THE SHIPPING LAW REVIEW

FOURTH EDITION

Editors
George Eddings, Andrew Chamberlain and
Rebecca Warder

THE LAWREVIEWS

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EDITORS' PREFACE

The fourth edition of this book aims to continue to provide those involved in handling shipping disputes in multiple jurisdictions with an overview of the key issues relevant to each jurisdiction. We have again invited 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: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals and environmental issues. We once again feature marine insurance and examine the significant legislative changes that have come into force since our last edition was produced. A new chapter on offshore shipping is also included, which seeks to demystify the complex contractual relationships within the sector.

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 regimes 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. Passenger and seafarer rights are also examined, and contributors set out the current position in each jurisdiction. The authors have then looked forward and 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 once again reflect that.

The current financial climate remains a challenge for the industry, but forward-looking shipping companies are innovating to get ahead. For example, companies are increasingly

using big data to maximise profit, including by making their fleets as fuel-efficient as possible and looking to new technology to reduce costs. There have been interesting developments in relation to direct freight booking with owners via online platforms and the launch of new 'green' maritime tech, which has the potential to cut fuel costs and reduce emissions.

In the past year air emissions control has continued to be significant for the industry. This is expected to continue in the coming year, with confirmation at the IMO's Marine Environment Protection Committee 70 that the new, more stringent limit for fuel sulphur content of 0.5 per cent will come into force from 2020. In June 2017, the IMO's new Working Group on Reduction of GHG Emissions from Ships meets against the background of calls from the European Commission Climate Actions Directorate (ECAD) for the IMO to set a target within 2017 for lower maritime emissions. There is also an ECAD proposal for an EU Emissions Trading Scheme for shipping to be launched by 2023.

Regulatory challenges of other kinds also continue to preoccupy the sector. The Ballast Water Management Convention is in force from 8 September 2017, and it has been estimated compliance could cost the industry in the region of US$100 billion. In light of the change of US administration, the sanctions landscape is more complex and uncertain than ever before and the change of leadership in the US has also impacted on crewing, with issues for operators with crew members potentially affected by stricter immigration controls.

The UK's projected exit from the European Union is another key development. The UK triggered Article 50 in March 2017, beginning the process to leave the EU in March 2019. There have been concerns about enforcement of English judgments and arbitration awards. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly affect enforceability. Arbitration awards will continue to be enforceable under the New York Convention, and it is likely that reciprocal EU–UK enforcement of court judgments may also be agreed.

Since our last edition there have been significant changes to the English law of marine insurance. The Insurance Act 2015 came into force on 12 August 2016 and reformed areas including disclosure by policyholders and their agents, warranties and insurers' remedies for fraudulent claims. The Enterprise Act 2016, in force from May 2017, has now introduced liability for insurers if claims are not paid within reasonable time. These changes have generally been welcomed by policyholders.

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 continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

George Eddings, Andrew Chamberlain and Rebecca Warder
HFW
London
June 2017

Chapter 38

SPAIN

Luis de San Simón[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRIES

Spain has been struck by the global crisis of the past 10 years. Despite clear signs of recovery, the effects of the crisis are still felt, such as the absence of a strong world economy and local political instability created by the absence of a solid government coalition.

Spain's GDP grew by 3.2 per cent in 2016, maintaining the pace of the previous year. In the fourth quarter, it was up 0.7 per cent, the same as in the previous quarter. Exports fell by 0.9 per cent. National seaborne trade grew by 4.1 per cent.

In 2014, the Luxembourg Court declared the Spanish legislation on cargo handling in ports contrary to the principle of right of establishment recognised in the EU Treaty. The stowage reform in Spain is mandatory since the judgment of the Court of Justice of the European Union of 11 December 2014, because its legal regime is not adjusted to Article 49 TFEU. After two and a half years, little progress has been made towards a consensus solution for compliance with the judgment.

In December 2015, the EU General Court resolved the Spanish government's action against the Commission Decision of July 2013, stating that investors participating in Tax Lease operations should repay the aid they allegedly received. The General Court annulled that decision because there was no selective advantage and, therefore, state aid to investors, since any operator could benefit from the same tax advantages. The Commission has appealed to the Court of Justice, and this is still pending.

Moreover, the new tax lease system approved by the Commission in November 2012, designed to facilitate the shipbuilding industry in Spain, started to operate successfully. In this regard, it must be noted that such healthy operation fundamentally started from the rejection of the appeal lodged against it by the Netherlands. 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 and ANAVE (Asociación Navieros Españoles), as for the fleet size, the total fleet of merchant ships controlled by Spanish companies, both under Spanish and foreign flags, comprised a total of 210 vessels. Of the total merchant vessels counted, in 2016 113 merchant vessels operated under the Spanish flag, compared with 117 merchant vessels in 2015, and 97 merchant vessels under foreign flags.

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

The tonnage of the total merchant fleet controlled by Spanish shipowners has increased by 11.3 per cent over 2015 and 2016.

The Spanish flag flies on 53.8 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 2016, the Spanish maritime trade totalled an overall port traffic of 495,431,524 tonnes of goods (+1.43 per cent), including in-transit containers (98.9 million tonnes). Liquid bulk totalled 167 million tonnes (-0.17 per cent), solid bulk totalled 91.7 million tonnes (-4.36 per cent), and general merchandise totalled 235,883,093 tonnes (5.11 per cent).

The busiest Spanish port is still Algeciras, whose traffic increased in 2016 by 4.71 per cent, making it also the busiest Mediterranean port. Valencia grew by 1.72 per cent, and Barcelona increased by a remarkable 3.8 per cent to 48.7 million tonnes. 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, the south of Spain and the Canary Islands; the Mediterranean routes, particularly the Italy–Spain route; 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.

