IN-DEPTH

Shipping Law

EDITION 12

Contributing editors
Bruce G Paulsen and **Brian P Maloney**
Seward & Kissel LLP

LEXOLOGY

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In-Depth: Shipping Law (formerly The Shipping Law Review) aims to provide those involved in handling cross-border shipping disputes with an overview of the key legal issues arising across multiple jurisdictions, including leading maritime nations and major shipbuilding centres. Among other things, it analyses the most noteworthy aspects of available dispute resolution procedures; shipbuilding contracts, contracts of carriage and cargo claims; limitation of liability; ship arrest procedures; and much more.

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Editors' Preface

Bruce G Paulsen and **Brian P Maloney**

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We are very pleased to be a part of the twelfth edition of Lexology In-Depth Shipping Law, to provide those involved in handling shipping disputes with an overview of issues that cut across multiple jurisdictions.

There are a variety of contributions on the law of leading maritime nations, including major flag states, countries known as shipbuilding centres or in which many shipping companies are located and a range of other jurisdictions. Each chapter aims to provide a commercial overview of the shipping industry and of the legislative framework for shipping, as well as a 'year in review' reflecting the most significant recent developments across local case law as well as market, policy, regulatory and legislative developments as may be applicable.

In addition, the authors provide an overview of local procedures for handling shipping disputes, including arbitration, litigation and alternative dispute resolution. Jurisdiction, enforcement and limitation periods are all covered, as are the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims.

With respect to limitation of liability, the chapters include a focus on 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, security and counter-security requirements, and the potential for wrongful arrest claims are also included. The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are also examined.

The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction in the coming year, market trends and other recent innovations. There has been disruption to trade routes, friction resulting from the imposition of economic sanctions in key markets and sectors and geopolitical turbulence resulting from the ongoing Ukraine–Russia conflict and in and around the Middle East, has deeply impacted the shipping industry. In addition to the dynamic world of trade sanctions and export controls, other key legal issues include regulatory developments to facilitate the use of electronic bills of lading and regulatory responses to environmental challenges, as well as a new international convention on the judicial sale of ships, among other international agreements. Operational considerations, including the possible transition to sustainable or alternative fuels, decarbonisation and digitalisation, are also hot button issues as to which regulation and policy change remains ongoing.

Through these uncertainties and ongoing regulatory changes, the global shipping sector remains resilient, and the legal practitioners supporting that industry – in part through their work in this volume – reflect that ethos. We would like to thank all of the contributors

for their assistance in producing the twelfth edition of this release, and hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

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Summary

Introduction

Commercial overview of the shipping industry

Shipping and port activities are of paramount importance to the Venezuelan economy. The country's population of nearly 30 million people relies very much on the importation of bulk and manufactured goods, and exports of oil and steel-related products. In the past, according to figures held by the national shipping registry, the domestic fleet of over 500 gross tonnage (GT) comprised approximately 400 vessels totalling 1.2 million GT. Despite the absence of up-to-date official data, it is fair to assume that this figure may have decreased in recent years as a result of the current economic situation and sanctions.

The state remains the principal shipowner. In addition to the tanker fleet of Petróleos de Venezuela SA (PdVSA), it has acquired by expropriation Conferry, the firm in charge of transport services between the mainland and Margarita Island. In 2011, the state also incorporated by Presidential Decree No. 7,677 the Corporación Venezolana de Navegación SA (Venavega), a shipping company serving the riverine, coastal and international seagoing market. Through Executive Decree No. 769 dated 5 February 2014, all maritime cargo transportation functions of the public administration were centralised and transferred to Venavega. Therefore, the private fleet is rather modest.

A number of years ago, the PdVSA embarked on a renovation and expansion programme of its fleet, to enable it to carry a significant percentage of all exports and to diversify its clients, with China at the forefront. However, this programme did not work out as planned, to the extent that only two Chinese-made oil tankers were added towards the end of 2013 to the Venezuelan fleet, which is currently affected by a lack of investment and obsolescence. The public fleet has also been affected by a lack of maintenance and, in particular, resources to purchase new tonnage.

