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Panama: Law & Practice

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Panama: Trends & Developments

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Law and Practice

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Law 8 of 30 March 1982, which created the Maritime Courts and dictates the Rules of Maritime Procedure, with the modifications, additions and deletions adopted by Laws No 11 of 1986, No 12 of 2009, and others, establishes a specialised maritime jurisdiction composed of two first-instance maritime courts, of equal standing, and a Maritime Court of Appeals with nationwide jurisdiction.

The most common maritime and shipping claims are the following.

- Ordinary Proceedings (in personam).
- Special Proceedings:
 - (a) collision;
 - (b) ship-owner's limitation of liability;
 - (c) enforcement of maritime liens (in rem);
 - (d) enforcement of naval mortgage;
 - (e) creditors' concursus;
 - (f) abbreviated proceedings seeking summary judgment; and
 - (g) special proceeding for enforcement of domestic and foreign decisions.

All these claims are subject to the specialised maritime jurisdiction of the Republic of Panama.

1.2 Port State Control

The inspections of Port State Control (PSC) in Panama are carried out by technical staff of the General Directorate of Merchant Marine of the Panama Maritime Authority, which is the government entity which must guarantee compliance with the Maritime Conventions approved and ratified by the Republic of Panama. These inspections are carried out in accordance with the provisions of international maritime conventions such as the International Convention for the Safety of Life at Sea 1974 (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), Standards of Training, Certification, and Watchkeeping (STCW), Tonnage and Ballast Water Management (BWM) for the purposes of identifying deficiencies in ships visiting Panamanian ports. Ships which may be rendered sub-standard under the terms of these conventions should take measures to remedy the deficiencies found and the inspectors of the Panama Maritime Authority will take the necessary steps to ensure that such remedial measures are taken to guarantee safety and protection of the marine environment.

Panama is part of the Viña del Mar Memorandum of Agreement (the Latin American Agreement on Port State Control of Vessels) and the Tokyo Memorandum of Understanding (MOU), so port state control inspections are carried out following the guidelines of those two memorandums of understanding, as well as based on the guidelines established in the International Maritime Organization (IMO) Resolution A.1138(31), adopted on 4 December 2019, updating the procedure for Port State Control Inspections.

In relation to marine casualties such as grounding, investigations are carried out by the Panama Maritime Authority as the Flag State. These functions in practice are not mixed with the obligations of the authority as Port State. As a flag state, it is the Maritime Casualty Investigations Department of the Panama Maritime Authority which co-ordinates the casualty investigations aboard flag ships around the world and also incidents in Panama's jurisdictional waters.

In the case of pollution or wreck removal, the Directorate General of Ports of the Panama Maritime Authority is the entity in charge of investigating and carrying out related actions.

1.3 Domestic Legislation Applicable to Ship Registration

Laws 55 and 57 of 6 August 2008, known as the Maritime Commerce Law and the General Merchant Marine Law, respectively, are the pieces of legislation that govern all matters related to the registration of domestic and international service vessels under the laws of the Republic of Panama.

There are two governmental institutions within the Panama Maritime Authority (PMA) in charge of the registration of vessels:

- the Directorate General of Merchant Marine (DIGEMAR) which is in charge of all administrative matters such as the enrolment of vessels and ensuring safety and security matters thereof; and
- the Directorate General of Public Registry of Property of Vessels (Ships Registry) which is in charge of recording all matters related to the legal status of the vessels concerning ownership and encumbrances.

1.4 Requirements for Ownership of Vessels

There are no citizenship requirements for registration of a vessel under the Panamanian Register. Any person, natural or juridical, irrespective of the nationality, may enrol a vessel under the Panamanian flag.

Panamanian laws allow the registration of a vessel while under construction. To that end, a certificate issued by the shipyard

describing the vessel which is being built, the name of the company for which the vessel is being constructed and a declaration of the intention to transfer ownership thereof will serve as title of ownership to be registered at the Ships Registry.

1.5 Temporary Registration of Vessels

The General Merchant Marine Laws of Panama allows temporary registrations as follows:

Special Registration for Temporary Navigation

This registry allows the enrolment of a vessel for a period of up to three months for ultimate scrapping, for a delivery voyage or any other kind of temporary navigational purpose. The interested party needs to pay a sole charge of 40% of the net tonnage of the vessel plus USD150.

The vessel will be deleted by operation of law at the end of the three-month period at no cost, but the interested party may, at any moment, request such deletion by way of filing a petition thereof and effecting payment of the regular deletion of governmental fees.

The registration of title of ownership or mortgages is optional for this type of registration. Nevertheless, if a mortgage is to be recorded, the registration of title must contain acknowledgment by the mortgagee that the registration of the vessel will elapse at the end of the three-month registration period.

Lay-up Registration

This registration is valid for one renewable year and allows the registration of vessels under Lay-up status, subject to certification issued by a Recognised Organisation (RO) or the applicable Port Authority where the vessel is located.

One of the advantages of this type of registration is that no enrolment fees apply to vessels that will be enrolled in Panama under this type of registration for the first time, and they will be exonerated from paying part of the applicable regular annual tonnage taxes and fees. In addition, they will be exempt from having technical, safety and security certificates on board, but the respective RO should make the pertinent annotations concerning the Lay-up status in the subject certificates.

