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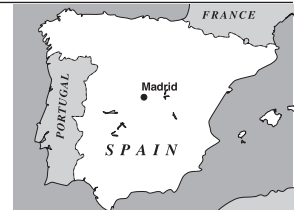
Spain

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Law and Practice

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1. Overview

1.1 Regulatory Bodies

The main regulatory body is the Directorate General of the Merchant Marine. This body has jurisdiction in relation to maritime navigation and the merchant fleet in accordance with the Ports and Merchant Marine Act 2/2011. The main functions of the Merchant Marine are:

- the control of maritime traffic and dispatch;
- the registration and flagging of ships;
- the instructions regarding the aid, rescue, towing, findings and maritime extractions and the execution and control of the maritime protection regulations, the safety of navigation and the rescue of human life at sea, homologation and control of training centres for maritime professional education, participation in the Lighthouses Commission or other instruments of institutional collaboration in maritime signalling, co-ordination of maritime emergencies, activation of emergency assessment teams and monitoring and control of their activity, as well as of its formation and training;
- the general management of nautical activity, the management of nautical qualifications and the registration, control of civil maritime personnel and adaptation of professional qualifications of the merchant marine;
- the issuance and renewal of the Maritime Labour Certificates and the Declaration of Maritime Labour Conformity referred to in the International Labour Organization Convention on Maritime Labour 2006, made in Geneva on 23 February 2006;
- the direction of prevention and fight against marine pollution from ships, boats and platforms, as well as the cleaning of marine waters;
- the determination of the minimum equipment with which ships and vessels should be provided in accordance with SOLAS, MARPOL Agreements and other international, supranational or national standards;
- internal legal advice, the processing of disciplinary proceedings, the issuance of reports and proposals for the resolution of administrative remedies against resolutions of the Maritime Administration;
- the incorporation into Spanish law of the legislation derived from European Commission and from international organisations such as (IMO); and
- the co-ordination of the international activity of the General Directorate of the Merchant Marine, especially in relation to the European Union and the International Maritime Organization.

1.2 Competition Laws and Regulation

There are no specific competition laws within the maritime industry.

1.3 Top Ten Flag States

Spain is not within the top ten flag states. As of 1 January 2019, the Spanish-controlled fleet consisted of 220 merchant vessels and a total of 4.485.725 more GT. 9 units when compared to the total in 2018, which is an increase of 8.9%.

1.4 Maritime Conventions

The main maritime conventions ratified by the Kingdom of Spain are the:

- 1976 Convention on Limitation of Liability for Maritime Claims and 1996 Protocol;
- 1992 Civil Liability Convention and the International Oil pollution Compensation Fund and the 2003 Supplementary Fund Protocol;
- International Convention on Maritime Liens and Mortgages, 1993;
- International Convention on Salvage, 1989;
- International Convention on Arrest of Ships, 1999;
- International Convention on Civil Liability for Bunker Oil Pollution Damage;
- Hague-Visby Rules - the Hague Rules as Amended by the Brussels Protocol 1968;
- 1910 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels;
- Maritime Labour Convention 2006;
- Montego Bay Convention on the law of the Sea 1982;
- UNESCO Convention of the Protection of the Underwater Heritage; and
- United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008 (Rotterdam Rules).

1.5 Classification Societies

The classification societies recognised in Spain are:

- Lloyd's Register;
- the China Classification Society;
- DNV GL;
- Bureau Veritas;
- the Korean Registry; and
- the RINA.

1.6 Types of Registrations

Spain has established a double registry system for vessels. Vessels flying the Spanish flag have to be registered in the Public or Administrative Vessel Registry, which is the registry for administrative (Flag State) purposes, as well as in Section of Vessels and Aircrafts (section 1) of the Title Registry for Movable Goods. The transfer and acquisition of ownership of a vessel requires written form, as well as registration in the Title Registry for it to be effective against third parties under Article 63 of the

Spanish Shipping Act (SSA). Likewise, perfection of voluntary security interests upon a vessel, their enforceability and the corresponding priority require registration in the Title Registry of a written deed (eg, Article 128 SSA for vessel mortgages).