The port system involves petrochemical terminals in the east and west of the country (such as La Salina, El Tablazo, Puerto Miranda, Amuay, Cardon and José) under the control of the PdVSA; bulk terminals in the Orinoco river (including Sidor and Ferrominera) under the administration of Corporación Venezolana de Guayana; and the public ports (such as Puerto Cabello, La Guaira, Maracaibo and Guanta) under the control of Bolipuertos SA, a state-owned company exclusively in charge of warehouse and storage facilities. Stevedoring services within public ports, however, are performed both by this public agency and private port operators. Few private marine terminals operate port facilities. No recent official cargo and traffic figures have been released by Bolipuertos SA; nevertheless, because of the rigid exchange control, devaluation and a huge decline in oil prices in the past, there has been a significant reduction in cargo volumes, said to have reached 80 per cent nationwide. In 2007–2008, Venezuelan ports handled more than 1.2 million twenty-foot equivalent units (TEUs). Of this total, 800,000 TEUs were handled by Puerto Cabello, placing it the 100 top container terminals worldwide. By contrast, in October 2020, the unofficial figure was just 220,000 TEUs, approximately.

The construction of the Container Terminal at Puerto Cabello by China Harbour Engineering Company, at a cost of US$520 million and with the capacity to handle 700,000 TEUs in its first phase, was stopped because of a lack of funds. There is currently little

chance of this being resumed. Fortunately, the expansion and modernisation of the port of La Guaira, entrusted to the Portuguese Teixeira Duarte Consortium, has been completed, and the container terminal is currently open and operated by Bolipuertos SA.

The main shipyard and dry dock facilities are Diques y Astilleros Nacionales CA (Dianca) and Ucocar. Although these are mainly linked to the Ministry of Defence, rendering services to naval and PdVSA ships, they also serve private ships. Dianca designs, builds, repairs, modifies and maintains ships and naval structures in steel and aluminium up to 30,000 deadweight tonnage (DWT) and Ucocar up to 1,000 DWT.

General overview of the legislative framework

A comprehensive set of laws governing the maritime business was enacted in 2001. This legal framework includes the Organic Law of Aquatic Spaces, the General Law on Merchant Marine and Related Activities, the General Law on Ports, the Law on Maritime Commerce, the Fishing Law, the Coastal Law, the Law on Maritime Procedures and the adoption of the 1965 Facilitation Convention. In addition, Venezuela has adopted the principal International Maritime Organization (IMO) instruments, of which four deserve further comment.

The Organic Law of Aquatic Spaces (last amendment published in *Official Gazette Extraordinary* No. 6,153 of 18 November 2014) reorganises maritime administration and creates the maritime jurisdiction, setting out the general principles governing the shipping and port business throughout the country. The Law provides that maritime authority will rest with the Ministry of Infrastructure through a national body named the National Institute of Aquatic Spaces (INEA), based in Caracas, which exercises its functions locally through the port captaincies.

The General Law on Merchant Marine and Related Activities (last amendment published in *Official Gazette Extraordinary* No. 6,153 of 18 November 2014) sets out the rules for the administrative regime of navigation and seafarers, activities of national ships in domestic and international waters, the general principles applicable to the merchant marine, and the coordination of the involvement in the industry by the public and private sectors.

The Law on Maritime Commerce (*Official Gazette* No. 38,351 of 5 January 2006) incorporates into domestic legislation the main international conventions, repealing the old maritime rules inserted in the Commercial Code. It incorporates the provisions governing aspects of private law, such as maritime jurisdiction, carriage of goods, limitation of liability, arrest of vessels and salvage, based on the international conventions not ratified by Venezuela.

Finally, the General Law on Ports (*Official Gazette* No. 39,140 of 17 March 2009) aims to form a national port system by introducing general principles in respect of the ports regime and infrastructure, governing public and private ports nationwide, to ensure coordination to consolidate a modern and efficient port system. Title IV of the Law introduces provisions for the liability regime of port operators and port administrators, based on the 1991 United Nations Convention on Liability of Operators of Transport Terminals in International Trade; however, some of the provisions have been reviewed to adjust them to particular Venezuelan port practices, whereas others have been introduced to cover situations that the Convention does not contemplate.

Year in review

There have been significant developments in the sanctions area during the past year. In late February 2025, President Donald Trump announced the revocation of Chevron's licence to operate in Venezuela, reversing the previous Biden administration's policy that had allowed Chevron to resume limited oil operations in the country as part of diplomatic efforts with the Venezuelan government. Trump cited the regime's failure to comply with electoral reforms and to cooperate on the return of Venezuelan migrants as key reasons for the decision.