Once re-activated, an inspection must be carried out by an RO to ascertain that the vessel is duly fitted and in accordance with all national and international maritime laws and regulations as a requirement to revert to a regular international service registration.

In addition, Panamanian laws allow dual bareboat-charter registrations. It is permitted that a ship with primary registration on a foreign registry be registered under the laws of Panama as

a secondary registry, pursuant to bareboat charterparty arrangements. The inverse situation is also permitted by Panama's laws.

The system contemplated under Panamanian laws results in the dismemberment of the features or attributes of registration. On the one hand, the laws of the primary registry govern the juridical status of a vessel in terms of the concept of ownership and encumbrances, while, on the other hand, the laws of the special subordinated registry govern matters regarding the administrative and technical operation of the vessel, ie, manning, labour relations, safety and security matters.

A vessel registered in Panama under a bareboat-charter agreement will have a registration valid for a period up to the validity of the bareboat-charter agreement; this period may be renewed as per renewals of the subject charter agreement.

A vessel registered under this special type of registration will be considered a Panamanian-registered vessel and will only be allowed to fly the Panamanian flag. Likewise, it will be subject to all regular applicable taxes, fees and duties in accordance with Panamanian law. Payment in respect of those applicable during the whole period of registration must be made in advance upon enrolment.

1.6 Registration of Mortgages

Ship mortgages are required to be registered at the Ships Registry in order to provide legal and binding effects against third parties.

A Panamanian mortgage may be executed in any language and must be notarised by way of acknowledgment of the legal capacity of the signatories and the authenticity of the signatures thereof. Thereafter, the notary's signature must be legalised by a Panamanian Consul or via apostille.

Registration may be effected preliminarily via the filing of an application form containing the description of the essential terms of a mortgage. This preliminary registration is completed during the course of one business day and it has full legal effect for a period of six months, within which period of time the interested party must file for permanent registration. Upon completion of permanent registration, the effects are retroactive to the time and date of the preliminary registration.

Permanent registration may be effected via two alternative procedures:

- by way of a full translation of the mortgage into the Spanish language and protocolisation before a Panama notary public into a Public Deed, which is filed for registration with the Ships Registry; or

- if the mortgage is executed in English, it can be registered in its original English version, provided a short mortgage extract is executed in respect of the mortgage and that extract is translated into Spanish for permanent registration, together with the original mortgage and any relevant attachments in English.

1.7 Ship Ownership and Mortgages Registry

The records related to ship ownerships and mortgages kept at the Ships Registry are available on the public website of the Panama Maritime Authority and any third party may access this in order to obtain information about ownership title and encumbrances registered over Panamanian vessels.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

The following international conventions on pollution and wreck removal have been ratified by Panama and, therefore, will impact upon the liability of owners and interested parties in events of pollution and wreck removal:

- the International Convention for the Prevention of Pollution from Ships (MARPOL) and annexes;
- the International Convention on Civil Liability for Oil Pollution (CLC);
- the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER);
- the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention);
- the Nairobi International Convention on the Removal of Wrecks.

2.2 International Conventions: Collision and Salvage

The following international conventions on collision and salvage have been ratified by Panama and, therefore, will impact upon the liability of owners and interested parties in events of collision and salvage:

- the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS);
- the Convention on Facilitation of International Maritime Traffic (London 1965).

In addition, Chapters I and II of Title III of the Law 55 of 2008 of the Republic of Panama (the Panama Maritime Commerce Law) regulate collisions and salvage.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

The Republic of Panama is not a signatory to the 1976 Convention on Limitation of Liability for Maritime Claims. Notwithstanding, most of the substantive rules established in that international agreement have been incorporated into Panamanian domestic legislation, specifically in Law 8 of 1982, as amended, on maritime procedure.

Therefore, the Republic of Panama, without being part of the 1976 Convention on Limitation of Liability for Maritime Claims, in practice follows the general principles or rules of that convention, albeit with certain modifications and deletions.

Panama has not passed into law the limits as modified by the 1996 Protocol to amend the 1976 Convention on Limitation of Liability for Maritime Claims.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Constitution of the Limitation Fund

The constitution of the limitation fund for the payment of claims is subject to the following rules:

- any person alleged to be liable may constitute a fund with the court or other competent authority in any State in which legal proceedings are instituted in respect of claims subject to limitation;
- the fund shall be constituted in the sum of those of the amounts set out in the article relating to General Limits, and special articles relating to passenger claims, together with interest thereon from the date of occurrence giving rise to the liability under the date of the contribution of the fund;
- the fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked;
- the fund may be constituted either by depositing the sum or by producing a guarantee which is acceptable and which the court or other competent authority considers to be adequate. In Panama's Maritime Courts the guarantees usually accepted are cash (Certificate of Judicial Deposit), cashier's or certified cheques drawn against banks licensed to operate in the Republic of Panama, and irrevocable payment guarantees issued by those banks.