The criteria for the registration of a vessel on the ordinary Shipping Registry are very wide. The Royal Decree 1027/1989 (*Real Decreto 1027/1989, de 28 de julio, sobre abanderamiento, matriculación de buques y registro marítimo*), which, pursuant to its Article 1, is applicable to every vessel, ship and naval artefact, states that the Shipping Registry shall be organised throughout nine “lists” where those vessels, ships or naval artefacts are to be registered:

- first list: platforms, high seas tugboats, support vessels and platform supply vessels;
- second list: Spanish-built vessels or those imported in accordance with the applicable laws in force, dedicated to the carriage of goods and/or passengers;
- third list: Spanish-built vessels or those imported in accordance with the applicable laws in force, dedicated to fishing activities and the extraction of other living marine resources;
- fourth list: auxiliary fishing ships, auxiliary ships to aquaculture, and those artefacts dedicated to the cultivation or housing of marine species;
- fifth list: tugboats, ships and naval artefacts dedicated to port and bay services;
- sixth list: recreational ships used for commercial purposes;
- seventh list: Spanish-built ships or duly imported, of any kind and which are used exclusively for recreational activities without commercial purposes;
- eighth list: public vessels or ships;
- ninth list: vessels or ships under construction.

However, the Special Shipping Registry opts for a different criterion regarding the registration of vessels and ships. Additional Disposition 16th of the Royal Decree 2/2011 of State Ports and Merchant Navy provides the relevant requirements: (i) any civil vessel capable of navigating with commercial purposes, excluding fishing vessels; and (ii) of at least 100 GT.

1.7 Types of Discounts

There are no types of discounts on registration and taxes available.

1.8 Citizenship Requirements for Registration

There are no citizenship requirements for the registration of vessels, which are normally registered by companies, not individuals. Under Article 76 of the Ports Act, the owning company needs to be domiciled in Spain or another EEA country. In the latter case, the company is required to nominate an agent in Spain.

In terms of pleasure yachts, there are no specific citizen requirements save that Spanish tax residents will need to comply with Spanish tax legislation.

1.9 Cabotage Laws

The EEC Regulation 3577/1992 on maritime cabotage is directly applicable in Spain. The aim of this Regulation is to eliminate restriction on the freedom provide maritime transport services within the European Union (EU). This law ensures that, within a given EU country, shipping companies or nationals based in other EU countries have the right to offer maritime transport services (known as maritime cabotage) provided that they comply with all the conditions for carrying out cabotage within that country. Shipping companies based in countries outside the EU, but controlled by EU nationals, may also offer such services. In accordance with this Regulation, Spain enacted the Royal Decree 1516/2007, which regulates the legal regime applicable to regular lines and maritime cabotage of public interest.

2. Ship Finance and Securities

2.1 Ship Finance Centre

Spain is not a ship finance centre when compared to other countries, although there are ship finance transactions, mostly in connection with ship-building. Since the European Commission's approval of the Spanish new tax lease system, Spain has seen a steady increase in ship-building transactions.

2.2 Document Registration

The key document that is required to be registered is the vessel's mortgage. In order for the mortgage to be valid and have the required in rem effects and the required protection against third parties, Article 128 of the SSA provides that it has to be constituted as a public deed and thereafter registered in the Registry of Chattels.

2.3 Preferred Modes of Ship Finance Registrations

There are no specific organisations or official bodies which regulate or control matters of ship finance registration.

2.4 Collateral Guarantees

The main collateral guarantee is obviously the ship mortgage, but there is other ancillary security used, such as refund guarantees or pledges. Pledges can be created over moveable assets. Possession over the collateral needs always to be transferred to the pledgee. There are many types of pledges but these normally include floating pledges over shares and credit rights such as monies in bank accounts.

2.5 Public Registry

Spanish registries are public for anyone outside Spanish jurisdiction. Most of the information required is available online.