Following Trump´s announcement, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) issued General License 41A on 4 March 2025. This licence authorised only the wind-down of Chevron's joint ventures with Venezuela's state oil company, Petróleos de Venezuela, SA (PdVSA), with a deadline for completion set at 12.01 am EDT on 3 April 2025. The licence specifically prohibited new business and restricted ongoing activities to those strictly necessary for winding-down operations.

In March 2025, OFAC further updated its guidance, issuing General License 41B, which extended the wind-down period until 27 May 2025, giving Chevron and other affected companies additional time to cease operations or seek specific OFAC authorisation. This extension followed lobbying efforts by Chevron for more time to manage the operational exit.

On 24 March 2025, the US administration issued a novel executive order authorising the Secretary of State to impose 'secondary tariffs' on imports into the United States from any country that continues to purchase Venezuelan oil after 2 April 2025. This measure is targeting not just direct US business with Venezuela, but also third countries – such as China, India, France, Italy and Spain – that import Venezuelan crude oil and export goods to the United States.

The secondary tariffs represent a significant escalation and a new tool in US sanctions policy, aimed at pressuring both the regime and its international partners. These moves mark a sharp reversal from the Biden administration's approach, which had temporarily eased some oil sector sanctions in exchange for commitments to hold free elections; a process the US administration now says not honoured.

Forum and jurisdiction

Courts

Shipping disputes are litigated in the courts with maritime jurisdiction and governed by the procedural rules introduced with the enactment of the Law on Maritime Procedure, published in the *Official Gazette Extraordinary* No. 5,554, dated 13 November 2001. Oral and abridged proceedings are the main features of the specialist jurisdiction. Appeals are heard by the superior courts, whose decisions are reviewed by the Supreme Court of Justice. The first instance courts and the superior courts with jurisdiction over maritime affairs and located in different states of the country are both unipersonal, corresponding

to the Venezuelan jurisdiction to hear without any derogation whatsoever cases regarding contracts of carriage of goods (bills of lading under liner traffic) or persons that enter the national territory. Although provisions for the carriage of goods are compulsory, those for charterparties are complementary to the will of the contracting parties, and so enforcement of foreign arbitration clauses inserted in the charterparty are allowed by maritime courts. Nevertheless, it has been ruled by the Constitutional Chamber of the Supreme Court of Justice that for a tacit renunciation of the arbitration clause, the defendant must avoid any initial activity in the proceedings other than to invoke the lack of jurisdiction of the arbitration.[1]

Nevertheless, maritime courts do not deal with a significant number of maritime-related matters, including drugs, pollution, personal injuries and customs fines, as these are assigned to criminal, environmental and taxation courts.

Arbitration and ADR

The Centre for Commercial Conciliation and Arbitration (CEDCA) and the Chamber of Commerce, Industry and Services of Caracas through its Arbitration Centre both have proven experience in arbitration. The procedures are conducted in accordance with the rules set up by each arbitration centre; in the absence of rules, the procedure specified in the Law for Commercial Arbitration enacted in 1998 should apply. Few cases on maritime matters referred to conciliation or arbitration are known in the domestic forum; however, one notable decision is an interim measure by way of arrest granted by CEDCA, allowing the mortgagee (a bank) to enter in possession and exploitation of the vessel because of default in payment by the mortgagor, pursuant to Article 141 of the Law on Maritime Commerce (CEDCA, File No. 070-12). On assessment of the facts and the solvency of the petitioner, arbitrators agreed to place the ship in the possession of the mortgagee without requesting any guarantee, but holding the bank responsible for the damages that the measure might cause to the defendants or third parties.

Enforcement of foreign judgments and arbitral awards

Foreign judgments are only enforceable in Venezuela after obtaining an *exequatur* from the Supreme Court of Justice, pursuant to the provisions of the Code for Civil Procedure (Article 850). Nevertheless, an *exequatur* may be denied pursuant to Article 851, for instance, if the judgment deprives domestic courts of jurisdiction or if it falls within one of the scenarios provided for by the civil procedural rules, such as a judgment contrary to public policy or one resulting from proceedings that have not been properly served to the defendant or one where his or her right to defence was not guaranteed.

With regard to arbitral awards, Venezuela is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) (since 1994) and the Commercial Arbitration Law (published in the *Official Gazette Extraordinary* No. 36,430 of 7 April 1998), of which Article 48 allows the execution of a final arbitration award before the competent court of first instance, wherever it is issued, without requiring an *exequatur*.