Parties Entitled to Petition the Limitation of Liability

Law 8 of 1982 regulates the parties who are recognised as having substantive legitimacy or standing to limit the liability of the claims described in that law. The rules contained therein are in essence the same rules contained in Article I of the 1976 Convention on Limitation of Liability for Maritime Claims.

In this respect, Law 8 of 1982 establishes that ship-owners and salvors have standing to limit their liability arising from the claims described in this law. The following are the different categories of persons who have standing and are entitled to limit liability, as follows:

- the ship-owner, understood as the registered owner of the vessel, and other parties who may be considered as owners: the charterer, the manager, and the operator of an ocean-going vessel;
- the salvor of the vessel, understood as any person rendering services in direct connection with salvage operations;
- any persons for whose acts, neglects, or defaults, the ship-owner or salvor is responsible may avail themselves of limitation of liability;
- regarding in rem claims, the law establishes that the liability of a ship-owner shall include liability in an action brought against the vessel herself;
- any insurer of liability for claims subject to limitation in accordance with Law 8 of 1982 shall be entitled to the benefits to the same extent as the assured itself.

It should be noted that Law 8 of 1982 clearly states that the act of invoking limitation of liability shall not constitute an admission of liability.

Limitation of Liability Fund Calculation

Law 8 of 1982 establishes that the liability limits for claims (excluding the claims of passengers) will be calculated as follows.

In respect of claims for loss of life and personal injury

- 333,000 units of account for a vessel with a tonnage not exceeding 500 tons;
- for a vessel with a tonnage in excess thereof, the following amount in addition to that mentioned in the first point:
 - (a) from 501 to 3,000 tons, 500 units of account per ton;
 - (b) from 3,001 to 30,000 tons, 333 units of account per ton;
 - (c) from 30,001 to 70,000 tons, 250 units of account per ton; and
 - (d) for each ton in excess of 70,000 tons, 167 units of account.

In respect of any other claims

- 167,000 units of account for a vessel with a tonnage not exceeding 500 tons;
- for a vessel with a tonnage in excess thereof, the following amount:
 - (a) from 501 to 30,000 tons, 167 units of account per ton;
 - (b) from 30,001 to 70,000 tons, 125 units of account per ton; and
 - (c) for each ton in excess of 70,000 tons, 83 units of account.

Furthermore, claims for damage to harbour works, waterways, and aids to navigation, will have the priority determined by the law.

3. Cargo Claims

3.1 Bills of Lading

The Republic of Panama has not adopted any international conventions concerning bills of lading. However, Law 55 of 2008 on Maritime Commerce, which covers carriage by sea and bills of lading, adopts into domestic legislation provisions based on the Hague-Visby Rules.

3.2 Title to Sue on a Bill of Lading

Any party deemed affected may sue on a bill of lading. In particular, Law 55 of 2008, on Maritime Commerce, provides that both the shipper and the carrier or effective carrier may be liable under a bill of lading.

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Law 55 of 2008, on Maritime Commerce, imposes the liability for damages on the vessel in rem, regardless of the party in control.

3.4 Misdeclaration of Cargo

Law 55 of 2008, on Maritime Commerce, states that a carrier can establish a claim against the shipper for misdeclaration of cargo if the goods are not properly packed or accurately described. The carrier will be indemnified on any loss resulting from poor packaging or inaccuracies in the information.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

As established by Panama's Code of Commerce, actions derived from land or sea transport contracts, or charterparty contracts, have a one-year time bar. Actions derived from liability in tort also have a one-year time bar, established by Panama's Civil Code. The one-year term will run from the date of the damage or the date of delivery of the cargo. This time limit cannot be extended or sustained.

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

The Republic of Panama has not adopted any international conventions regarding the arrest of vessels. This matter is covered by Law 8 of 1982, as amended.

4.2 Maritime Liens

Maritime Liens are set forth in Law 55 of 2008, on Maritime Commerce, and are listed as liens against the vessel, the freight and the cargo.

The following liens will have privilege over the vessel and will concur on its price in the following order:

- any judicial costs caused in the common interest of the maritime creditors;
- any expenses, compensation and salaries for assistance and salvage;
- any salaries, remuneration and compensation due to the captain and crew;
- the naval mortgage;
- any credits in favour of the Panamanian State for fees and taxes;
- any salaries and stipends due to stevedores and dock workers hired directly by the owner, operator or captain of the vessel to load or unload it;
- any indemnities due for damages caused by fault or negligence;
- any amounts owed by way of contribution in general averages;
- any amounts owed by virtue of obligations contracted for the necessities and provisioning of the vessel;
- any amounts taken on the bottomry of the vessel and rigging for supplies, arms and apparel, and insurance premiums;
- any salaries of pilots and watchmen and conservation and custody expenses of the vessel, its rigs and supplies;
- any indemnities owed to carriers and passengers for failure to deliver the goods carried or for any damages thereto imputable to the captain or the crew;
- the price of the last acquisition of the vessel and any interest due.

