

THE SHIPPING LAW
REVIEW

SEVENTH EDITION

Editors

George Eddings, Andrew Chamberlain and
Holly Colaço

THE LAWREVIEWS

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PREFACE

The seventh edition of this book aims to continue to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues and decommissioning. A new chapter on ship financing is also included, which seeks to demystify this interesting and fast-developing area of law.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, 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 the authors 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, 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 examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during 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 about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's MEPC 72 in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement has led to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

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

George Eddings, Andrew Chamberlain and Holly Colaço

HFW

London

May 2020

PANAMA

*Juan David Morgan Jr*¹

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The Panama Canal (the Canal) is considered one of the seven wonders of the modern world. Because of the Canal, Panama is at the crossroads of some of the world's most important shipping lanes. The Canal has been serving the shipping industry since its inauguration in 1914, and, particularly since the Torrijos-Carter Treaties of 1977, has been a catalyst in the development of the country. From 1,000 ship transits in 1914, the Canal now handles about 14,500 transits each year. The Canal is run by the Panama Canal Authority (PCA), a Panamanian government agency, which took over from the Panama Canal Commission, an agency of the US government, in 2000.

Since the PCA took over the administration of the Panama Canal, waiting time for the Canal is down substantially and there are now fewer accidents per year. Revenues from the Panama Canal have risen exponentially. For the fiscal year of 2019, the Canal registered 12,281 transits totalling 468.8 million tonnes, which represented more than US\$2.5 billion in revenue. In 2007, after it was approved by a national referendum, Panama embarked on a US\$5.3 billion expansion project of the Canal. The expanded Canal was officially inaugurated on 26 June 2016. Its main feature is the addition of a much bigger set of locks on the Atlantic and Pacific side of the waterway, more than doubling its cargo capacity. The new locks have a 25 per cent increase in length to 1,400 feet, a 51 per cent increase in width to 180 feet, and a 26 per cent increase in draught to 60 feet. Traditional Panamax vessels have a maximum deadweight tonnage (DWT) of 80,000, while the Neopanamax size have up to 170,000 DWT. The biggest container vessels that could transit the Panama Canal before its expansion could carry up to 5,000 twenty-foot equivalent units (TEUs), while those that are now able to transit can carry up to 14,000 TEUs. The expansion project also included deepening the Gatun Lake and the access channels at both sides of the Canal, as well as deepening, widening and straightening the Gaillard Cut. On 23 April 2019, the *M/V Energy Liberty* became the 6,000th Neopanamax vessel to transit the expanded Canal. The expanded Canal has bolstered the growth of the maritime sector of Panama's economy and generated record profits for the country.

The port system at both ends of the Canal, particularly the privately operated container ports, are efficient and constantly growing. The vast majority of cargo that comes to Panama is for transshipment purposes. There are currently five privately operated container ports at both ends of the Canal, with a railway linking four of these ports; in effect, they constitute an integrated logistical port system. Also, new oil terminals have just been or are being built at

¹ Juan David Morgan Jr is a partner at Morgan & Morgan.

both ends of the Canal. In the western part of the country there is an oil pipeline linking the Atlantic and Pacific oceans, with port terminals capable of handling very large crude carriers. It has been in operation since 1982 and new storage tanks were recently built at both ends of the pipeline.

The maritime sector of Panama has grown substantially, fuelled by the Panama Canal. The Panama Chamber of Shipping now has over 250 members, while 20 years ago it had fewer than 30. These include regional offices of shipping companies, shipping agents, bunkering companies, shipyards, port operators, dredging companies, surveying companies, banks and insurance companies. According to the United Nations Conference on Trade and Development (UNCTAD), in 2019, there were more than 7,500 ships registered in Panama, totalling around 200 million gross tonnage.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Panama has a unicameral National Assembly with 71 legislators elected every five years. The main pieces of maritime legislation are the Organic Law of the PCA and the Organic Law of the Panama Maritime Authority (PMA). The Panama Canal has a special chapter in Panama's Constitution, the objective of which is to keep it as far away as possible from local politics. Panama has ratified most of the International Maritime Organization (IMO) conventions. Their implementation and enforcement are carried out by the PMA, which has directorates dealing with the merchant marine, seafarers, and ports and auxiliary industries. Maritime substantive law is contained in the Law on Maritime Commerce (LMC), passed in 2008 by the National Assembly to replace the old Book II of the Code of Commerce, enacted in 1917, which had hitherto contained Panama's substantive maritime laws. The Code of Maritime Procedure (CMP) regulates the two maritime courts operating in Panama and contains the procedural laws applicable to all maritime cases. The CMP has a section that incorporated the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) into domestic law. The contents of the Protocol to amend the LLMC Convention 1996 (the LLMC Protocol 1996) have not been passed into law.

