

IN-DEPTH

Shipping Law

PANAMA



LEXOLOGY

Shipping Law

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

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Panama

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Introduction

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. In 1914, 1,000 ships passed through Canal; it now handles up to 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 Canal, waiting time for passing through the Canal has fallen substantially and there are now fewer accidents per year. Revenues from the Canal have risen considerably. For the fiscal year of 2023, the Canal registered 9,015 transits, totalling 511.1 million PC/UMS tonnes,^[2] amounting almost US\$5 billion in revenue.

In 2007, after it was approved by a national referendum, Panama embarked on a US\$5.3 billion expansion project. 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 ends of the waterway, more than doubling its cargo capacity. The size of the new locks is 1,400 feet long (a 25 per cent increase) by 180 feet wide (a 51 per cent increase), with a draught of 60 feet (a 26 per cent increase). Traditional Panamax vessels have a maximum deadweight tonnage (DWT) of 80,000, and Neopanamax vessels are of up to 170,000 DWT. The biggest container vessels that could transit the Canal before its expansion could carry up to 5,000 twenty-foot equivalent units (TEUs), whereas those that are now able to transit can carry up to 14,000 TEUs. The expansion project also included deepening of Gatun Lake and the access channels at both sides of the Canal, as well as deepening, widening and straightening the Gaillard Cut. The expanded Canal reached its seventh anniversary with more than 17,000 transits. The expansion 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, is 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 the ends of the Canal, with a railway linking four of them; in effect, they constitute an integrated logistical port system. Furthermore, new oil terminals have recently been or are being built at 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 have been built at both ends of the pipeline.

The maritime sector in Panama has grown substantially, fuelled by the Canal. As of 2023, the Panama Chamber of Shipping had more than 200 members, whereas 40 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 Panama Maritime Authority (PMA), Panama closed 2023 with more than 8,660 registered ships, totalling almost 250 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 PMA. The 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 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.

Year in review

Since covid-19, the most relevant news in Panama concerning the maritime industry and law are the challenges that the Panama Canal has faced due to climate risks. The Canal has had to restrict transits and undertake work – at the same time – on immediate and long-term solutions. The Canal has been constantly monitoring the climate situation and communicating its decisions and changes to its customers.

Optimising the use of water, adjusting transit schedules and other decisions have been made. The Canal has focused its attention on procedures not commonly used during the vast majority of a calendar year to save as much water as possible.

At the same time, these challenges have posed several questions to public policy makers, politicians and the public in general as to what new legislation should be enacted and which actual laws should be revised for the Canal to keep its operation on a normal basis and, at the same time, for the Canal watershed to keep providing freshwater to the communities around it. This topic has been at the centre of the political debate within the ongoing presidential campaign and will continue to be at the forefront for the next couple of months and even years.

The board of directors of the Panama Canal has presented a proposal to the government that focuses on: (1) defining the Canal watershed and modifying its limits; and (2) eliminating restrictions imposed on the Canal for constructing a new reservoir.

While all this takes place, the Canal continues to play one of the most relevant roles within the Panamanian maritime industry, with all transits that were booked ahead of time going through the Canal on time, and this is expected to continue.

Forum and jurisdiction

i Courts

Two maritime courts 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 Article 19, the maritime courts also have jurisdiction to adjudicate cases arising outside the Republic of Panama when:

1. a vessel or other property of the defendant is arrested in Panama;
2. the defendant is found within Panama;
3. the involved vessels are Panamanian;
4. Panamanian substantive law is applicable to the dispute; and
5. 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'. Two Supreme Court decisions 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 charterparty. 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 High Court of England and Wales 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 stays of action based on forum-selection clauses in bills of lading. If the relevant forum-selection clause is contained in a charterparty 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 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). 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 its facilities. The 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. The eventual aim is that the CECOMAP becomes 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 were 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 that 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 (e.g., ships, cargoes and

bunkers) would be passing through the Canal or calling at Panama ports for only a brief period.

