The Shipping Law Review

Third Edition

Editors
James Gosling and Tessa Jones Huzarski

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EDITOR'S PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

James Gosling and Tessa Jones Huzarski
Holman Fenwick Willan LLP
London
June 2015

Chapter 45

VENEZUELA

José Alfredo Sabatino Pizzolante[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Shipping and port activities are of paramount importance to the Venezuelan economy, bearing in mind that the country's population (with nearly 30 million inhabitants), relies very much on the importation of bulk and manufactured goods as well as the export of oil and steel-related products. According to last figures held by the national shipping registry, the domestic fleet over 500 GT comprises approximately 461 vessels totalling 1.47 million GT. The state remains as the principal shipowner since 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; and in 2011 also the state 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. More recently, through Executive Decree No. 769 dated 5 February 2014, all maritime cargo transportation functions of the public administration have been centralised and will be performed by Venavega. Therefore, the private fleet is rather modest. It is worth mentioning that in recent years PDVSA has embarked on a renovation and expansion programme of its fleet, to be able to carry at least 45 per cent of all exports and to diversify its clients, with China at the forefront, although the programme is to some extent delayed.

The port system involves petrochemical terminals in the eastern and western parts of the country (La Salina, El Tablazo, Puerto Miranda, Amuay, Cardon, José, etc.) under control of PDVSA; bulk terminals in the Orinoco river (Sidor, Ferrominera, etc.) under administration of Corporación Venezolana de Guayana; and the public ports (Puerto Cabello, La Guaira, Maracaibo, Guanta, etc.) under control of Bolipuertos, SA, a state-owned company exclusively in charge of the warehouse and storage facilities. Stevedoring services within public ports, however, are performed both by this public agency and private port

1 José Alfredo Sabatino Pizzolante is a partner at Sabatino Pizzolante Abogados Marítimos & Comerciales.

operators. Few private marine terminals operate port facilities. Unfortunately no recent cargo and traffic figures have been released by Bolipuertos, SA; nevertheless, due to the rigid exchange control in place and huge decline in oil prices, there has been a significant reduction in cargo volumes, said to reach 80 per cent nationwide. 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 has been currently stopped, due to the lack of funds. 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 now operative.

The main shipyard and dry-docking facilities in the country are Diques y Astilleros Nacionales, CA and the Ucocar. Although these are mainly linked to the Ministry of Defence, rendering services to the Navy and PDVSA ships, they also serve private ships. Dianca designs, builds, repairs, modifies and maintains ships, naval structures of steel and aluminium up to 30,000 DWT; and Ucocar up to 1,000 DWT. Both have entered into strategic associations with Damen Group and Navantia for the constructions of some tugs and patrol vessels.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

A comprehensive set of laws governing the maritime business was enacted in 2001. The new 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. Besides, the country has adopted the principal IMO instruments. At least four instruments deserve particular comments.

The Organic Law of Aquatic Spaces (last amendment published in Official Gazette Extraordinary No. 6,153 of 18 November 2014) reorganises the 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, that will exercise its functions locally through the port captaincies. The General Law on Merchant Marine and Related Activities (last amendment also 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 public and private sectors' involvement in the industry. 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 at forming a national port system by introducing general principles related to the ports regime and infrastructure, governing public and private ports nationwide, to ensure coordination in order to consolidate a modern and efficient port system. Title IV of the Law introduces provisions related to 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.

III FORUM AND JURISDICTION

i Courts

Shipping disputes are litigated in the maritime courts 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 specialised jurisdiction. Appeals are heard by the Superior Maritime Court, whose decisions are reviewed by the Supreme Court of Justice. The First Instance Maritime Court and the Superior Maritime Court 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. While provisions related to the carriage of goods are compulsory, those related to 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 (*Astivenca v. Oceanlink Offshore III AS*).[2]

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

ii 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 the field. The arbitration procedures are conducted in accordance with the rules set up by each arbitration centre, and 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, a decision worth mentioning 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 due to default in payment by the mortgagor, pursuant to Article 141 of the Law on Maritime Commerce (CEDCA – File No. 070-12). On the 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 such measure might cause to the defendants or third parties.