2.6 Certified Information

Certificates of ownership and of charges can be obtained in the relevant registry upon request but this document will always be in Spanish.

2.7 Reflagging

The registry will work with the applicant and it will be for him or her to co-ordinate with the other registries.

2.8 Costs of Registering a Ship Mortgage

Containers carried on board a vessel can be registered as moveable property on the registry of moveable property, but this is very unusual in practice.

2.9 Multiple Mortgages

A vessel can be subject to several mortgages. The first in time will rank over the remainder of the mortgages. There is no legal requirement to seek consent from the higher recorded mortgages, although this can be agreed upon in the mortgage agreement by the parties and financial institutions frequently require a clause to that effect.

2.10 Pledge Agreements

Spanish law recognises the registration of pledges without displacement (*prenda sin desplazamiento*) and chattel mortgages (*hipoteca mobiliaria*), but there is no possibility to create any of them over a vessel. In this respect, only mortgages can be registered in respect of a vessel.

Chattel mortgages (*hipoteca mobiliaria*) can only be created over business premises, cars, trains and other motor vehicles, aeroplanes, machinery and equipment, and intellectual and industrial property.

Pledges without displacement (of the possession of the object of the pledge) can only be created in respect of harvests, animals on plots, harvesting machinery, raw materials and merchandise in warehouses, art collections and credit rights held by the beneficiaries of administrative contracts, licences, awards or subsidies, provided that this is permitted by law.

Both chattel mortgages and pledges have to be executed in a public deed before a Public Notary prior to being registered in a specific public Registry (*Registro de bienes muebles* - Registry of Moveable Assets).

2.11 Maritime Liens

All maritime liens will rank above a mortgage. These are:

- costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as claims included in the third point below incurred from the time of arrest or seizure;
- claims arising out of wreck removals carried out by the Public Authorities (Article 304.4 of the State Ports and Merchant Marine Act [hereinafter, "SPMMA"] and Article 12.3 of the 1993 Geneva Convention);
- claims for wages and other sums due to the Master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
- claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- claims for reward for the salvage of the vessel;
- claims for port, canal and other waterway dues and pilotage dues;
- claims based on tort arising out of physical loss or damage caused by the operation of the vessel, other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2.12 Duly Recorded Mortgages

Mortgage and finance agreements will always require the permission of the creditor in order to sell or charge the vessel. Further, vessels will normally be sold free of any charges, liens or encumbrances. However, there is no reason in principle to prevent a seller from assigning the buyer the mortgage over the vessel within the sales transaction. Nevertheless, an agreement will need to be reached with the creditor.

3. Government Requisition of Vessels

3.1 Authority to Requisition Vessels

The 1954 Law of Forced Expropriation (as amended) provides in its Article 101 that "in time of war and in case of total or partial mobilisation (...), military authorities could use, after their requisition, any kind of moveable assets or real estate, rights, companies, industries, lodgings, personal services and, in general anything that may contribute directly or indirectly to military goals."

Also, it is to be noted that Article 302 of the SPMMA states that vessels which are abandoned in the area of service of Spanish ports belong to the [Spanish] State.

A vessel is considered to have been abandoned if (i) it has been moored or at anchorage in the same place at the port without

any activity for more than three months, (ii) it has not paid port dues and (iii) the Port Authority declares this situation of abandonment.

After that declaration of abandonment, which is made through an administrative procedure in which the ship-owner can be a party, the ownership of the vessel is transferred to the Spanish State [Port Authority] which may sell the vessel in an auction or sink it, if maritime safety requires it.

4. Capital Markets

4.1 Typical Means of Raising Capital

Financial institutions approach ship finance with caution and will normally require that the financing be backed up by long-term charterparties with reputable entities. They normally structure the operation with a combination of asset finance and corporate finance.

Further, the financing of these assets is supported by a tax-lease framework which permits an accelerated tax depreciation of leased assets, which ultimately has a beneficial impact on the vessel's price and hence the competitiveness of Spanish shipyards worldwide.