III FORUM AND JURISDICTION

i Courts

Panama has two maritime courts that have exclusive jurisdiction over all maritime judicial claims filed in Panama. Appeals are heard by the Court of Maritime Appeals, which comprises three justices. This is the only appeals court for maritime cases. After the relevant appellate briefs are submitted, there is a hearing in the Court of Maritime Appeals for the parties to present their cases before the justices. Under Article 19 of the CMP, the maritime courts have exclusive jurisdiction to hear and adjudicate cases that arise from within the territory, or the territorial waters, of the Republic of Panama. As per the same Article, the maritime courts also have jurisdiction to adjudicate cases arising outside the Republic of Panama when:

- a* a vessel or other property of the defendant is arrested in Panama;
- b* the defendant is found within Panama;
- c* the involved vessels are Panamanian;
- d* Panamanian substantive law is applicable to the dispute; and
- e* the parties submit themselves, either expressly or tacitly, to their jurisdiction.

Under Article 22 of the CMP, cases arising out of Panama may be stayed in favour of a foreign forum when the court considers that the Panamanian forum is not convenient, when the parties have expressly agreed by contract to submit to the jurisdiction of a foreign forum or arbitration tribunal, and when the dispute has previously been submitted to a foreign arbitration tribunal and court and a decision is pending. The CMP was amended in 2009 to, inter alia, make it more difficult to stay an action in favour of a foreign forum when the relevant forum selection clause is not contained in a contract that has been negotiated by the parties. Article 22(3) of the CMP expressly states that pro forma or adhesion contracts are not considered 'previously and expressly negotiated'. There have been two recent Supreme Court decisions that have interpreted the modified Article 22(3) of the CMP in the context of forum-selection clauses in contracts of carriage evidenced by bills of lading. In a decision dated 30 May 2012 in *Mund & Fester GMBH & Co KG v. 'Nagoya Bay' and Nagoya Bay Inc*, the Supreme Court affirmed a ruling of the Second Maritime Court that denied a motion to stay an action based on the standard arbitration clause contained in the 1994 Congen Bill Form, which incorporated, by reference, the arbitration clause in the charter party. More recently, in a decision dated 6 January 2014 in *Harvest Fresh Growers Inc v. Maersk Line*, the Supreme Court affirmed a ruling of the First Maritime Court that denied a motion to stay an action in favour of the English High Court based on a forum-selection clause in a standard liner bill of lading. The lower court decision was affirmed, even though the parties had negotiated a service contract that incorporated the standard terms of the Maersk bill of lading. In both cases, the Supreme Court found that there was no evidence of a prior negotiation by the parties of the corresponding forum selection clauses. It must be said that the reason behind the legislative amendment to Article 22(3) of the CMP was to prevent stay of actions based on forum selection clauses in bills of lading. If the relevant forum selection clause is contained in a charter party or memorandum of agreement, which are normally actively negotiated by the parties, the Panamanian courts would tend to enforce it.