The following liens will have privilege over the freight and will concur on its price in the following order:

- any judicial costs caused in the common interest of creditors;
- any expenses, indemnities and salaries for assistance and salvage;
- any salaries, remuneration and compensation due to the captain and crew for the voyage in which the freight was earned;
- any amounts due by way of general averages contributions;
- bottomry bonds on freight earned;
- insurance premiums;
- any amounts of capital and interest owed by virtue of the obligations contracted by the captain on the freight, with the legal formalities;

- any indemnities owed to carriers and passengers for failure to deliver the goods carried or for any damages thereto imputable to the captain or the crew;
- any other duly registered debt guaranteed by bottomry bond or naval mortgage or pledge on the freight.

The following liens will have privilege over the cargo and will concur on its price in the following order:

- any judicial costs caused in the common interest of creditors;
- any expenses, indemnities and salaries for assistance and salvage;
- any commercial taxes or fiscal rights owed at the place of unloading;
- any transportation and cargo expenses;
- any leasing of storage for the things unloaded;
- any amounts owed by general averages contributions;
- bottomry bonds and insurance premiums;
- any amounts of capital and interest owed by virtue of the obligations contracted by the captain on the freight, with the legal formalities;
- any other loan with pledge on the cargo, if the lender holds the Bill of Lading.

4.3 Liability in Personam for Owners or Demise Charterers

A vessel may be arrested in rem, regardless of the owner's personal liability. Notwithstanding, the owners or demise may be held liable in an in personam claim if the applicable law so allows.

4.4 Unpaid Bunkers

A bunker supplier may arrest a vessel in connection with unpaid bunkers. Under Panamanian Law, bunker claims generally permit the arrest of a vessel, regardless of whether the supply was requested by the owner, operator or charterer. Any party affected by that debt may file for the arrest.

4.5 Arresting a Vessel

To obtain an arrest order it is necessary to file an arrest request and complaint, with prima facie evidence of the claim. The plaintiff must also cover the court arrest and maintenance expenses. In the Panamanian jurisdiction, the arrest is available in three instances:

Physically to Seize Property Susceptible to Arrest in Order to Make Effective Privileged Maritime Liens over That Property

If filing an in rem claim against the vessel, the Maritime Courts may order the arrest of a vessel of any nationality in Panamanian

waters, in order to attain jurisdiction. It would be necessary to deposit before the Maritime Courts the following:

- security to act without a power of attorney, which is returned in full once the power of attorney and a certificate of the legal existence of the plaintiff is filed with the court;
- USD1,000.00 security for damages that the arrest may cause;
- USD2,500.00 initial maintenance fees. If the arrest is not lifted shortly, the Marshal may request plaintiffs to post additional fees for maintenance. The failure to post such fees may result in lifting the arrest.

The plaintiff must file the evidences in respect of the applicable laws (copy of the laws, Legal Opinions, Lawyer Affidavit and/or others).

To Bring within the Jurisdiction of the Panama Maritime Courts Cognisance of Causes Emerging within or outside the National Territory, as a Result of Facts, or Acts Related to Navigation, When the Defendant Is outside Its Jurisdiction

In this case, the plaintiff may request the arrest of the vessel (regardless of her nationality or of the ship-owner's nationality) while navigating in Panamanian waters or Panamanian ports, even if there are no other contacts with the Panamanian jurisdiction. It would be necessary to deposit before the Maritime Courts the following:

- security to act without a power of attorney, which is returned in full once the power of attorney and a certificate of the legal existence of the plaintiff is filed with the court;
- USD1,000.00 security for damages that the arrest may cause;
- USD2,500.00 initial maintenance fees.

To Assure That the Proceedings Will Not Have an Illusory Effect, and Keep the Defendant from Transferring, Dissipating, or Encumbering Properties Susceptible to Those Measures

In this case, the plaintiff may request the arrest of the vessel involved in the transaction that gave place to his or her claim, or any other vessel or property belonging to the defendant.

In such a case, the Maritime Courts would request security in an amount between 20% and 30% of the amount of the claim. The amounts would be affixed discretionarily by the judge. Security must be posted in cash, certified cheques issued by banks licensed to operate in Panama, or Panamanian public debt titles.

After filing the complaint and an arrest motion, as a general rule of proceedings, the following documents must be filed before the Maritime Court:

- power of attorney;
- a certificate of the legal existence of the plaintiff;
- a certificate of the legal existence of the defendant: this document will be necessary only if the claim is filed against the owner of the vessel (in personam complaint);
- evidence of the claim.

All foreign documents must be notarised as authentic and legalised according to the 1961 Hague Convention on the Apostille or legalised before a Panamanian Consulate at the place of issuance. Documents in languages other than Spanish must be translated by an official translator.

4.6 Arresting Bunkers and Freight

Law 8 of 1982, as amended, allows for arrests to be executed against bunkers and freight, under the general rules for arrest.

4.7 Sister-Ship Arrest

Sister ships or vessels owned by affiliates may be sued and arrested in rem in lieu of those on which the claim originated, when the applicable substantive law permits it. The plaintiff must file prima facie evidence demonstrating that, under the applicable substantive law, the arrest of a sister ship is viable, and that the vessel subject to the arrest is a sister ship under the applicable substantive law.

