellver* and *Prestige* cases, and is also an arbitrator.

His professional activity, experience and prestige have seen him present cases in all types of court and judicial affairs, arbitration, and conduct extensive national and international advisory work.

Mr de San Simón is a full member of the International Maritime Committee, as well as a member of the Spanish Association of Maritime Law, the Ibero-American Institute of Maritime Law and the International Bar Association. He is also an honorary member of the Centre of Law Studies of Salzburg. He was also a former member of the Advisory Committee of the Latin Law Institute and Tulane Law School, the chair of the A1 Subcommittee and an adviser to Spain at the IMO.

He is the creator and founder of the International Maritime Law Seminar, which is held annually in London. Mr de San Simón also teaches several master's degrees in maritime law. He has published various articles in both national and international journals, and authored and contributed to several publications. He has also delivered many lectures both in Spain and abroad.

He is the president of the Maritime and Transport Law Section of the Madrid Bar Association.

**SAN SIMÓN & DUCH**

Araquil 3

28023 Madrid

Spain

Tel: +34 91 357 92 98

Fax: +34 91 357 50 37

[lsansimon@lsansimon.com](mailto:lsansimon@lsansimon.com)

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