Article 566 of the CMP contains conflict-of-laws rules. In general, in contractual claims, the maritime courts apply the substantive laws agreed on by the parties to the contract to resolve the dispute. In tort claims, the substantive law of the flag state of the relevant vessel, or the laws of the place where the tort occurs, are applied to resolve disputes.

ii Arbitration and ADR

The Maritime Law Association of Panama and the Panama Chamber of Shipping joined forces to create a maritime arbitration centre (CECOMAP). Recently, the rules and a table of fees were approved for the CECOMAP and an agreement with one of the established arbitration centres in the Chamber of Commerce or the Construction Chamber is being worked on for the CECOMAP to be able to use their facilities. CECOMAP is intended to be an arbitration centre in which the growing number of companies in the Panama Chamber of Shipping can resolve their disputes efficiently and cost-effectively. Eventually, it is intended that the CECOMAP become an option for dispute resolution for the whole of Latin America.

iii Enforcement of foreign judgments and arbitral awards

Final foreign judgment and arbitration awards can be enforced in Panama. Before enforcement, the party seeking enforcement of its judgment or award must have it recognised and declared enforceable by the Fourth Chamber of the Supreme Court of Panama through *exequatur* proceedings. These proceedings normally last between six months and one year, depending on the opposition presented by the judgment or award debtor, who must be notified of the

exequatur proceedings and may file opposition pleadings and evidence. The general rule is that a final judgment or award would be recognised and then enforced in Panama if the action that resulted in the judgment or award was properly and personally served on the defendant, so that it was not rendered by default, and if the obligation for which the judgment and award was sought would be considered a legal obligation in the Republic of Panama.

The only additional requirement is that of reciprocity. As per Article 424 of the CMP, if the judgment or award comes from a country that would not recognise judgments or awards rendered in Panama, Panama would not recognise judgments or awards from such country.

In 1982, Panama ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention). This makes the recognition and enforcement of arbitration awards issued in countries that are also parties to the Convention simpler and somewhat faster than a normal *exequatur* for recognition of a foreign judgment.

One important feature of enforcing a maritime foreign judgment or arbitration award is that the maritime courts may attach assets of the judgment or award debtor, and thereby obtain security for the enforcement while the *exequatur* proceedings are pending in the Supreme Court. This is important because much of the time such assets (ships, cargoes, bunkers, etc.) would be passing through the Panama Canal or calling at Panama ports for only a brief period.

IV SHIPPING CONTRACTS

i Shipbuilding

The shipbuilding industry is not well developed in Panama. Ships built in Panama are basically small craft used in local trade or the local maritime service industries. There is one shipyard in Panama with a current Panamax-size dry dock, which is located at the Pacific entrance to the Panama Canal: MEC Shipyard. The facility is, however, used for maintenance and repair of vessels, rather than shipbuilding. Ship repairers have standard form contracts, which may be amended by the parties to accommodate their needs.

ii Contracts of carriage

Chapter I of Title II of the LMC contains substantive maritime law on contracts of carriage. While Panama has not ratified any of the international conventions dealing with contracts of carriage, the Chapter basically incorporates 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), with some minor additions. Article 58 of the LMC contains the same defences available to a carrier under Article IV, Rule 2 of the Hague-Visby Rules, including the 'act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation and management of the ship'. Article 63 of the LMC determines how any loss to cargo interests is to be calculated and includes the same limitations of liability to the carrier by package (666.67 special drawing right (SDRs) per package) and weight (2 SDRs per kilogram). Article 57 contains the concept of when a deviation would be considered a 'reasonable' deviation. Article 58 provides liability to the carrier for damage or loss caused by delay, unless the delay was caused by one of the exempted perils. It also establishes that, unless the parties have agreed on a specific duration, there is a delay when the goods have not been delivered in the designated port or place within a 'reasonable' time. The duties of the shipper

are contained in Section 3 of Chapter I and again mirror those of the Hague-Visby Rules. In general, the LMC transposes the Rules to domestic maritime law, except that it provides for carrier liability for loss or damage caused by delay.

While very modern legislation exists on contracts of carriage, the vast majority of contracts of carriage cases in Panama's maritime courts are not resolved in accordance with Panamanian substantive law. Article 566(10) of the CMP provides that the applicable substantive law to determine the effects of contracts of carriage are those agreed on by the parties and, only when there is no governing-law clause, by the laws of the place of shipment. Since most contracts of carriage nowadays contain a governing-law clause, and it is only very seldom that the parties have agreed on Panamanian substantive law, cargo claims almost invariably end up being litigated in accordance to the substantive laws of other countries.

