

THE NEW SPANISH SHIPPING LAW

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Some days ago a milestone in Spain's Maritime law took place:

The Spanish Law of July 2014

(Ley de Navegación Marítima)

came into force on September 25, 2014.

It is a law drafted with the aim of unification and to coordinate domestic and international maritime law.

It offers greater legal certainty, putting an end to existing contradictions between national law, international conventions and community law in force in Spain.

It gives Spain a modern maritime legal regime,
suitable for the needs of today's maritime
transport .

To sum up, the new long-awaited law is a very welcome legal development that must be celebrated since brings Spain into the 21st. century in terms of maritime law.

The new Spanish Shipping Law covers almost all aspects of shipping.

Shipbuilding

Where there is a discrepancy between the different documents, the construction contract prevails over the technical specifications and the technical specifications control over the blueprints.

The Law contains indemnities for delays beyond 30 days and provides the right to cancel the contract if the delay goes 180 days and is unreasonable.

Liens

The LNM refers to the 1993 Geneva Conventions as the legal body governing ship mortgages and maritime liens.

It also gives a right of retention to builders and repairers until their payment is effected.

Classification Societies

These will be contractually liable for any damage or loss as a consequence of the absence of diligence in inspecting vessels and issuing certificates. The liability to third parties is governed by the ex-tort common Law generally applicable in Spain.

Vessel's Manager

If the vessel's manager does not disclose that he is acting as a representative of the owner, he will be jointly and severally liable with the owner for any obligations acquired on the owners' behalf. This also will be the case for any ex-tort damage caused to third parties by the manager's acts or by the acts of the manager's servants/employees.

The master is the person who is in command of the vessel, in charge of the crew, and represents public authority on board.

Owners may not dismiss the master or apply a penalty on him as a result of the master being compelled to depart from their instructions out of the need to act in a more suitable manner to protect safety. The standard is measured by the professional opinion of a competent sailor.

Master

Ship Agent

A ship's agent is not liable to the receivers of the carried goods for loss or damage to the cargo or for delay in its delivery.

The LNM puts an end to the recent case law of the Supreme Court making the ship agent liable for loss, damage or delivery of the goods.

The ship agent is under the duty to receive any claims related to the goods and must notify said claims to the owner.

Pilotage

The LNM makes the pilot liable for damage attributable only to the pilot. Where the master and the pilot are both at fault, then the owner, the master and pilot are jointly and severally liable.

The limitation of the civil liability of the pilot is twenty euros per gross registered ton of the vessel to which the pilot provided the service up to a maximum limit of one million euros.

Carriage by sea

The LNM establishes that carriage by sea of goods under charter parties will be governed by the charter agreements.

The carriage by sea of goods under bills of lading is governed by the mandatory law for the parties contained in the Hague - Visby Rules, but delay in the delivery of the goods can also give rise to indemnification under the LNM.

The mandatory regime will be applicable to international as well as domestic carriage.

A lien on the goods in favor of the carrier until freight is paid is recognized in the LNM.

The carriage of passengers and their luggage is governed by the regime of the 1974 Convention and its Protocols, which will apply to both international and domestic carriage.

Collisions

According to the LNM, the 1910 Brussels Convention will apply not only to collisions that took place between vessels of different nationalities, but also to collisions between vessels flying the Spanish flag.

The repealed provisions of the former Commercial Code provided where the two vessels were at fault the damages would be divided equally irrespective of the degree of fault of each, departing from the proportional rule set out on the 1910 Convention.

General Average

The LNM refers to the York and Antwerp Rules and also establishes a procedure to proceed with the settlement of average by Public Notaries where there is no agreement between all interests.

Salvage

Pursuant to the LNM, salvage is mainly governed by the 1989 London Salvage Convention and the Protocols.

The master and the owner may conclude salvage agreements on behalf of the owner of the property that is on board.

The salvor has a retention right on the vessel and property until the claimed reward is guaranteed.

Stevedores

Stevedores may limit their liability for loss or damages to cargo in sum of two SDR per kilogram. In case of delay, the limitation is two times and a half of the price paid to the stevedores for the services rendered.

Wrecks

The LNM sets out a procedure for wreck removal.

It is not applicable to underwater cultural heritage sites and objects, which are governed by the 2001 Convention.

Towage

The owners of the tug and the vessel are in principle jointly and severally liable for damage caused to third parties by the convoy.

Extraordinary towage could suppose a special remuneration, which includes an appropriate price for the services, damages, and loss of earnings during the service.

Civil liability for pollution

The LNM points out the preferred application of the relevant Conventions (CLC92/FUND/PROT 03 and 2001 Bunkers Convention) and contains provisions for other cases that do not fall within the scope of said conventions, incorporating the European Principles, including the “polluter pays” principle.

Yachts and pleasure crafts

This area is widely covered by the LNM, which also regulates in detail sailboat charter agreements, with or without crew.

Marine Insurance

The LNM introduces the direct action against the insurers in any civil liability marine insurance (beyond in case of a mandatory insurance in which the international legislation has already set out a direct action).

This includes the direct action against P&I Clubs that was not possible in the past.

Procedural rules

The LNM also contains procedural provisions in several areas.

E.g: The LNM contains some procedural regulations on arrest of vessels which is governed by the 1999 Convention. Countersecurity required from the claimant to make the arrest effective is fixed at 15% of the amount of the maritime claim. Where the Spanish arresting Court has no jurisdiction over the merits of the claim, the court will grant a period of between 30 and 90 days within which the claimant must file the claim before the competent judicial or arbitral tribunal.

Limitation periods

The law also contains some new limitation periods for bringing action:

- ✓ 3 years (shipbuilding contracts, naval hypoteque)
- ✓ 2 years (marine insurance)
- ✓ 1 year (cargo claims, recovery actions, freight, demurrage, towage, general average)
- ✓ Limitation periods for salvage claims (2 years) collision claims (2 years) and pollution claims (3 years) are those set out in the applicable conventions

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