Shipping contracts

Shipbuilding

No significant shipbuilding takes place in Venezuela; the existing shipyards are mainly involved with maintenance and repairs. However, at one time, PdVSA embarked on an expansion of its fleet by entering into strategic associations with Japan, China and South Korea for the construction of Suezmax and Aframax vessels and very large crude carriers. Some agreements were also concluded with Spain, Brazil and Argentina. Unfortunately, these agreements either have not been properly executed or have not materialised. The Navy did the same with Spain. In these cases, financing was granted by foreign governments and bankers in the context of the agreements.

Contracts of carriage

Venezuela is not a signatory of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules), the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules) or the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules). Instead, the Law on Maritime Commerce adopts a mixed regime for the regulation of the carriage of goods by water, making it clear that these provisions shall apply whatever the nationality of the ship, carrier, actual carrier, shipper, consignee or any other interested person. However, these provisions do not apply to charterparties, unless a bill of lading is issued pursuant to a charterparty that governs the relationship between a carrier and a holder of a bill of lading that is not the charterer. It follows that any shipment to or from Venezuela under liner traffic will be subject to these provisions in terms of, inter alia, liability regime, exoneration from and limitation of liability and time bar, irrespective of the nationality of the ship, being cargo claims under jurisdiction of the domestic maritime courts, whether the goods are moved in international trade or cabotage.

All actions derived from the contract of carriage of goods by water are subject to a one-year time bar, counted from the date of delivery of the merchandise by carrier to the consignee, or the date when the merchandise should have been delivered. Domestic law adheres to the period of responsibility, exoneration and limitation of liability as stated in the Conventions.

It is important to point out that a carrier is not entitled to retain goods on board to guarantee their credits; however, pursuant to Article 259 of the Law on Maritime Commerce and to safeguard the payment of freight, use of containers, demurrage, contribution to general average and signature of the bond, the carrier through an order of a maritime court may place the goods in the hands of a third party (warehouse). Should the carrier guarantee the corresponding fiscal credit, and in the absence of anyone claiming the goods, these will be taken to court auction. The carrier may also exercise a lien on the cargo for freight, demurrage and costs for loading and unloading operations, as well as other costs derived from the contract of carriage and the charterparty. However, this lien shall cease if the action is not brought within 30 days of the discharge, provided the cargo has not passed into the hands of a third party.

With regard to the liabilities of the shipper, the Law on Maritime Commerce prescribes in Article 229 that the shipper (including its servant or agent) is not liable for loss sustained

by the carrier or by the ship, unless it was caused by the shipper's fault. Specific provisions are set out in connection with dangerous goods, imposing on the shipper the obligation to suitably mark or label dangerous goods as such and to inform the carrier about the dangerous nature of any cargo and the precautions to adopt. Should the shipper fail to do so, the carrier may at any time unload or destroy the cargo, without payment of compensation and irrespective of the damages owed by the shipper towards the carrier (Article 231). Similarly, according to the General Law on Ports (Article 101), a port operator in charge of warehouses and container yards who has not been informed about the dangerous nature of goods, may also destroy or dispose of the cargo without payment of compensation to its owner and is entitled to have its costs reimbursed by the person who was obliged to notify the port operator of the dangerous nature of the cargo.

Cargo claims

As in the Hamburg Rules, the Law on Maritime Commerce defines a 'consignee' as a person entitled to receive goods, so domestic provisions allocate the title to sue on the former (Article 249). As to who can be sued, Article 197 states that for the purposes of the law, 'carrier' means 'any person who by himself or through another person acting on his behalf has concluded a contract of carriage of goods by water with a shipper'; whereas 'actual carrier' means 'any person to whom the carrier has entrusted the performance of the carriage of goods by water or of part of it'. Consequently, in light of the maritime provisions, the owners will be the carrier if they have direct exploitation of the ship, whereas charterers will be regarded as the carrier if undertaking the commercial operation of the ship and issuing the bills of lading. In other words, the responsible party for the execution of the contract of carriage is the one issuing the bill of lading.

The provisions for bareboat charters, as for charterparties (time and voyage), are complementary to the will of the parties (Article 150). It follows that dispute resolution clauses would be acceptable.

Limitation of liability

The Law on Maritime Commerce has incorporated the provisions of the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976). Shipowners and their insurers are thus allowed to limit liability contractually in the same manner and in accordance with the limitation figures prescribed by Articles 2 and 6 of the Convention.