Article 244 of the LMC contains the list of claims that give rise to maritime liens on ships or 'preferred maritime credits'. The list contains 13 types of claims. Contract-of-carriage claims can give rise to a maritime lien against the carrying ship under items 7 and 12. Claims that give rise to liens on cargo are listed in Article 248 of the LMC. Inter alia, contract-of-carriage claims for unpaid freight and contributions to general average give rise to liens on cargo in favour of the carrier that may be exercised by possession.

iii Cargo claims

Among the claims filed in Panama's maritime courts, cargo claims are the most common. Most involve damage to containerised cargo, but there are also bulk cargo claims. Claims for damage to fruit cargoes carried from Panama and Latin America to Europe and the United States are fairly common. Under Panamanian substantive law, whichever party suffered the loss – either the shipper or the consignee – can sue the contractual carrier, the actual carrier or the servant of the carrier that was entrusted with the care and custody of the cargo when the damage occurred. Subrogated cargo underwriters have title to sue. Under Article 202 of the LMC, upon payment by an insurer to its insured, the insurer is vested with title to sue by operation of law; a formal assignment of rights is not required. In Panama, it is normally the cargo underwriter who files suit; however, when the claim is subject, for instance, to English law, a prudent litigator would always include the consignee under the bill of lading as a claimant to avoid title-to-sue issues under such law. The Panamanian courts uphold the incorporation by reference of charter party clauses into contracts of carriage evidenced by bills of lading. The leading case on incorporation by reference is *Agrowest SA, COMEXA & Dos Valles SA v. Maersk Line*. In a decision dated 6 February 2006, the Supreme Court held that an arbitration clause in a service contract could be incorporated by reference into contracts of carriage. Since then, the maritime courts incorporate, by reference, charter party terms into contracts of carriage. However, while the governing-law clause in a charter party may be incorporated by reference into the contract of carriage, a forum-selection clause incorporated by reference may be ineffective to stay an action in favour of the contractually selected forum, unless negotiation between the parties can be evinced (see discussion of the '*Nagoya Bay*' in Section III.i).

iv Limitation of liability

Panama has incorporated the LLMC Convention 1976 into domestic law, without the LLMC Protocol 1996, almost verbatim. Procedurally, the limitation action is regulated by Articles 517 to 529 of the CMP. Some of its most important features are: that the action must be commenced within six months of the receipt of a claim in writing by the person seeking to

limit; that the limitation fund may not only be constituted by a cash bond, but also through a guarantee issued by a bank or an insurance company licensed in Panama; and that the party seeking to limit may also petition the court for a finding of no liability.

For oil pollution claims, limitation of liability is regulated by the International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC Convention) and its 1992 Protocol.

Cargo claims may be limited in accordance with the package and weight limitation of the Hague-Visby Rules, which have been incorporated into the LMC.

V REMEDIES

i Ship arrest

With more than 14,000 canal transits per year and the busiest container ports in Latin America, Panama is an ideal place to arrest not only vessels, but cargoes, bunkers and any other assets that may enter the jurisdiction. The arrest procedure is fairly simple, and the maritime courts are open 365 days per year and 24 hours a day for urgent matters, such as arrests or the lifting of arrests. There are three types of arrests contemplated in the CMP:

- a* arrests merely to secure an in personam claim: in this type of arrest, the defendant is a company with operations in Panama and that can be served with process within the court's jurisdiction. For this type of arrest, the claimant or arrestor must post between 20 and 30 per cent of the arrest amount as counter-security with the court;
- b* arrests to confer jurisdiction to Panamanian maritime courts over the defendant: this type of arrest has the effect of serving the complaint on the defendant, as well as securing the claim. Defendants are companies that cannot be served with process within Panama – normally foreign companies with no operations in Panama or Panamanian companies that do not have any operations within Panama. For this type of arrest, only US\$1,000 is required as counter-security, irrespective of the claim amount, but *prima facie* evidence of the claim and its quantum must be filed with the complaint and arrest petition; and
- c* arrests to enforce a maritime lien or other *in rem* right: in this type of arrest, the defendant is not a person, but the vessel itself. To effect these arrests, the claimant must have a claim that gives rise to a maritime lien or other *in rem* right (for instance, a statutory right *in rem*) against the vessel. The counter-security is US\$1,000 irrespective of the claim amount, but the claimant must provide the same *prima facie* evidence requirement as in (b).