Further, the Spanish Corporate Tax Act (27/2014 of November 27th) provides for a special fiscal benefit for ship-owners which allows them to pay taxes at a fixed daily rate proportional to the capacity of ships employed, thus reducing their tax burden.

4.2 Fleet Mortgages and Syndicated Loans

Fleet mortgages and syndicated loans are not frequently used in Spain.

4.3 Role of the Flag of the Vessel

Financial institutions will take into consideration the intended flag of the vessel within their overall risk assessment and are only likely to finance operations in which the asset is intending to fly a reputable flag.

4.4 Securitisation

Securitisation is not common in ship finance structures.

4.5 Participation of Capital Markets in Shipping Transactions

Spain has seen a steady increase in ship-building transactions since the entry into force of the new tax-lease system.

5. Maritime Labour

5.1 Labour Laws and Conventions

The Spanish labour regime combines several domestic Acts and international Conventions.

At domestic level, the most relevant legal instruments are the Collective Bargains Agreements (CBA) and the Spanish Workers' Act (SWA) approved by the Royal Legislative Decree 2/2015, of October 23rd. The SWA regulates in general terms the relationship between employers and employees with regard to, among others, labour rights, types of labour contracts and their content, working hours, salaries, promotions, collective bargaining and labour representatives, termination of contracts, types of dismissals and compensations. However, most of the CBAs address the same issues, but in more detail, and these prevail over the SWA.

Also, the SSA, in Articles 156 to 187, broadly regulates seafarers' labour law from an administrative perspective, for example seafarers' qualifications, documentation, nationality, inspections and the Master's duties and responsibilities. However, there are other legal instruments regulating seafarers' labour rights and obligations in more detail, most of which come from European legislation.

At international level, Spain has ratified more than 130 Conventions on labour law which protect workers' rights in crucial matters such as minimum wage, maximum working hours and working conditions. In maritime labour, the most relevant Convention that Spain has ratified is the Maritime Labour Convention 2006 (MLC) and all its amendments currently in force.

5.2 Local Seafarers

According to Article 162 of the SSA, as a general rule, the Master and the first deck officer of Spanish vessels shall be nationals of a member state of the European Economic Area. Nonetheless, there are exceptions, for example, the Spanish Maritime Authorities can request that these roles on board shall be covered by Spanish citizens if the role involves the effective exercise of prerogatives of a public authority and that exercise does not represent a very small part of the role.

Additionally, this Article requires that a least 50% of the crewmembers on board a Spanish vessel shall be nationals of a member state of the European Economic Area.

The same principles apply as for international sea-going vessels registered in Spain and, in accordance with Royal Decree 1516/2007, of November 16th, for vessels flying the flag of an EU Member State which are engaged in cabotage between the peninsula and other seas of Spanish territories.

5.3 Minimum Wage Requirements and Overtime

The minimum wage required by law is fixed annually by the Spanish government. In 2019, the minimum gross wage was fixed in EUR30 per hour or EUR900 per month, but according to the social agents this may substantially increase up to EUR1,200 per day in 2020.

The duration of the ordinary working day would be agreed in the CBA or contract of employment, but the annual average weekly working time would not exceed 40 hours. As a general rule, an ordinary working day cannot exceed nine hours of effective work.

Overtime is the time worked beyond the ordinary working day agreed in the CBA or the contract of employment and this time shall be compensated. In general, annual overtime should not exceed 80 hours.

5.4 Justified Dismissal

If the employer is able to evidence that the cause of dismissal is based on the economical, technical, organisational or production situation of the company, as described in the SWA, the dismissal would in principle be considered justified and the worker would be entitled to a compensation of 20 days' salary per year of work at the company, up to a maximum of 12 months.

Also, the following causes would justify a dismissal without compensation for the worker (Article 54 SWA):

- repeated and unjustified lack of attention to work or punctuality;
- indiscipline or disobedience at work;
- verbal or physical offence to the employer, other workers or their relatives;
- breach of contractual good faith and abuse of confidence at work;
- persistent and deliberate low standard of work performance;
- habitual inebriation or drug addiction affecting work, or harassment by reason of race, religion, incapacity, age or sexual orientation of the employer or other workers.