Anyone seeking to limit liability (such as shipowners, charterers, insurers and salvors) may appear before a maritime court and request the commencement of a proceeding to constitute a limitation fund (Maritime Law, Articles 52 to 74). This is set in motion by the submission of a petition that indicates the circumstances giving rise to the damages in respect of which limitation is invoked; the maximum amount of the limitation fund calculated in accordance with the Maritime Law; the list of creditors known by the petitioner and the definite or provisional amount of their credit and its nature; and any documentation to support the constituted fund, which may take the shape of cash, financial instruments or securities issued or guaranteed by the state. Any precautionary measure (arrest) on a ship will be suspended once the limitation fund is constituted.

Remedies

Ship arrest

The arrest of ships is governed mainly by the provisions of the International Convention on Arrest of Ships 1999 (the 1999 Arrest Convention), incorporated in the Law on Maritime Commerce, to the extent that Article 93, following the Convention, sets out the list of maritime claims giving rise to a ship arrest. Similarly, the governing provisions allow for the arrest of the ship in respect of which the maritime claim arose and of a sister ship. The maritime courts shall grant the arrest for a maritime claim when this is founded in a public document or a private document recognised by the other party, accepted invoices, charterparties, bills of lading or any other document proving the existence of the maritime claim. Otherwise, the court may request from the claimant the submission of a guarantee in the amount and subject to the conditions determined by the court before granting an arrest. However, the defendant may oppose the arrest or request the lifting of it if, in the opinion of the court, sufficient security has been provided, except when the ship has been arrested for any dispute as to the possession of the ship or any dispute resulting from a contract of sale. Under domestic provisions, the action for the arrest of a ship must be brought against the ship and her master at the same time, as prescribed by Article 15 of the Law on Maritime Commerce, otherwise the action will be dismissed.[2]

In practical terms, an arrest is executed through an order forwarded by the court to the port captaincy via fax or email, resulting in the withholding of clearance to sail by the maritime authority. Consequently, an arrest order granted on an unberthed ship within Venezuelan jurisdictional waters would be possible.

Court orders for sale of a vessel

Domestic provisions allow the anticipated auction of a ship. Thus, Article 106 of the Law on Maritime Commerce states that after 30 continuous days following the arrest of the ship, if the shipowner fails to attend proceedings, at the request of the claimant, the court may order the auction of the ship, subject to the claimant submitting sufficient guarantee, provided the claim exceeds 20 per cent of the value of the ship and it is exposed to ruin, obsolescence or deterioration. Mortgagees and holders of maritime privileges may also request the forced sale of the ship. In all cases, the court will arrange the sale subject to the publication in the national press of a notice of auction, with an indication of the parties involved, a description of the ship, the estimated price, the time and date of the sale and identification of the port where the ship is located. In the case of a forced sale or execution, the court will notify the competent authorities of the flag state, owners, beneficiaries of mortgages and holders of maritime privileges. In the court sale of MV *Josefa Camejo*, the defendants attempted to obtain an injunction, arguing that the ferry performed a public service, an argument rejected by the Supreme Court of Justice after assessing the facts, as it was found that the vessel had been anchored for several years without carrying out any activities, and therefore was not performing any public service as a result of the lack of continuity in its activity.[3]

Regulation

Safety

Venezuela has adopted the main IMO safety instruments, namely the International Convention on Load Lines 1966 (the Load Lines Convention), the International Regulations for Preventing Collisions at Sea 1972 (COLREGs), the International Convention for the Safety of Life at Sea 1974 (SOLAS), the Convention on the International Maritime Satellite Organization 1976 (the INMARSAT Convention), the Torremolinos International Convention for the Safety of Fishing Vessels, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995 (the STCW Convention) and the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 1979). Compliance with these safety conventions is monitored by the INEA through its Safety Department and the various port captaincies, as well as the coastguard exercising its port state control functions.

Port state control

Venezuela is a signatory to the Latin American Agreement on Port State Control of Vessels 1992 (the Viña del Mar MOU), by which port state control was implemented in Latin America. Port state control is carried out by the coastguard, a branch of the Navy that is in charge of the documentary and physical inspection of vessels. In the event of substandard conditions or deficiencies being noted, the coastguard inspectors will produce a report, notifying this to the port captaincy. It is for the latter to instruct a surveyor to determine the extent of the deficiencies. Once deficiencies have been corrected, the port captaincy will send a surveyor to check the work and will then inform the coastguard of whether the vessel should or should not be detained.