Most arrests in Panama fall under (b) and (c). When the complaint and arrest petition are filed, the corresponding maritime judge would review the *prima facie* evidence and, if he or she considers that it sufficiently supports the claim and its quantum, he or she immediately issues the arrest order. The court marshal then serves the arrest order on the vessel, normally when at anchor when the vessel is waiting to transit the Panama Canal at either Balboa or Cristobal anchorages, or at any of the ports. If feasible, an arrest order may also be served by helicopter on the target vessel, provided the vessel is within Panamanian territorial waters. When the target vessel is the vessel in respect of which the claim has arisen, the claimant may also request an inspection of documents on board the vessel to obtain evidence. Inspection of documents is particularly important in arrests of bunkers or cargoes, to confirm that the defendant owns the bunkers or cargoes.

An arrest cannot be effected in Panama to secure proceedings in another jurisdiction. It is a requirement that substantive proceedings be commenced in Panama simultaneously with the arrest petition; however, the case can later be stayed in favour of a foreign forum. The security obtained through the arrest can be replaced with security in the foreign forum, or the security in Panama can be maintained in the maritime courts to the order of the foreign forum.

Amounts to be posted as security may be consigned to the court in the following forms:

- a* a guarantee certificate drawn on cash from the Banco Nacional de Panama (Panama's central bank);
- b* a letter of guarantee from a bank operating locally;
- c* a guarantee issued by a local insurance company; or
- d* any other form of security on which the parties may agree.

P&I letters of undertaking, which fall under (d), are probably the most common form of security for the lifting of arrests in Panama; however, they are not accepted as a matter of law and the claimant must consent to this form of security before the maritime court will accept it to lift an arrest. The amount of security is determined by the quantum of the claim, the legal interest and the provisional judicial costs (including attorneys' fees) set by the maritime judge. If the claim amount exceeds the value of the ship, the security may be limited to such value. If, however, the parties cannot agree on the value of the ship, the court will have to order an appraisal, which could cause a substantial delay in the lifting of the arrest. Once adequate security is posted, the maritime court will promptly issue the order lifting the arrest, which the marshal of the court will serve on the master of the vessel, returning the documents removed from the vessel and removing the custodians from the vessel. The whole process could last from one to several hours, depending on the location of the vessel (Balboa or Cristobal).

In the event of a wrongful arrest, the CMP provides the aggrieved party with summary proceedings to lift the arrest. This is called *apremio*, which consists of a special motion to lift the arrest upon showing sufficient evidence that the arrest was wrongful, which, under the CMP, means it was effected:

- a* over property (ship, cargo, bunkers, etc.) not belonging to the defendant;
- b* in contravention of a previous express agreement by the parties to refrain from arrests; or
- c* when a maritime lien has been extinguished or is in-existent (*in rem* claims).

Upon the filing of an *apremio* motion with the required supporting evidence, the maritime judge will immediately consider and resolve the motion. If the motion is admitted, the judge will call the parties to a special hearing to be held in the shortest possible time (usually within one day), in which the claimant would have the burden of proving that the arrest was not wrongful and should therefore be maintained. If it fails to carry such burden of proof, the maritime judge will order the immediate release of the vessel or other property arrested. The claimant may appeal the decision, but this does not prevent the lifting of the arrest.

ii Court orders for sale of a vessel

A pre-judgment judicial sale of a vessel can be and normally is ordered when it becomes apparent that the defendant will not, or cannot, lift the arrest. When the judge orders the judicial sale of a vessel, he or she appoints an appraiser to issue a report on the market value of the vessel. The court then sets three dates for the judicial auction of the vessel by the marshal.