4.8 Other Ways of Obtaining Attachment Orders

Law 8 of 1982, as amended, allows a party with reason to believe that, during the time prior to a judicial recognition of their right, they will suffer imminent or irreparable danger, to request from the Maritime Court the most appropriate conservatory or protection measure which will provisionally guarantee, depending on the circumstances, the effect of a judgment on the merits (ie, an injunction order). Such measures normally are in the form of an order against the sale, transfer or mortgage of Panamanian vessels.

Accordingly, the Maritime Court may issue an order restraining the sale of a Panamanian-registered vessel upon the filing of a complaint against the vessel or her owner with a petition accompanied with evidence of the existence, and the merits, of the claim. The plaintiff must deposit with the court security, which is fixed by the court between USD10,000.00 to USD50,000.00.

The security must be posted in cash, certified cheques issued by banks licensed to operate in Panama, Panamanian public debt titles or any other guarantee agreed by the parties.

The plaintiff must file a complaint, together with security for damages and all the preliminary evidences to support the facts of the complaint. Initially, documents may be filed in fax or pdf

copies with an undertaking to produce the originals within a short period of time.

Once issued, the court sends the order to the Department of Registration of Titles and Encumbrances of the Shipping Bureau and these authorities make a note on the records of the vessel.

4.9 Releasing an Arrested Vessel

Once the arrest is executed, the defendant or any other interested party may petition the release of the arrest by posting a security which is affixed by the court to cover the amount of the claim, interest (three years), arrest expenses and legal fees. The security must be posted in cash, certified cheques issued by banks licensed to operate in Panama, Panamanian public debt titles or any other guarantee agreed by the parties.

The parties may agree the amount, the nature and the conditions of the security which will be substituted for the arrested vessel, and must jointly petition the judge for the lifting of the arrest, consigning at the same time the agreed bond. The parties may agree on other types of guarantees such as LOI/LOUs, Bank Letters, or P&C letters.

If the parties do not reach an agreement as to the amount and nature of the security to be consigned, the court, on a motion by the defendant or a third party interested in lifting the arrest, shall set the amount of the security so that it covers the amount claimed in the complaint plus interest (three years), costs and expenses. This amount shall not exceed the market value of the property.

Notwithstanding the foregoing, when the arrest is requested to make effective proprietary rights, or the possession and the use of the property under arrest, the arrest may not be lifted or suspended.

4.10 Procedure for the Judicial Sale of Arrested Ships

When ordering the judicial sale, the court will instruct the Marshal to carry out the sale procedure. The court will appoint a surveyor to survey the vessel and determine her market value. The plaintiff must pay the surveyor professional fees.

The court order fixing the judicial sale dates must be published at least twice a week until the sale is completed, in national newspapers and any other specialised publications that the parties deem convenient.

Bids and counter-bids will be received in writing by the Marshal. On the same date, the oral bidding and counter-bidding process will begin. Bids that have been submitted to the Marshal will be

announced and the vessel will be provisionally adjudicated to the bidder with the highest price.

The successful bidder must pay the full purchase price within three working days after the provisional adjudication of the vessel. Payment must be made in cash, or by a certified cashier's cheque in the name of the Maritime Court. On the date of the sale, the Marshal will issue a Provisional Adjudication Certificate in favour of the successful bidder.

After the full purchase price has been paid by the successful bidder, the court will issue a Statutory Adjudication Certificate in favour of the purchaser. This document will constitute the legal title of the vessel and will state that the vessel has been acquired in a judicial sale free from any encumbrances.

The sums collected from the judicial sale of the vessel will be consigned with the court by the Marshal and will be deposited in a special account maintained by the court. The Marshal must apply to the court for payment of his or her fees and expenses of arrest, custody and sale.

Once the sale proceeds have been paid into the court, any party who has obtained a judgment in rem against the vessel or her sale proceeds may apply to the court for determination of priorities, if necessary, and for payment of their claim.

Notice of such an application will be given by the court to all parties who have actions filed against the vessel, warning them to lodge their claims. If claimants do not reach an agreement with respect to the distribution of the sale proceeds, the court will appoint an administrator to determine the order in which to pay the privileged maritime lien-holders. The naval mortgage will rank fourth in priority.

The Marshal's claim against the sale proceeds for his or her fees and expenses has the highest priority and until he or she has been paid in full, the court will always reserve sufficient funds in court for that purpose. The plaintiff will also be reimbursed for the sums that he or she supplied to the Marshal for the arrest, custody and conservation of the vessel, before payment is made to any maritime lien-holder. The order of priorities in which the sale proceeds will be paid will be determined by the applicable substantive law.

4.11 Insolvency Laws Applied by Maritime Courts

Panama has enacted Law 12 of 2016 on insolvency proceedings, which came into effect in January 2017. The Insolvency Law includes provisions similar to those included in Chapter 11 of the United States Bankruptcy Code, creating a specialised insolvency jurisdiction before the civil courts.

Bankruptcy financial protection will be granted by the civil courts to the debtor who undergoes a reorganisation process under Law 12 of 2016. During this period, no executory proceedings, executions of any kind, restitution of assets or evictions may be initiated against the debtor.