Inspectors check for compliance with the principal IMO instruments. The most common deficiency is a lack of the certificates prescribed by the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)), the Load Lines Convention and SOLAS. Nevertheless, under Venezuelan legislation, the coastguard has no power to detain vessels, and, to that end, the cooperation of the port captaincy is required to refuse port clearance to a vessel and to open the corresponding administrative file to apply for any potential fines.

Owing to the lack of a comprehensive legal framework governing the activities of different agencies in the maritime field, in many instances port state control is confused in its implementation, occasionally causing serious delays to ships.

Registration and classification

The ship registration process has improved significantly since the turn of the century, after the dual registration procedure (requiring inscription of documentation with the maritime authority as well as the public registry) was repealed by the newly enacted legislation. Thus, the office of the Venezuelan Shipping Registry (Renave) is now located within the INEA and has branches in the various port captaincies. Ships or ships under construction

with a tonnage equal to or above 500 GT will be registered with the Renave office located in Caracas. Vessels under 500 GT will be registered in the particular branch of Renave located in the port captaincy where the ship will be registered.

It is important to point out that, according to Article 108 of the Organic Law of Aquatic Spaces, cabotage is regarded as the carriage of cargo or persons between Venezuelan ports. Therefore, transshipment of cargo (either internal or in transit) between domestic ports comes under this category. Article 111 of the same Law defines 'domestic navigation' as any activity different from cabotage, carried out within jurisdictional waters of a particular port captaincy, such as fishery, dredging, leisure and scientific navigation. Cabotage and domestic navigation are restricted to ships registered in Renave. Despite this, the INEA shall grant, at the request of the interested party, and by way of exception, a special permit (waiver) to ships of foreign registry to carry out cabotage or domestic navigation. The grant of such a permit is dependent on a certification by the INEA that the ship complies with the requirements of national and international legislation regarding safety, and that there is no available tonnage in the shipping registry. Even so, irrespective of the granted waiver, the ship must comply with the process for temporary admission with the customs office before arrival.

A ship may be wholly owned by foreign parties; the only requirement is the incorporation of a domestic company, but 100 per cent of the shares may be wholly owned by a foreign interest. Furthermore, a foreign-registered ship bareboat-chartered to a Venezuelan company for up to or over one year may be registered with Renave. The basic documentation to be submitted is as follows:

1. an application for inscription of the vessel with Renave, which must be submitted through the INEA website;
2. a copy of the articles of incorporation of the company acting as owner or charterer;
3. evidence of the deletion or suspension of the previous registration or equivalent document;
4. the vessel's document of ownership or bareboat or leasing agreement, as the case may be, duly translated into Spanish; and
5. plans and technical characteristics of the ships, including former GT certificates.

Customs procedure is a critical aspect of shipping registration in Venezuela, so the choice of the port of registry, and thus the customs office, is an important issue. In the case of vessels under bareboat or leasing agreements, since they will not be a definitive importation, it is generally accepted that the applicable customs regime will be that of a temporary admission, whereby the import duties will be suspended.

An important aspect in connection with flag registration is also the inspection and certification. There is no specific age requirement, but vessels more than 10 years old are subject to a special inspection regime for registry with Renave. In general terms, once the flagging process has advanced, inspection and certification of the ship by an appointed flag surveyor are needed. Note that maritime administration allows up to three months for the homologation of the certified original, at which time the Venezuelan documents should be issued. Homologation must also be carried out for the International Safety Management Code documentation within three months.

Environmental regulation

Venezuela is a signatory to the International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC Convention), as amended in 1976 and 1984, and the 1992 Protocol. Therefore, shipowners bear strict liability for damage resulting from an oil spill, unless the damage has been caused by the events specified in the Convention. Shipowners are entitled to limit liability in accordance with the Convention, following the procedural rules set out in the Law on Maritime Commerce.

Venezuela has also enacted the Organic Law on the Environment (*Official Gazette Extraordinary* No. 5,833 of 22 December 2006) and the Criminal Law on the Environment (*Official Gazette* No. 39,910 of 2 May 2012), prescribing provisions concerning air and sea pollution. The first is a comprehensive set of provisions intended to establish the guiding principles for the conservation and improvement of the environment. It declares the conservation and improvement of the environment to be a matter of public utility and general interest, including within the activities capable of degrading the environment, and those that directly or indirectly pollute or cause a deterioration of the atmosphere, water, seabed, soil or subsoil, or that have an unfavourable effect on fauna or flora. The Criminal Law on the Environment defines those acts that violate the legal provisions for environmental conservation, imposing heavy penalties such as imprisonment, arrest and fines. A significant number of offences are set out, including:

1. discharge of pollution in lakes, the coast or marine environment as a result of non-compliance with the technical rules in force;
2. pollution of the marine environment resulting from leaks or discharges of oil and other products during transportation, exploration and exploitation on the continental platform and in the Venezuelan exclusive economic zone;
3. construction of works without authorisation or in breach of the technical rules that are capable of causing contamination to the lakes, coast and marine environment; and
4. breach of the international conventions on oil pollution.