5.5 Occupational Injuries and Insurance

The Order ESS/66/2013 of January 28th is an approved compensation scale for occupational injuries from accidents that are definitive injuries but that do not affect workers' capability to work. This scale is used in order to calculate compensations to be paid by social security for injuries that do not affect workers' capability to work.

However, for calculation of a company's liability to be paid to the worker for an accident (civil liability), there is no approved compensation scale. However, the compensation scale for inju-

ries from traffic accidents, which is updated every year, is used by the courts as a guideline for calculating these compensations.

As a general rule, during the sick leave caused by an accident the company will pay compensation of 75% of the last salary of the worker plus the compensation from social security. Then, those compensations can be deducted from the contributions that are made by the company to social security on behalf of their workers. However, that compensation can be increased by virtue of CBAs. In principle, this compensation is payable until the worker obtains a medical discharge or up to a maximum of 12 months, extendable to an additional six months if it is expected that the worker will have recovered during this time.

After this period, social security will examine the worker, and if the worker is still not fit to work, will pay a compensation for his or her inability to work. If liability of the company in the accident is proven for lack of security measures, the company could be liable to pay an additional 30-50% of the compensation to the worker. However, if before or after the examination the worker has recovered, he or she could apply for compensation for the definitive injuries that do not affect their capability to work and this compensation would be paid by social security or mutual insurance.

Additionally, if the worker files a claim before the criminal, civil or labour courts and the company is found to be liable for the accident, the company will be liable to pay for a compensation to the worker that would be calculated in accordance with the compensation scale for injuries from traffic accidents mentioned previously. This amount, depending on the terms of the policy and the facts of the case, would be covered by private insurance cover.

5.6 Maritime Disputes

There is no special jurisdiction for maritime labour disputes, and therefore, these disputes will be heard before the Spanish Labour Courts.

5.7 Repatriation

Spain is party to the MLC 2006, which recognises the right of the crew members to be repatriated without cost to them when:

- the employment contract expired when the crew member was abroad;
- the ship-owners or the crew member (for justified reasons) terminate the contract of employment; or
- the crew member cannot continue to carry out the tasks agreed in the contract of employment (Rule A2.5.1). The ship-owners are under an obligation to pay for the costs of repatriation and the signatory member of the MLC shall require the vessels flying their flag to have a financial

guarantee to cover those costs. If the ship-owners do not pay for the costs of repatriation, either the Member State whose flag is flying over the vessel or the country to which the crew member is to be repatriated is allowed to request the ship-owner for reimbursement of the costs (Rule A2.5.1.5).

If the ship-owner does not pay for the costs, the special administrative body of the Spanish social security for seafarers (Instituto Social de la Marina) will pay in advance for the costs of repatriation.

The crew member, in order to ask for advance payment of these costs, must fill in an application (Annex III of the Order TAS/29/2008) and submit it to the Instituto Social de la Marina jointly with a document evidencing the enrolling of the crew member on that vessel (Article 3.1.(d)1° of the Order TAS/29/2008).

The Director of the Instituto Social de la Marina shall issue a resolution, within 30 days, accepting or rejecting the application (Article 16.2 of the Royal Decree 869/2007).

Then, if the application is approved, these costs will be requested to the ship-owner from their legal representative.

5.8 International Bargaining Forum (ITF) Agreements

CBAs are frequently used in Spain and as previously explained, these have prevalence over the SWA, which is a piece of legislation that sets out the minimum rights and obligations between the employees and the companies. In Spain there are five types of CBAs, in the following order of prevalence:

- company CBA;
- local CBA by sector;
- provincial CBA by sector;
- autonomous community CBA by sector; and
- national CBA by sector.

The most commonly used CBAs are those agreed between the workers and their companies.