On the first date, the lowest bid may be no lower than three-quarters of the appraised value of the vessel. If there are no bidders in the first auction, the lowest bid in the second auction may be half of the appraised value of the vessel. If the vessel is not sold in the second auction, there is no minimum bid in the third auction. The vessel is sold by the marshal to the highest bidder. Usually, vessels sell for less than their appraised value.

VI REGULATION

i Safety

Panama has passed the International Convention for the Safety of Life at Sea 1974 (SOLAS) into law; this is the most important legislation on safety for Panamanian merchant vessels. It is implemented by the PMA and it relies on its recognised organisations (ROs) for the certification of the merchant vessels registered in Panama. The International Regulations for Preventing Collisions at Sea 1972 (COLREGs) have also been passed into law in Panama. They apply to Panamanian merchant vessels and they are also the 'rules of the road' for navigating Panamanian territorial waters. The PCA has, however, adopted its own COLREGs (PCA COLREGs) with certain variants from the IMO COLREGs, which apply to all vessels in Panama Canal waters. These include the designated anchorage areas at both sides of the Panama Canal (Balboa and Cristobal). The PCA COLREGs are almost identical to their IMO counterparts, but have slightly different regulations dealing with instances when the master is required to be on bridge, navigation in the Gaillard Cut and through the locks, and lookout duties.

ii Port state control

The port state control (PSC) entity in Panama is the PMA. The PMA's Directorate of Merchant Marine and its Directorate of Ports and Auxiliary Industries execute random inspections of merchant vessels of any nationality entering Panamanian waters. Panama subscribes to and is part of the *Viña del Mar* memorandum of understanding (MOU), which groups the maritime authorities of South America, Mexico, Panama and the Caribbean.

iii Registration and classification

Panama has the biggest open registry in the world. Shipowners from any nationality – except those from countries to which the UN has applied restrictions (currently North Korea and Iran) – may register their vessels in Panama. The procedure is very quick and simple. The shipowner just needs to complete a form with the ship's particulars and present it to the Directorate of Merchant Marine of the PMA, with a copy of the minimum safe manning certificate from the previous registry – newbuilds are of course exempted from the latter requirement. Upon payment of the registration fees and annual tonnage taxes, which vary according to the ship's type, the vessel is issued a provisional patent of navigation, valid for six months.

The registration procedure can be carried out in Panama through a lawyer or at one of the many Panamanian consulates in key ports and maritime centres throughout the world. A lawyer must always be appointed as the vessel's legal representative before the PMA. After the provisional registration, the shipowner has six months to complete permanent registration of the vessel. To do so, title over the vessel must be duly registered in the Registry of Titles & Mortgages of the PMA, the deletion certificate from the previous registry must be filed before the PMA and the corresponding technical certificates evidencing compliance with the various IMO conventions must be issued by the classification society or RO selected by

the shipowner. For fishing and fishing support vessels (reefers that carry fish), a certificate of compliance from the Authority of Aquatic Resources of Panama must be obtained before the permanent registration of the vessel can be accomplished.

The permanent patent of navigation, issued after the foregoing requirements are met, is valid for five years, after which an application for renewal can be filed. Vessels that are continually detained by the PSC of the various MOUs can be deregistered by Panama. Upon receiving the corresponding PSC reports, the Director of Merchant Marine can commence an *ex officio* cancellation process, which may lead to the vessel's cancellation from the registry, unless the vessel is mortgaged and the mortgagee bank, which must be served with notice of such process, appears before the Directorate of Merchant Marine and opposes such cancellation. Technical certificates evidencing compliance with the various IMO conventions are issued by Panama through the classification societies and ROs authorised by Panama to issue certificates on its behalf. All members of the International Association of Classification Societies (IACS) are authorised by Panama. There are also a number of non-IACS ROs authorised by Panama. Most are Panamanian, but there are some foreign ROs authorised by Panama. There have not been any cases filed against classification societies or ROs in Panama's maritime courts, but, in principle, there is nothing in Panamanian law that would exempt them from liability for negligence in the issuance of certificates, if such negligence were to cause damage to shipowners or third parties.