Furthermore, the captain, shipowner or operator that negligently caused the polluting incident will be subject to imprisonment of between one and three years. A captain's failure to give notice of a polluting accident within the national waters will be subject to imprisonment of between four and eight months, and the responsible ship can be detained by court order. However, Article 96 of the Criminal Law on the Environment states that anyone emitting or allowing the escape of gases or biological or biochemical agents of any nature capable of deteriorating or polluting the atmosphere or air is in breach of the technical rules applicable to the matter and will be subject to imprisonment of between six months and two years and a fine of between 600 and 2,000 units.

Collisions, salvage and wrecks

Rules on collision are included in the Law on Maritime Commerce, based on the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910

(the Collision Convention 1910). In this sense 'collision' does not solely refer to violent physical contact between two or more vessels, since the domestic rules also extend to repair of damage caused by a vessel, even if a collision has not actually taken place and the damage is caused as a result of a negligent manoeuvring (e.g., without physical contact). In cases of damage to port infrastructure, including fenders, the port authority may request a guarantee to cover the repairs. P&I club letters of undertaking are usually accepted, with the guarantee remaining in place until the costs are paid or the responsibility is determined; nevertheless, the guarantee must be executed within six months of the incident. Legal actions in connection with collisions are subject to a two-year time bar.

The main provisions of the International Convention on Salvage 1989 (the 1989 Salvage Convention) are also incorporated into domestic legislation. The master and the shipowner are free to enter into contracts of salvage, but even so, such contracts can be annulled by the maritime court if they were executed under undue pressure, influence or danger, or if the conditions are not fair and the agreed reward is excessively high in relation to the services rendered. As regards the criteria for fixing the reward, domestic provisions follow Article 13 of the Convention. Any action relating to payment under salvage operations shall be subject to a two-year time bar.

Regarding wrecks, the Law on Merchant Marine and Related Activities (Article 92) sets out provisions regarding navigation channels, which also apply to wreckages in general. Thus, the obstruction of a navigation channel caused by the grounding of a vessel, collision, allision or sinking will impose on the shipowner a number of obligations, the aim of which is to give prompt notice of the incident to the maritime authority through the port captaincy to enable measures to be taken to reduce the risks for other ships sailing nearby and to remove the wreckage if necessary. Following casualties, the maritime authority will set up an investigation committee that, as well as determining the causes, may recommend steps to be taken, including publication in the press of a warning to mariners. In such cases, the authorities expect full cooperation from the shipowner or insurers in taking the necessary measures for marking, surveillance and eventual removal of the wreck; should they fail to do so, the maritime authority may carry out the necessary measures, in which case the shipowner is obliged to reimburse the costs incurred by a third party appointed by the authorities to this end.

Passengers' rights

The main provisions of the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention) have been included in the Law of Maritime Commerce. These provisions apply to the carriage of passengers in both international and domestic traffic. Pursuant to Article 278, 'carriage of passenger' comprises the following:

1. in respect of a passenger and his or her cabin luggage, the period aboard the vessel or on any vehicle or means of access to board or disembark, and that period in which the passenger and his or her cabin luggage are carried by water to or from the vessel and always when the price of this service is included in the passenger's ticket, or the vehicle used to perform this carriage has been put at the disposal of the passenger by the carrier;
2.

in respect of the passenger, the period of carriage does not include that period when the passenger is at a terminal, maritime station, berth or any other port premises; and

3. in respect of luggage that is not cabin luggage, this includes the period starting when the carrier, his or her employees or agents have taken care of the luggage while ashore or on board through to the time when this luggage is returned to the owner.

Provisions state that the carrier must hand to the passenger a ticket as proof of the contract and a bill of transport wherein any luggage that is not cabin luggage is properly described. The omission of these obligations shall prevent the carrier from exercising a limitation of liability in respect of damages to the passengers and their luggage, depending on the documents that the carrier omitted to deliver (Article 279).