6. Maritime Courts

6.1 Courts of First Instance and Appeal

Under Spanish law, there are specific courts which handle maritime disputes, as per Article 86 ter.2 c) of the Organic Law on the Judiciary Power. These courts are the commercial courts (*Juzgados de lo Mercantil*).

Appeals to decisions adopted by mercantile courts are dealt with by the *Audiencias Provinciales* (Provincial High Courts). *Audiencias Provinciales* are to be found within the normal framework of the civil courts and they are not necessarily specialised in maritime affairs. At the top of the system there is the Supreme Court (*Tribunal Supremo*), but there is no court of appeals which deals only with maritime matters.

It must be noted, however, that the Salvage Act 60/1962 created a specialised branch of (administrative) courts which deal exclusively with salvage awards. It is a sui generis administrative adjudicating body, composed of two different layers, the Permanent Maritime Courts and the Central Maritime Tribunal. It is an administrative, highly specialised body which is within the framework of the Spanish Navy and, therefore, it is not a court stricto sensu. The decisions of this administrative body (although it is called Tribunal) can be appealed before the *Audiencia Nacional* (National High Court), as an administrative court of appeal.

The SSA provides for the creation of specialised bodies (*Consejo de Arbitrajes Marítimos* and *Audidores de Arbitrajes Marítimos*) to deal with these matters but its entry into force is unknown and not foreseeable in the near future, as of January 2020.

6.2 Determining a Maritime Dispute

Maritime issues can be determined as being those falling under the scope of the SSA, which covers, as per Article 1, “all legal situations and relationships which arise out of shipping”.

At the same time, as Spain is a party to international treaties which define maritime claims (eg, Article 1.1 of the 1999 Geneva Convention on the arrest of ships), all disputes which fall under the scope of those definitions would be considered as maritime claims by the Spanish courts.

Under Spanish law legal procedures, claims are always in personam, whereby a claim is made against a legal or natural person. For instance, when arresting a ship, the action is directed against the ship-owner as debtor and not against the vessel itself, therefore it cannot be considered to be an action in rem. Spanish law recognises the existence of maritime liens which follow the vessel, irrespective of ownership, but the action is construed as being directed against the debtor.

As a general rule, the courts act as soon as they are seized by the claimant. For instance, if an arrest of a ship is being dealt with, its adoption can be made almost immediately by the court, if counter-security has been provided by the party requesting the measure. In the rest of the cases, the court has to follow usual civil procedure to adjudicate the issue. Therefore, the length of the proceedings depends on each particular case.

6.3 Arbitration and Mediation

Article 19.4 of the Spanish Civil Procedure Act recognises both arbitration and mediation as a possibility to resolve the controversy outside the scope of the courts.

In the same sense, the Arbitration Act 60/2003 and the Act on Mediation on Civil and Mercantile Issues 5/2012 allow this possibility.

The only limits to have recourse to arbitration and/or mediation are that the parties have effectively agreed to use that method in order to settle their controversy and that the subject matter of the arbitration or mediation is not forbidden to be settled by those procedures (usually, matters concerning shipping are understood to be acceptable to be settled by arbitration or mediation).

There is also the possibility of judicial conciliation (*conciliación*), whereby the parties reach an amicable agreement before the judge outside litigation proceedings.

6.4 Judicial Sale of Vessels

The court has a duty to supervise the judicial sale of vessels. In fact, under Articles 480 to 486 of the SSA, if the forced sale of the vessel is a judicial one, the court will have control of all aspects of it, from the adoption of cautionary measures to the distribution of the proceeds of the sale.

In the case that it is an *administrative* forced sale (eg, carried out by Port Authorities), there is always the possibility to appeal its decisions to an administrative court.

There is no possibility to enforce a judicial sale of a vessel if, as a general rule, the ship-owner is not the debtor. Under Spanish law, it is not possible to sell the property of a third party forcibly (without its prior consent) in order to settle a claim.

Judges will not act *ex officio* in mercantile matters. Only Public Authorities (Port Authorities, for instance) can initiate administrative proceedings *ex officio* to sell a vessel forcibly. In this case, they need to give no guarantee whatsoever to act.