The LNM covers almost all aspects of shipping, heralds the end of the 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 JURISDICCTION

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 also have a time bar of one year from the payment of the indemnity. Claims related to towage contract also have 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 CLC Convention 1992 and the Bunker Convention.

ii 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.

iii 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 the courts of which 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 Shipping Law 14/2014 (LNM) sets out indemnities for delays in the delivery beyond 30 days and the right to cancel the contract if the delay last 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 denounced by the client within one year from 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 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.

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.

According to the LNM, a bill of lading in electronic form can be issued if the shipper and carrier have agreed to it in writing before the uploading of the cargo onto the vessel. Similarly, the option of issuing maritime waybills is addressed, as Article 268 of 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 also regulates 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

An important new rule 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 bills of lading do not bind the acquirer of the bill of lading. Consent of this is required.

If the cargo insurer indemnifies the party with title to sue for damage or loss, the underwriter is liable instead.

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 as a result of 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 Convention, 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 the 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 Oil Pollution Fund Convention and the Bunker Convention.

V REMEDIES

i Ship arrest

Spain is party to the Arrest Convention 1999. 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 shipowner, 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 be in principle 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 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 multi-purpose 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.

Ship-owner 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 Shipping Law 14/2014 (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 Convention 1992 and the Oil Pollution Fund Convention as modified by its Protocol, as well as the Bunker Convention, signed in London on 23 March 2001.

With respect to national legislation, the LNM also regulates 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 quasi-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 CLC Convention 1972 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 Collision Convention 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 1989 Salvage Convention 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 LNM 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 Maritime Labour Convention 2006 (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 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 on shipping, making Spain one of a few countries in the world that has the vast majority of its maritime law regulated by the same legislative document, thus providing legal certainty.

Spanish courts are now interpreting its provisions. Jurisdiction clauses in bills of lading is one of the aspects of the LNM that is being developed by Spanish courts.

Before the LNM was enacted, the trend of the Spanish courts had been to dismiss cargo claims brought by cargo owners or their subrogated underwriters for lack of jurisdiction in the presence of jurisdiction clauses in bills of lading in the light of the Brussels Convention and the Regulation 44/2001.

Spain is an eminent shipper country where a majority of the imported and exported cargo is carried by foreign shipping companies. It is not surprising that the above trend was not popular in the cargo sector and the jurisdiction clauses in bills of lading was a hot topic in Spain to the extent that the preamble of the LNM echoes, to some extent, the position of the cargo sectors. This preamble says that the LNM contains what are known as specialities of jurisdiction that, based on the preferential application in this matter of the rules contained in the international conventions and in the provisions of the European Union, aims to avoid abuse detected, declaring the nullity of clauses of submission to a foreign jurisdiction or arbitration abroad, when those have not been negotiated individually or separately.

The LNM contains two relevant provisions on jurisdiction clauses. Article 468 declares that without prejudice to the terms foreseen in the international conventions in force in Spain and the provisions of the European Union, clauses of submission to a foreign jurisdiction or arbitration abroad shall be null and void and considered not to be included as set forth in contracts for use of the ship, or in ancillary navigation contracts, when they have not been negotiated individually and separately. This provision of law goes on saying that in particular, insertion of a jurisdiction or arbitration clause in the printed conditions shall not provide evidence in itself of fulfilment of the requisites established therein.

On the other hand, Article 251 of the LNM declares that the acquirer of the bill of lading shall acquire all the rights and actions of the conveyor to the goods, with the exception of agreements regarding jurisdiction and arbitration, which shall require the consent of the acquirer.

The Valencia Court of Appeal has already issued three decisions in relation to the validity of foreign jurisdiction clauses in bills of lading.

In the first of the decisions of the Valencia Court of Appeal, dated 27 July 2016, the Court did not admit the validity of the jurisdiction clause because the Court was not satisfied that there was an agreement given that the party challenging the jurisdiction clause was not aware of the usage of trade in relation to foreign jurisdiction clauses in bill of lading.

In the second of the decisions of the Valencia Court of Appeal, also dated 27 July 2016, the validity of the jurisdiction clause was admitted because of the ample experience of both parties in the industry and the prior course of dealing between them.

In the third of the decisions, dated 17 November 2016, the Valencia Court of Appeal also upheld a jurisdiction clause in a bill of lading stating that the recast Brussels Regulation (1215/2012) prevails over national provisions of law (Article 248 of the LNM) when the jurisdiction clause refers to courts of a Member State and that there has to be a valid agreement within the meaning of the Regulation for the clause to be valid and binding.

The Barcelona Court of Appeal has issued a clear decision on jurisdiction clauses referring to the court of a Member State of the EU. In this decision, the court stated that if the claimant is the shipper, then the recast Brussels Regulation (1215/2012) prevails over the Spanish domestic law and, therefore, Article 25 of the Recast Brussel Regulation cannot be superseded by Article 468 of the LNM. Therefore, the validity of the jurisdiction clause cannot be examined under Spanish law but under the law of the Member State whose courts are mentioned in the submission clause. However, if the claimant is the holder of the bill of lading then the conveyance of this document of title is be studied under Spanish law, in particular, in light of Article 251 of the LNM ordering that the acquirer of the bill of lading shall acquire all the rights and actions of the conveyor to the goods, with the exception of jurisdiction and arbitration clauses, which shall require the consent of the acquirer. Pursuant to Article 468 of the LNM, the jurisdiction clause will only bind the holder of the bill of lading.

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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.

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