2 Constitutional Chamber – Supreme Court of Justice – File No. 09-0573.

iii Enforcement of foreign judgments and arbitral awards

Foreign judgments are only enforceable in Venezuela after obtaining the *exequatur* from the Supreme Court of Justice, pursuant to the provisions of the Code for Civil Procedure (Article 850). Nevertheless, the *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 for the Recognition and Execution of Foreign Arbitration Awards (since 1994) as well as the Commercial Arbitration Law (published in the Official Gazette Extraordinary No. 36,430 dated 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 the *exequatur*.

IV SHIPPING CONTRACTS

i Shipbuilding

No significant shipbuilding takes place in Venezuela, since the existing shipyards are mainly involved with maintenance and repairs. However, the PDVSA has embarked in the expansion of its fleet by entering into strategic associations with Japan, China and South Korea for the constructions of Suezmax, Aframax and VLCC vessels. Some agreements have also been concluded with Spain, Brazil and Argentina. The navy has done the same with Spain. In these cases financing has been granted by foreign governments and bankers in the context of said agreements.

ii Contracts of carriage

Venezuela is not a signatory of either the Hague, Hague-Visby or 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 the charterparty that governs the relationship between the carrier and the holder of the 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 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 the carrier is not entitled to retain goods on board to guarantee his or her 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 upon the cargo for freight, demurrage, costs for loading and unloading operations as well as other costs derived from the contract of carriage and the charterparty. This lien, however, shall cease if the action is not brought within 30 days following the discharge, provided cargo has not passed to 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 former (including the 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 upon 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). Likewise, 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.

iii Cargo claims

As in the Hamburg Rules the Law on Maritime Commerce defines the consignee as the person entitled to receive the 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 the light of the maritime provisions the owners will be the carrier if they have the 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 related to bareboat charters as well as charterparties (time and voyage) are complementary to the will of the parties (Article 150). It follows that dispute resolution clauses would be acceptable.

iv Limitation of liability

The Law on Maritime Commerce has incorporated the provisions of the LLMC Convention 1976. Shipowners and their insurers are thus allowed to contractually limit liability 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 (shipowners, charterers, insurers, salvors, etc.) may appear before a maritime court and request the commencement of a proceeding to constitute a limitation fund (Articles 52 to 74 of the Maritime Law); this is made through the submission of a petition indicating 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; together with 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) upon a ship will be suspended once the limitation fund is constituted.

V REMEDIES

i Ship arrest

The arrest of ships in Venezuela is mainly governed by the provisions of the 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 the arrest of the ship in respect of which the maritime claim arose, as well as the arrest 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. The defendant, however, may oppose the arrest or request the lifting of it, if in the opinion of the court sufficient security has been provided, save in cases in which 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 the 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.[3]

In practical terms an arrest is executed through an order forwarded by the court to the port captaincy via fax or e-mail, resulting in the withholding of clearance to sail by the maritime authority. Consequently, an arrest order granted upon an unberthed ship within Venezuelan jurisdictional waters would be possible, although no precedents are known.

ii 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 cout 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 national press of a notice of auction, with indication of the parties involved, description of the ship, estimated price, time and date for the sale and identification of the port where the ship is. In the case of a forced sale or execution the court will notify the competent authorities of the flag state, the 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

3 First Instance Maritime Court – File No. 2005-000059.

the ferry performed a public service, an argument rejected by the Supreme Court of Justice upon assessing the facts, as it was found that the vessel had been anchored for several years without carrying out any activities and was therefore not performing any public service due to the lack of continuity in its activity.[4]

VI REGULATION

i Safety

Venezuela has adopted the main IMO safety instruments, namely: the Load Lines Convention, Colregs, SOLAS, Convention on the International Maritime Satellite Organization, Torremolinos International Convention for the Safety of Fishing Vessels, the STCW Convention and SAR. 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.