Law 12 of 2016 on insolvency proceedings is recent and has not been extensively tested by the courts.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

Any party who by mistake, fault, negligence or bad faith seizes an asset or property that does not belong to the defendant or in contravention of a prior and express agreement between the parties, or a party requests an arrest for a maritime lien which is inexistent or time-barred by the statute of limitation, will be responsible for the damages caused, as well as for the payment of the expenses and costs arising from such action.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Chapter IV of the Panama Maritime Commerce Law regulates the Contract for the Carriage of Passengers by Sea, while Chapter II of Law 8 of 1982 (Code of Maritime Procedure) regulates the Procedure for Limiting the Ship-owner's Liability.

Article 1651 of the Code of Commerce of Panama establishes a one-year time-bar provision for indemnities derived from shipping transport or charter contracts and a time-bar provision of six months if its issuance is within the territory of the Republic of Panama.

Limitations on liabilities available in respect to a passenger's claim include:

- claims related to death and bodily injury which occurred on board or were directly connected to the exploitation of a vessel or salvage or assistance operations, and damages resulting from any of these causes;
- claims related to damages resulting from a delay in the transportation of passengers or their luggage by sea; and
- claims for damages different from those arising from contractual rights, caused in direct connection with the exploitation of the vessel or with salvage or assistance operations.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Law 8 of 1982, as amended, recognises the validity of the substantive law included in bills of lading. Maritime Courts may abstain from hearing a cause in which the parties have previously and expressly negotiated to submit their controversies to a court in a foreign country, and have thus agreed this in writing. However, pro forma or adhesion contracts (such as bills of lading) are not considered to be previously and expressly negotiated.

6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading

Law 8 of 1982, as amended, recognises the validity of an arbitration agreement, provided it is in writing and has been negotiated between all parties. Arbitration can be conducted pursuant to the rules chosen by a party, otherwise the Panamanian law on arbitration will govern the arbitration proceeding. Maritime courts have to abstain, at the request of one of the parties, from continuing to hear a claim already submitted to arbitration, as well as in cases where an arbitration clause exists. In such cases, the maritime courts can order the taking of appropriate measures to safeguard a party's rights, such as the consigning of a surety bond before the competent court or a waiver of time-bar defence, if the statute of limitations has been interrupted. If an arrest or seizure has taken place, or it is not possible to consign a bond before the competent court, the maritime courts can stay the main proceeding and keep the arrest or seizure in place, subject to the results of the arbitral proceeding.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Foreign arbitral awards are recognised and enforced in Panama in accordance with either the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the 1975 Inter-American Convention on International Commercial Arbitration or any other treaty ratified by Panama on the recognition and enforcement of arbitral awards. The petition for recognition is filed before the Fourth Chamber of the Supreme Court of Justice.

Law 131 of 2013 regulates national and international arbitration in Panama, and incorporates modern international arbitration practices and principles.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In practice, the maritime courts are likely to grant the claim if the plaintiff complies with the appropriate prima facie evidence.

Notwithstanding, the maritime courts may abstain from hearing a cause in which the parties have previously and expressly negotiated to submit their controversies to a court in a foreign country, and have thus agreed this in writing. However, pro forma or adhesion contracts (such as bills of lading) are not considered to be previously and expressly negotiated.

6.5 Domestic Arbitration Institutes

The Centre for Maritime Conciliation, Mediation and Arbitration of Panama (CECOMAP), founded in 2007 by the Panama Maritime Chamber and the Panama Maritime Law Association, specialises in maritime claims.

6.6 Remedies Where Proceedings Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In proceedings commenced in breach of a foreign jurisdiction or arbitration clause, the defendant may raise incidents or challenges which can lead to an annulment of proceedings, such as lack of jurisdiction and lack of competence.

The arbitration jurisdiction is recognised at the constitutional level in Panama and Law 131 of 2013, on Arbitration, dictates that, in disputes which include arbitration clauses, a judicial court shall decline jurisdiction in favour of the arbitral tribunal, and immediately forward the file to the arbitral tribunal.

7. Ship-Owner's Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

The Panamanian tax system is based on the principle of territoriality. Only income generated in the national territory is taxed and foreign-source income is exempt.

The 2010 amendments to the Tax Code introduced provisions in relation to transportation and include the international transportation in the portion corresponding to freight, passengers, cargo and other services of which the origin or final destination is Panama as an activity that shall be considered as income obtained from sources within Panama. Notwithstanding, it is important to indicate that the amended Tax Code specifies that these activities will be exempt if the international companies have their home port in Panama.

Income obtained within Panama from the operations of ships registered abroad will also be exempt if the income obtained by Panamanian-registered vessels in that country is given a similar exemption under the principle of reciprocity. The same applies to income obtained within Panama from operations of ships registered abroad by foreign persons resident, or not, in the

national territory, provided that Panamanian natural or legal entities are given similar treatment in the country of the nationality of that person.

The sale of vessels registered under the Panamanian flag and engaged in international trade shall be exempt from income tax.

8. Implications of the Coronavirus Pandemic

8.1 COVID-19-Related Restrictions on Maritime Activities

There are no major restrictions in the operations of ports aside from biosecurity measures well known around the globe, which are carefully implemented and enforced.