When a party wishes to arrest a vessel (or to lift its arrest), bonds that are requested by the courts can be of any of the types recognised by Spanish law, expressly including bank bonds (*aval bancario*).

In respect of its amount, the bond given by the claimant has to be at least 15% of the value of the claim in order to request the vessel arrest (Article 473 of the SSA). This amount can be modified by the court in light of the characteristics of the ship and the particular case.

A bond consisting in the full amount of the claim has to be given by the ship-owner in order to lift the arrest of the vessel.

In order to participate in an auction to bid for the vessel, a guarantee of 5% of the assessment of the vessel (Article 647 of the Spanish Civil Procedure Act) is to be given. There is no requirement to put forward a guarantee or bond if the party requires the adoption by the court of the judicial sale.

6.5 Execution of Foreign Resolutions

In this respect, there is a distinction to be made between resolutions coming from other Member States of the European Union and resolutions coming from third countries.

In the first case, Regulation (EU) 1215/2012 is fully applicable. Therefore, direct recognition and enforcement of resolutions of EU countries is the rule, after they have been sent to the competent Spanish court with the formal requirements that Regulation 1215/2012 stipulates.

For third countries, provided there are no bilateral treaties signed by Spain which deal with these matters, the Foreign Legal Co-operation Act 29/2015 is applicable. In this case, in order to enforce a foreign resolution in Spain (whether it be a judicial resolution or an arbitral award), it has first to be recognised by a court through a mechanism called *exequatur*, whereby the foreign decision is given executive force by a Spanish court (in maritime affairs, normally that court is a Mercantile Court). After the judicial resolution is homologated through the *exequatur* proceedings, it can be enforceable in Spain.

In the event that a bilateral treaty is in force between Spain and another country, the provisions of that treaty are to be followed.

6.6 Order of Priority of Maritime Claims

The Spanish courts will apply Spanish law when a vessel is within its jurisdiction in order to determine the order of priority.

The priority status of mortgages on ships registered in Spain is that set out in the 1993 Geneva Convention, according to Articles 4 and 5, with the important caveat that, in Spain, claims arising out of wreck removals carried out by the Public Authorities hold the highest ranking (after the costs and expenses of the arrest of the vessel):

- maritime liens:
 - (a) costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel. Such costs and expenses include, *inter alia*, the costs for the upkeep of the vessel and the crew as well as claims included in (c) incurred from the time of arrest or seizure;
 - (b) claims arising out of wreck removals carried out by

the Public Authorities (Article 304.4 of the State Ports and Merchant Marine Act [hereinafter, “SPMMA”] and Article 12.3 of the 1993 Geneva Convention);

- (c) claims for wages and other sums due to the Master, officers and other members of the vessel’s complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
 - (d) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
 - (e) claims for reward for the salvage of the vessel;
 - (f) claims for port, canal and other waterway dues and pilotage dues;
 - (g) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers’ effects carried on the vessel;
- registered mortgages;
 - other maritime claims.

As it can be seen, mortgages are in a lesser position when compared to maritime liens but hold a higher status than an ordinary maritime claim (or other claims).

6.7 Sister Ships or Vessels Owned by Affiliates

Spain is also a party to the 1999 Geneva Convention on the Arrest of Ships, which provides in its Article 3.2 that arrest is permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose: (a) the owner of the ship in respect of which the maritime claim arose; or (b) the demise charterer, time charterer or voyage charterer of that ship.

6.8 Limitations of Liability

Spain is a party to several treaties that deal with limitation of liability, for instance, the LLMC 1976 and its 1996 and 2012 Protocols, as well as to the International Convention on Civil Liability for Oil Pollution Damage (CLC) as amended by its 1992 Protocol, and the Bunkers Convention.

Therefore, the statute for claims subject to limitations of liability is that of those international treaties.

It is to be noted that, in this respect, Spain has availed itself of the reservation it made when signing the 1996 LLMC Protocol.