ii Port state control

Venezuela is a signatory to the Viña del Mar MoU of 1992, by which port state control was implemented in Latin America. Port state control is carried out in Venezuela by the coastguard, a branch of the navy and which 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 then the port captaincy will send a surveyor to check this 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, with the most common deficiencies being a lack of the certificates prescribed by MARPOL, 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. Therefore, due 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. According to available statistics, an average of 1,500 vessels are inspected by the port state control authorities each year, resulting in 20 to 25 detentions. Figures held by the secretariat of the Viña del Mar MoU show that the port of Puerto Cabello conducted 60 per cent of the inspections carried out in Venezuela, putting Venezuela in third place in numbers of inspections carried out, after Brazil and Argentina.

iii Registration and classification

The ship registration process has improved significantly in the last decade and a half, since the dual registration procedure (requiring inscription of documentation with the maritime authority as well as the public registry) was repealed by the now enacted legislation. Thus, the office of the Venezuelan Shipping Registry (Renave), is now located within the INEA with

4 Constitutional Chamber, Supreme Court of Justice – File No. 06-1803.

branches in the different port captaincies. Existing ships or ships under construction with a tonnage equal to or over 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 respective 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, as well as persons, between Venezuelan ports. Therefore, trans-shipment 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 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 once again 100 per cent of the shares may be wholly owned by a foreign interest. Also a foreign-registered ship bareboat chartered for up to or over one year to a Venezuelan company may be registered with Renave. The basic documentation to be submitted is:

a an application for inscription of the vessel with Renave, which must be submitted through the INEA website;
b a copy of the articles of incorporation of the company acting as owner or charterer;
c evidence of the deletion or suspension of the previous registration or equivalent document;
d the vessel's document of ownership or bareboat or leasing agreement as the case might be, duly translated into Spanish; and
e plans and technical characteristics of the ships, including former gross tonnage certificate.

Customs procedure is a critical aspect of shipping registration in Venezuela, so the choice of the port of registry and so 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 then 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 over 10 years old are subject to a special inspection regime for registry with Renave. In general terms, once the flagging process has advanced, the inspection and certification of the ship by an appointed flag surveyor is needed. Note that maritime administration allows up to three months for the homologation of the certified original, at which time the Venezuelan documents ones should be issued. Homologation must also be carried out for the ISM Code documentation within three months.

iv Environmental regulation

Venezuela is a signatory to the CLC Convention 1969, as amended in 1976 and 1984, as well as the 1992 Protocol. Therefore, shipowners bear strict liability for damages resulting from an oil spill, unless such 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 No. 5,833 Extraordinary 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 a matter of public utility and general interest, including within the activities capable of degrading the environment those which directly or indirectly pollute or cause a deterioration of the atmosphere, water, seabed, soil, or subsoil, or which have an unfavourable impact on fauna or flora. The second law 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: discharge of pollution in lakes, the coast and marine environment as a result of non-compliance with the technical rules in force; 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; construction of works without authorisation or breach of the technical rules that are capable of causing contamination to the lakes, coast and marine environment; and breach of the international conventions on oil pollution.

Additionally, 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 from four to eight months, and the responsible ship can be detained by court order. On the other hand, Article 96 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 in in breach of the technical rules applicable to the matter will be subject to imprisonment from six months to two years and a fine of between 600 and 2,000 tributary units.

v Collisions, salvage and wrecks

Rules relating to collision are included in the Law on Maritime Commerce, based on 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 the 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 the six months following the incident. Legal actions in connection with collisions are subject to a two-year time bar.

The main provisions of the Salvage Convention 1989 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. With regard to 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 due to grounding of a vessel, collision, allision or sinking will impose upon the shipowner a number of obligations aimed at giving prompt notice of the incident to the maritime authority through the port captaincy in order to take measures 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 besides determining the causes, may recommend steps to be taken, including the publication of a warning to mariners in the press. 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; however, should they fail to do so, the maritime authority may take such measures, in which case the shipowner is obliged to reimburse the costs incurred by a third party appointed by the authorities to this end.

vi Passengers' rights

The main provisions of the Athens Convention have been included in the Law of Maritime Commerce. These provisions apply both to the carriage of passengers in both international and domestic traffic. Pursuant to Article 278 'carriage of passenger' comprises the following:

a 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 come aboard 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.

b 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.

c In respect of luggage that is not cabin luggage, this includes the period starting when the carrier, his 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 owners.