On 17 November 2017, Panama and China entered into a Maritime Transport Agreement in Beijing that grants most-favoured-nation treatment to Panama flag vessels calling at Chinese ports. This means that Panama flag vessels will be charged preferential rates in Chinese ports and thus reduce their operational expenses.

Panama completed the required internal approval process on 27 March 2018 when the law that enacts the Maritime Transport Agreement, Law No. 24 of 20 March 2018, was officially published. The Agreement came into force on 17 May 2018.

iv Environmental regulation

Panama has ratified the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)), which is the primary legislation regulating pollution from ships. The PCA also has its own regulations in place to prevent pollution from ships and to sanction those ships that cause oil pollution while transiting the Panama Canal. For severe offences, PCA fines can reach US\$1 million. Panama also has a Ministry of the Environment, whose jurisdiction includes Panamanian territorial waters. Normally, its focus is on pollution events on land, but it could also fine any vessels causing pollution. In 2002, the *Sydney Star* had a collision with the *Royal Ocean* in Cristobal. As a result, one of its bunker tanks was ruptured and it spilled bunkers at the north entrance of the Panama Canal. Both the PMA and PCA fined the vessel. It was ruled by the Supreme Court that both entities could fine the vessel independently of each other, but the PMA did reduce its fine, taking into account that the PCA had already levied a fine of US\$25,000 against the vessel.

v Collisions, salvage and wrecks

Collisions and salvage are regulated in Chapters I and II, respectively, of Title III of the LMC. In general, for a salvor to collect any salvage award, the salvage must be at least partially successful.

vi Passengers' rights

Panama ratified the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention) and the Protocol of 2002 to the Athens Convention (the Athens Convention Protocol 2002) on 7 November 2013. There have not yet been any cases litigated in the maritime courts to which the Athens Convention has been applied.

vii Seafarers' rights

Panama ratified the Maritime Labour Convention 2006 (MLC) in January 2009. There have been no detentions in Panama resulting from a breach of the MLC. In addition to the MLC, Panama has a Maritime Labour Law (MLL), passed in 1998, which regulates all labour issues not dealt with in the MLC. There is a minimum compensation table for seamen who have suffered accidents on board Panamanian vessels established by virtue of Article 82 of the MLL. The maximum compensation under this table is US\$50,000 in the event of death or permanent disability; however, this compensation is considered of a labour nature and seamen could also sue the shipowner for civil liability, in which case they must prove the negligence of the shipowner in the causation of the accident. Any payment under the compensation table would be deducted from any damages arising from any civil liability. Under Article 92 of the MLL, the shipowner and the seaman may agree on any law and jurisdiction other than Panama in their contracts. In a judgment dated 26 March 2006, in *Edwin Cabungcag et al v. Diamond Camellia SA & Mitsui OSK Lines*, the Supreme Court of Panama upheld a decision from the lower labour courts dismissing for lack of jurisdiction a claim arising on board a Panamanian vessel because the parties had agreed on Philippine law and jurisdiction in the applicable labour contract. Panama's two maritime courts have jurisdiction for any civil claims against a shipowner, while labour claims against shipowners of Panamanian-flagged vessels must be filed in Panama's labour courts.

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Juan David Morgan Jr obtained his Bachelor of Arts degree from Ohio Wesleyan University, having completed his junior year at Heidelberg University in Germany, and his *Juris* Doctor degree with specialisation in maritime law from Tulane University Law School in 1990. He joined Morgan & Morgan that same year and became a partner in 1997. He handles all kinds of maritime cases, dry and wet. He was a director and secretary of finance of the National Bar Association (1995–1997), a director of the Panama Maritime Chamber (2001–2005), a director of the Panamanian-German Chamber of Commerce and Industry (2004) and its president (2006–2008), and a director of the Panama Maritime Lawyers Association (2004–2010) and its president (2009–2010). He is listed by *Chambers Global* and *Chambers Latin America* as a Band 1 practitioner in shipping litigation. He speaks Spanish, English and German.

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