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 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. Although Panama has not ratified any of the international conventions dealing with contracts of carriage, Chapter I 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 as 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.

Although 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 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 with 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. Among other things, 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

Of 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 that law. The Panamanian courts uphold the incorporation by reference of charterparty 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, charterparty terms into contracts of carriage. However, although the governing-law clause in a charterparty 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.

The following are some of its most important features:

1. the action must be commenced within six months of the receipt of a claim in writing by the person seeking to limit;
2. the limitation fund may be constituted not only by a cash bond but also through a guarantee issued by a bank or an insurance company licensed in Panama; and
3. 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.

Remedies

i Ship arrest

With more than 14,000 transits of the Canal per year and the busiest container ports in Latin America, Panama is an ideal place to arrest not only vessels but also 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 a 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:

1. 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. The claimant or arrestor must post between 20 and 30 per cent of the arrest amount as counter-security with the court;
2. 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. 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
3. 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 point (b).

Most arrests in Panama are of the types in points (b) and (c), above. When the complaint and arrest petition are filed, the corresponding maritime judge reviews the prima facie evidence and, if he or she considers that it sufficiently supports the claim and its quantum, immediately issues the arrest order. The court marshal then serves the arrest order on the vessel, normally when at anchor while waiting to transit the 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:

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

Protection and indemnity letters of undertaking, which fall under point (d), above, 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 that value. If 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*, consisting of a special motion to lift the arrest on showing sufficient evidence that the arrest was wrongful, which, under the CMP, means it was effected:

1. over property (e.g., ship, cargo and bunkers) not belonging to the defendant;
2. in contravention of a previous express agreement by the parties to refrain from arrests; or
3. when a maritime lien has been extinguished or is inexistent (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 that 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 prejudgment 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.

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 are the 'rules of the road' for navigating Panamanian territorial waters. However, the PCA has adopted its own COLREGs (PCA COLREGs) with certain variants from the IMO COLREGs, which apply to all vessels in Canal waters. These include the designated anchorage areas at both ends of the 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 the 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, 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 of any nationality – except those from countries to which the United Nations 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 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, which is 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 and 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 memoranda of understanding 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 the process, appears before the Directorate of Merchant Marine and opposes the 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 some are 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 the 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 vessels under the Panama flag calling at Chinese ports. This means that Panama-flagged 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 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 was in 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 Canal. Both the PMA and the 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 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 seafarers 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 seafarers 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 seafarer 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, whereas labour claims against shipowners of Panama-flagged vessels must be filed in Panama's labour courts.

Outlook and conclusions

During 2023, the Panama Maritime Authority joined forces with key players of the local and international maritime industry to revise Law No. 57 of 6 August 2008 (the Merchant Marine Law). The revision process entailed several meetings, which resulted in 188 Articles reviewed, 70 modified, 10 eliminated and more than 12 new Articles that were proposed.

This revision contemplates the creation of new departments and the assessment of the functions of some of the existing departments of the Merchant Marine Directorate. The goal for this revision is to modernise the Merchant Marine Directorate and the Merchant Marine Law to the needs of the current era so that the Panama flag registry continues to be the largest one.

Another relevant development within maritime laws of Panama was the drafting of a law by means of which maritime companies are created. This law will be based on a model of registration of ships to the incorporation of companies dedicated to maritime endeavours.

The law will also allow for this type of company to be incorporated by the Panama Ship Registry so that shipowners and operators can handle the the registration of their ships and maritime-related corporations through one Panamanian entity.

These two new laws are currently before the National Assembly for discussion, revision and further approval.

Endnotes

- 1 Juan David Morgan Jr is a partner at Morgan & Morgan. [^ Back to section](#)
- 2 The Panama Canal/Universal Measurement System (PC/UMS) is based on net tonnage, modified for Panama Canal purposes. [^ Back to section](#)



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