In respect of crew changes, Panama has implemented protocols thereof under various modalities, such as:

- ship-to-ship crew change;
- group repatriation of Panamanian crew per ship;
- ship-to-ship repatriation with intermediate terrestrial modality;
- Panamanian-for-Panamanian crew change in national ports;
- foreign-for-Panamanian crew change in national ports;
- embarkation and disembarkation of Panamanian crew abroad; and
- co-ordination of charter flights for purposes of bringing to Panama crew of diverse shipping lines to achieve crew changes in Panama.

Between March and October 2020, more than 11,000 seafarers were able to return to their homes, thanks to the efforts of the Panama Maritime Authority in this respect.

8.2 Force Majeure and Frustration in Relation to COVID-19

The Maritime Courts of Panama have currently not made public any decision in regard to concepts of *force majeure* and/or frustration, or any other contractual relief, due to the coronavirus pandemic.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

There are no jurisdiction-specific and maritime issues that apply here.

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ticipation within the major maritime associations, such as the Panama Maritime Law Association (APADEMAR), thus contributing to the development of the sector. The firm's clientele includes ship-owners, charterers, shipyards, ports and port terminals owners, insurance companies, international banks and financial institutions, private equity investors, consortiums and other players in the maritime sector.

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INTERNATIONAL LAWYERS

Trends and Developments

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Introduction

Panama's role as a maritime country is undeniable. For centuries, Panama's geography has provided a bridge for communication between people from different countries and continents, through its water passageways. Through its maritime infrastructure and services, Panama has created a competitive and efficient logistics hub which has shortened distances and barriers for world trade.

The maritime industry in Panama consists of activities that are generated in several sectors, including the Panama Canal and its ports, the sale of marine fuels, agencies and shipping lines, fisheries, transport by rail between the port terminals in the Pacific and the Atlantic, domestic shipping, pipelines, port terminals, other maritime auxiliary services and the Ship Registry of Panama. These activities never stop and are a constant source of income, which supplies an important economic contribution of approximately 33.5% to the gross domestic product (GDP) of the Republic of Panama.

The Ship Registry of Panama

It is a matter of great pride for the nation of Panama to have a Ship Registry which has provided quality service to the international maritime community for over 100 years, comprising the largest merchant marine fleet in the world to date.

Throughout 2020, and despite the enormous limitations brought by the COVID-19 pandemic, the Panama Maritime Authority (AMP), through its General Directorate of Merchant Marine, was able to incorporate 1,033 vessels into its fleet and 29.7 million gross registered tonnage (GRT). From this group, 339 vessels corresponded to new-builds, representing a growth of 6.22% when compared to the total numbers obtained from 2019. In addition, deletions and transfers to other flags were reduced to 25.8%, which represents the best statistical facts in the last ten years.

With these positive results, for the first time ever, the Panamanian flag reached a total tonnage of 230,577,081 GRT, from 8,516 registered vessels, which roughly comprises 16% of the world's merchant fleet.

The size of the records can also be reflected in relation to their contribution percentage in the budget of the International Maritime Organization (IMO) which Panama, as an "A" member country, represents one of its ten major contributors.

Trends and Developments

The major trend in the maritime sector of Panama has been the modernisation of the Panama Ships Registry in order to update its procedures into the digital era.

The new applications integrate into a single platform, the technological systems utilised by the General Directorate of Merchant Marine and the General Directorate of the Public Registry of the Property of Vessels, to include innovations, adapting to the existing technology, and to undertake improvements to the workflow of the Panama Ship Registry.

Some of the applications worth mentioning are the following.

- Integral management of the naval registration process – this contemplates the integration of the workflow at the Panama Ship Registry, for the purpose of facilitating “red tape” for the user.
- Unification of the database – it will solve the problem that is presented by the incongruities of the different databases that are kept in both General Directorates.
- Remote presentation of documents – through the web platform, users may enter the system, load and present their documents upon both General Directorates. In this respect, as of 27 April 2020 remote reception of Public Deeds for titles of ownership and mortgages was initiated as part of the technical modernisation plan for the maritime administration. The implementation accelerated the process and reduced timeframes. Up to 31 December 2020, about 4,089 documents (68% of the registration procedures) were received remotely.
- Electronic signature – all the documents (including Public Deeds) will be signed electronically, at the external level as well as the internal level; this functionality involves an agreement with the Panama Public Registry and the General Directorate of Electronic Signatures. Public Deeds will be authorised by public notaries who will use duly registered electronic signatures certified by the Panamanian government, thus increasing legal certainty.
- Payment gateway – this contemplates the different payment methods utilised at present, such as credit and debit cards.
- Registry calculator – users may calculate the costs for each one of their operations through the web platform.
- Issuance of certifications electronically – through the webpage, users may request and receive their certifications

of property and encumbrances signed electronically; the certifications will be bilingual.