The indemnity paid by the carrier in cases of death or personal injury to a passenger shall not exceed 46,666 special drawing rights (SDRs) per voyage (Article 298), whereas the limits of liability both for contractual and non-contractual liability of the carrier in respect of loss or damages suffered by the luggage are regulated by Article 299, in any case not exceeding the following limits:

1. for cabin luggage – 833 SDRs per passenger and per voyage;
2. for vehicles, including luggage carried inside or on top of vehicles – 3,333 SDRs per vehicle and per voyage; and
3. for all other luggage – 1,200 SDRs per passenger and per voyage.

The time bar provisions set out in domestic legislation are similar to those of Article 16 of the Athens Convention.

Seafarers' rights

Labour provisions for domestic shipping can be found in the Organic Law on Labour and Workers (*Official Gazette Extraordinary* No. 6,076 of 7 May 2012), which is generally regarded as having generous provisions towards seafarers. Article 346 of the Law sets out the obligations of shipowners to provide seafarers with minimum standards on board, such as:

1. clean accommodation;
2. healthy, nutritional and sufficient food;
3. medical care, hospitalisation and medicines where social security does not provide them;
4. repatriation and travel for boarding expenses;
5. notification to the authorities of any accident at work;
6. granting licence for the exercise of electoral rights; and
7. accommodation and food ashore when the ship is abroad for repairs and seafarers cannot remain on board.

The provisions of the Organic Law on Working Conditions and Accident Prevention (*Official Gazette* No. 38,236 of 26 July 2005) also have a significant effect on shipping in respect of loss of life or personal injury accidents. The Law prescribes a number of sanctions for the employer in the event of accidents suffered by employees during working hours, should the employer fail to properly instruct and warn the worker about the nature of the risks to which he or she is exposed, as well as to provide the worker with the safe means to perform his or her job. These sanctions may take the shape of fines or even imprisonment if it is proven that the employer was aware of the danger to which the employee was exposed while working. It should be borne in mind that accidents involving loss of life or personal injuries on board ship could well be the result of the employer's failure to instruct and warn the seafarer about the risks concerned with the assigned task. It follows that in the event of occurrence of an accident at work or occupational illness as a consequence of an employer's violation of legal regulations in respect of health and safety at work, the employer will be obliged to pay indemnification to the worker or his or her heirs, in accordance with the degree of fault and the injury. Claims brought by seafarers for personal injuries or occupational illness are generally founded on the provisions of this Law.

Venezuela has not ratified the Maritime Labour Convention 2006, although the PdVSA has announced that its fleet has already been voluntarily certified, which makes it the first Venezuelan shipowner to comply with this instrument.

Outlook and conclusions

Covid-19 regulations and procedures are now over and shipping and port activities are being carried out without any problem, including embarking, disembarking, travelling and crew changes.

It is true that sanctions imposed on Venezuela by the US administration have certainly affected its trade in recent years. OFAC initially issued General License 30, allowing it to engage in all activities and transactions with government entities that are ordinarily incidental to the use of a port, later amended as General License 30A, clarifying that all transactions and activities prohibited by Executive Order No. 13,850 involving INEA or any entity in which it owns, directly or indirectly, an interest of 50 per cent or more, ordinarily incidental and necessary to the operation or use of ports in Venezuela, are authorised. Pursuant to amended General License 30A, both US and non-US persons would not be sanctionable when using and paying pilotage, towage and launch services to the INEA deemed necessary for the operation or use of Venezuelan ports.

From the talks between Venezuela's government and the opposition held in Mexico City in November 2022, the OFAC issued a new modified Venezuela-related General License 41, issued 22 November 2022, authorising certain transactions by Chevron Corporation's joint ventures in Venezuela. Although it is a limited authorisation, this move followed by the new General Licenses issued in October 2023 are seen as good signs, although always subject to the political affairs and free elections advocated by the states.

Finally, an important pilot project is in motion at the port of La Guaira, with the consultancy of UNCTAD, in order to implement the ASYCUDA Single Window aimed to integrate

processes among cross-border regulatory agencies, customs and other government bodies, allowing traders to electronically submit import and export paperwork through a single interface.

Endnotes

1 *Astivenca v. Oceanlink Offshore III AS*, Constitutional Chamber, Supreme Court of Justice, File No. 09-0573. ^ Back to section

2 First Instance Maritime Court, File No. 2005-000059. ^ Back to section

3 Constitutional Chamber, Supreme Court of Justice, File No. 06-1803. ^ Back to section

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