Provisions state that the carrier must hand to the passenger a ticket as proof of the contract and a bill of transport wherein that 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, whichever were 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 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:

a in the case of cabin luggage – 833 special drawing rights per passenger and per voyage;

b in the case of vehicles, including luggage carried inside or on top of vehicles – 3,333 special drawing rights per vehicle and per voyage; and

c in the case of all other luggage – 1,200 special drawing rights per passenger and per voyage.

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

vii Seafarers' rights

Labour provisions for domestic shipping can be found in the Organic Law on Labour (Official Gazette No. 6,076 Extraordinary 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 clean accommodation; healthy, nutritional and sufficient food; medical care, hospitalisation and medicines where social security does not provide them; repatriation and travel for boarding expenses; notification to the authorities of any accident at work; granting licence for the exercise of electoral rights; and 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 impact on shipping, in case of loss of life or personal injury accidents. The Law prescribes a number of sanctions for the employer in case of accidents suffered by employees that may happen during working hours, should the employer fail to properly instruct and warn the worker about the nature of the risks he is exposed to, as well as to provide him with the safe means to perform his 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 at the time he was performing his work. It should be borne in mind that accidents involving loss of life or personal injuries on board the ship could well be the result of the employer's failure to instruct and warn the seafarers about the risks concerned with the assigned task. It follows that in case of occurrence of an accident at work or occupational illness as a consequence of an employer's violation of legal regulations in respect of safety and health 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.

On the other hand, Venezuela has not ratified the Maritime Labour Convention 2006, although PDVSA has announced that its fleet has already been voluntarily certified; the first Venezuelan shipowner to comply with this instrument.

VII OUTLOOK

In the past decade, there have been a significant number of reported drug cases involving the conviction of seafarers and the arrest of ships. Cases are mainly related to drugs attached to the vessel's hull or placed inside the rudder stock spaces, specifically affecting tankers and bulk carriers; however, it is important to point out that container ships are also targeted either by placing drugs on the superstructure or in loaded or empty containers. These cases are exclusively handled by the criminal courts and the corresponding investigations by the Prosecutor's Office have proved to be very cumbersome and time-consuming. It has been recommended that ships take precautionary measures such as underwater inspections and

extra security services when calling at domestic ports, but even so, due to the increase in drug trafficking through Venezuelan territory, this seems to be a recurrent problem to be taken into account by anyone trading with Venezuela.

Moreover, the lack of clear legal provisions and guidelines from the Customs Office may result in the application of huge fines for cargo shortage or over-landing and especially for shipping containers remaining within the national territory for longer than the permitted 90 days after arrival. This situation has become even more critical due to recent amendments to the Organic Customs Law (Official Gazette Extraordinary No. 6,155 of 19 November 2014), increasing the fines and restricting the time limit to notify shortages and over-landings.

Owing to the current economic situation and a shortage of dollars driven by the decline in oil prices, pilotage and towage services as well as port tariffs have suffered a huge increase because these tariffs now being payable in US dollars, among other reasons. Despite this scenario, the government has recently manifested its willingness to back fisheries as a fundamental objective for the national economy. To this end, the executive branch announced the creation of the Ministry of Fisheries and Aquaculture to resolve issues related to this sector and to double the fishing production capacity of the country, for which the national oceanic fishing fleet is shortly expected to receive funding and the necessary assistance to modernise it.

Finally, the implementation of Executive Decree No. 769 assigning to Venavega the performance of cargo transportation for the different public agencies, now backed by the cargo reservation provisions prescribed by the 2014 amendments to the General Law on Merchant Marine and Related Activities, still remains on paper, with no impact on the transport services sector.

Appendix 1

ABOUT THE AUTHORS

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