This reservation allows Spain to exclude from the limitation of liability those claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board that ship, and also of its cargo (therefore excluding

those claims included in paragraphs d) and e) of Article 2 of the LLMC as amended by 1996 Protocol).

This exclusion has been expressly incorporated into Spanish law by Article 304.6 of the State Ports and Merchant Marine Act (SPMMA).

Under Spanish law, as a general rule, the calculation of limits of liability is carried out according to the aforementioned treaties.

Nevertheless, Article 399 of the SSA sets special limits to claims related to death or bodily injury to the passengers of a vessel, irrespective of the vessel’s tonnage, which refers to the limits to be found in European law in this respect.

Also, in Article 399 of the SSA there is another special calculation of the limitation of liability for those vessels with a gross tonnage less than 300 tons:

- one million special drawing rights for claims regarding death or bodily injury; and
- 500,000 special drawing rights for the rest of claims, subject to limitation.

The application of these limits is not completely straightforward due to the fact that these amounts as stated in the SSA differ from those which are applicable according to the reservation Spain made to the LLMC (which says that the limit for vessels with a gross tonnage of less than 300 tons would be half the limit of a 2000-ton vessel).

In this case, taking into consideration the higher status of the Convention under Spanish law, legal writers are of the opinion that the limits of the reservation (which are higher) are to be taken into consideration.

Furthermore, pilots can limit their liability as per Royal Decree 393/1996 (Article 24) up to a maximum of EUR600,000.

6.9 Exceptional Actions for Ending a Maritime Claim

Exceptional actions for ending a maritime claim in Spain are:

- extra-judicial settlement of the claim;
- the claim is time-barred;
- lack of jurisdiction/competence of the court;
- the creditor becomes the debtor (Article 1156 of the Spanish Civil Code);
- lack of legitimacy on the part of the claimant to pursue its claim (ie, he or she has no valid claim);
- lack of legitimacy on the part of the respondent to be sued (ie, he or she is not the actual debtor).

7. Legislation on Corporations and Tax System

7.1 New Corporate or Tax Legislation

In accordance with the European Commission, in order to address the risk of flagging out and relocation of shipping companies to low-tax countries outside of the EU, the Commission's 2004 Guidelines on State aid to maritime transport allow Member States to adopt measures that improve the fiscal climate for shipping companies. Only companies that are active in maritime transport (defined as the transport of goods and persons by sea) are eligible for measures under the Maritime Guidelines.

The most prominent of these measures is tonnage tax, whereby shipping companies can apply to be taxed based on a notional profit or the tonnage they operate, instead of being taxed under the normal corporate tax system. This can reduce the overall level of taxes paid and increase their predictability for the companies. Under seafarer schemes, labour costs (ie, income tax and social security contributions) for seafarers employed on board vessels flying the flag of an EU or European Economic Area (EEA) Member State may be partly or totally reduced.

In accordance with the EC Guidelines, Spanish Corporate Tax Act (27/2014 of November 27th) provides for a special fiscal benefit for ship-owners which allows them to pay taxes at a fixed daily rate proportional to the capacity of ships employed, thus reducing their tax burden.

This fiscal benefit is intended to reverse Spain's decline in the shipping sector and safeguard employment and know-how in the industry.

7.2 Tax System

Spain follows a territorial tax system.

7.3 Settling Matters Once a Company Ceases to Exist

In principle, an action is possible if the debt accrued prior to the date when the company is extinguished, and the claim is not time-barred.

7.4 International Tax Treaties

Spain is party to multiple double taxation treaties with many countries, but no specific shipping tax treaty.

Albors Galiano & Portales is a leading firm in the Spanish shipping, transportation, insurance and reinsurance, and yachting practice areas that was established in Madrid in the 1990s and has achieved recognition in niche practice areas traditionally dominated by foreign law firms. It has offices in Madrid, Barcelona, Bilbao and Palma de Mallorca, and correspondents in the main capitals. The firm's professional practice involves maritime law, road and air transport law, insurance

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