- Electronic apostille – the respective legalisation paperwork is filed before the Ministry of Foreign Relations of the Republic of Panama, thus the electronic modernisation of the issuance of the apostille in Panama will increase the level of satisfaction of the user and the competitiveness of the Panama Ship Registry.
- Notification of online procedures – implementation of an application for mobile devices for follow-up of the procedures executed before both directorates and the issuance of alerts by electronic mail.
- Bilingual platforms – the new web platform utilised to carry out the paperwork before the Panama Ship Registry will be in the English or Spanish language.
- Statistical module – the technological platform will permit the management of reports, dynamic graphs and management indicators for the purpose of extracting statistical data to facilitate decision-making and marketing by the national merchant marine.
- Validation of certificate of good standing – the physical presentation of the certificate of good standing will not be necessary for the paperwork required before the General Directorate of the Public Registry of the Property of Vessels, as the validation will be effected through the system.
- Electronic consular validation – the notarial certifications effected by the privative consuls of the merchant marine may be effected through the system and backed by their electronic signatures for the purpose of safeguarding registration safety.
- Unique window for maritime financing – this technological platform will contemplate the necessary paperwork for the procurement of the certifications of the entities established in Panama for the purpose of offering shipping financing or developing bankable maritime projects, for the procurement of fiscal, labour and migratory incentives, as established in Law 50 dated 28 June 2017.

Regulatory Initiatives

Amendment of the law of the public registry of vessels

In view of the upgrade being implemented on the technological platform of the registry's procedures, the maritime authorities of Panama, along with members of the Maritime Lawyers Association of Panama (APADEMAR), integrated a commission creating the project of a new decree amending Executive Decree No 259 of 31 March 2011, which regulates the different filing and legal documentation of the Public Registry of Vessels.

This new Decree will update and simplify the procedures for registration of title of ownership and mortgages, cancellation and correction of documents filed, registration of orders from

administrative and judicial institutions, and certifications, as well as authentications.

The new Decree is expected to be approved by early 2021.

Creation of the law for maritime purpose companies

Panama's Company Law No 32 dates back to 1927. This has been the regulatory framework which maritime companies have incorporated in Panama, to date.

In order to keep up with other jurisdictions and with the new corporate trends, maritime authorities and members of APADEMAR have in addition established a commission to study the creation of a new law in order to incorporate maritime purpose companies. The new law anticipates being user-friendly for all types of maritime operations and at the same time upgrading its standards to present transparency and compliance requirements from the OECD and other international entities.

Challenges Ahead

COVID-19 perspective

Throughout 2020, the effects of the COVID-19 pandemic have impacted numerous commercial areas of the world's economy, including the maritime sector which accounts for almost 90% of total world trade.

A greatly affected sector has been the crew on board vessels and the need to apply the protocols set by the International Maritime Organization for change of crew and repatriation to their country of origin, with which Panama has complied to the letter, with excellent results.

While the application of vaccines and a possible end to the pandemic are awaited, similar conditions for 2021 or part thereof may still be expected. Therefore, the maritime administration will need to keep being resilient and adapt its procedures according to the short-term situations which may be presented along the way. Furthermore, the administration will need to make sure that conditions and treatment of crew are up to the standards required by the Maritime Labour Convention (MLC) 2006.

The LNG and LPG market and the situation in Panama

One of the most dynamic sectors in shipping is the LNG and LPG market, in which many of its vessels form an integral part of the Panamanian flag. LNG is a sensitive product and therefore requires specialised ports for handling, with many of these being in Asia and Europe.

The Panama Canal is one of the main navigating routes for LNG between continents. There is, however, a traffic-jam situation in the Panama Canal as well as a stronger demand for consumer

goods, due to the pandemic. This situation has forced LNG ships either to wait in line or to take other routes. Not reaching their destinations on time has caused LNG prices to increase.

The Panama Canal Authority (ACP) is very keen to have LNG and LPG traffic travel into its main waterway, due to its economic return, and the challenge will be how to increase the efficiency of its operations without decreasing the levels of security which are necessary for the handling of these types of ships.

Change of LIBOR

In the ship finance market, the projected deadline for the change of LIBOR to loan agreements is looming large. The issue covers both LIBOR loan agreements already executed as well as all LIBOR-based transactions that are likely to continue after 2021.

Based on the present Law No 55 of 6 August 2008, the change to LIBOR would entail the necessity to register possibly thousands of mortgage addenda in order to cover such an amendment of interest to the principal obligation. This additional documentary burden would be severely cumbersome for the shipping industry. It will still be necessary to wait and see what developments appear during this year with regard to this matter in order to decide what approach to follow. However, Panama must be prepared potentially to opt for a change of law, for the benefit of the present and future flag users.

Conclusions

Despite the recession and obstacles caused by the pandemic, with fewer vessels in the market as well as the pressure imposed by other flag competitors (mainly Liberia and the Marshall Islands), the Ship Registry of Panama has obtained positive results in its fleet growth. Prioritising the update of technology in the procedures has been positive, thus assuring the continuity of services. As an example, during the most crucial months of the pandemic, the General Directorate of Public Registry of Ships processed a total of 5,951 documents for registration as mortgages, titles of ownerships, certifications, etc. This policy should continue in order to sustain constant development.

Many challenges lay ahead; however, Panama should be ready to address these with its usual responsible and flexible business approach.

PANAMA TRENDS AND DEVELOPMENTS

Contributed by: Belisario Porras, Patton Moreno & Asvat

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