



ICLG

The International Comparative Legal Guide to:

Shipping Law 2015

3rd Edition

A practical cross-border insight into shipping law

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Shipping Law*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting shipping law, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 41 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Ed Mills-Webb of Clyde & Co LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

i) Collision

Maritime Law in the Republic of Panama has been mainly developed based on the basis of national regulations. Panama has enacted Law 55 of 2008, which governs maritime commerce (the “Maritime Commerce Law”), Law 56 of 2008, related to ports, and Law 57 of 2008 which regulates the merchant marine, which form the basis of our substantive maritime law.

Panama has had few instances of ratification of international conventions. This is due to the fact that Panama is not interested in being categorised as a *pro-ship-owner* or *pro-carrier* country. Most of the international treaties that have been incorporated as substantive national law are related to the safety of life at sea and navigation, maritime and air pollution prevention.

On collision matters, the International Regulations for Preventing Collisions at Sea 1972 (COLREG 72) forms part of Panama’s maritime substantive law, on account of which this treaty can be applied by the Maritime Courts in collision proceedings. However, Panama has not ratified the International Collisions Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (Collision Convention, Brussels 1910), the International Convention on Certain Rules Concerning Civil Jurisdiction in matters of Collision (1952), or the International Convention for Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other incidents of Navigation (1952).

Panamanian maritime procedural law is governed by the consolidated text of Law 8 of 1982 (the “Maritime Procedural Law”), which created the Maritime Courts and provides the rules of procedure, contains principles of private international law that determine the rights and obligations of the parties in collision proceedings, specifically, in Article 566, numeral 9, as follows:

- the law of the flag of the vessels: when the vessels are registered in the same country and the collision occurs in international waters, the laws of the country of common registry for both vessels applies;
- the law where the casualty takes place: when the collision occurs in the jurisdictional waters of a country, the

applicable law would be the one from the country where the accident occurred (also named criteria of *lex loci delicti commissi*); and

- the law of the forum as supplementary law: when the collision occurs in international waters between vessels of different registry, the applicable law will be the national law of the Republic of Panama.

ii) Pollution

On the matter of pollution, there are different rules which apply when said pollution occurs in national waters and when it occurs in the waters of the Panama Canal. In the first case, the Maritime Courts are competent to know of the matter. In the second case, there is an administrative proceeding in which the decision may include the payment of a compulsory fine (Law 19 of 1997, Article 63); but in the event that the interested parties do not agree with the decision of the Board of Inspectors of the Panama Canal Authority, they may take legal action through the Maritime Courts.

In some precedents, the Civil Chamber of the Supreme Court of Justice has confirmed the position currently held by the Maritime Courts of Panama to the effect that the legal action that originates on account of damages caused by maritime pollution corresponds to the vicarious liability doctrine. This type of liability is regulated by the Civil Code which applies as supplementary law in maritime substantive law matters. The general rule of tort in our Civil Code establishes that whoever by act or omission causes damage to another, by fault or negligence, is obligated to repair the damage caused; and further, it indicates that the statute of limitations for this type of action is one year counted from the date when the injured party knew of the damage.

It should be further noted that Panama has ratified the Civil Liability Convention of 1992 and the FUND Protocol 1992, which provides that ship-owners are strictly responsible in cases of maritime pollution resulting from maritime casualties involving oil-carrying vessels.

iii) Salvage / general average

With respect to international conventions on salvage matters, Panama has recently ratified the International Convention on Maritime Search and Rescue 1979 (Hamburg, 27 April 1979) by means of Law 29 of 18 April 2013.

Salvage has traditionally been considered by the international maritime community as a maritime lien and Panama acknowledges this particular concept. Thus, in spite of the fact that the International Convention on Maritime Liens and Mortgage of 1993 has not been ratified by Panama, our Maritime Commerce Law’s ranking of maritime liens includes expenses and compensations due to salvage in the second place, only preceded by judicial costs.

Said law watches over the existence of equity in the salvage agreement even after rescue has taken place. Thus, it gives the Maritime Courts the powers to amend or to set aside any salvage agreement in cases of unfairness of terms in the referred contract, upon the request of the presumed-affected party.

In addition, the claims for aid or salvage or contribution in general average are not subject to limitation of liability.

With respect to determining which acts are considered salvage and which are considered general average, our Maritime Commerce Law lists a limited set of acts to be considered by the Maritime Courts as general average in its Article 244. It further states that the applicable law is determined by the law of the country where the vessel is registered (Article 221).

iv) **Wreck removal**

Panama's Maritime Procedural Law provides that claims in respect of the raising, removal, destruction or rendering harmless of a vessel which has sunk, been wrecked, stranded or abandoned, including anything that is or has been on board of such vessel shall be subject to limitation of liability. It further provides that the party liable shall not be entitled to limit his liability if it is proved that the loss resulted from a personal act or omission of the party, committed with the intent to cause such loss, or committed recklessly and with knowledge that such loss would probably result.

As mentioned before, Panama has ratified the Civil Liability Convention of 1992 and the FUND Protocol 1992, which also contains provisions on limitation of liability for wreck removal matters.

v) **Limitation of liability**

While the London Convention of 1976, i.e. the Limitation of Liability for Maritime Claims, has not been ratified by Panama, our Maritime Procedural Law contains the essential elements of this international treaty. Rules governing the persons entitled to the right to limit their liability, the two categories of claims subject to limitation, the loss of the entitlement to limit liability, the scope of the limits in respect of claims for loss of life or personal injuries and the limits in the case of any other claims, and the unit of account (Special Drawing Rights) are similar if not identical to the referred to convention.

As of today, the Panamanian limits are lesser than the ones which are contemplated in the Protocol of 1996.

vi) **The limitation fund**

The constitution of the limitation fund in respect of maritime claims is allowed by Panama's Maritime Procedural Law (articles 598 to 600). Said norms provide that any person presumably liable may constitute a limitation fund before the courts or competent authority in any State in which proceedings with respect to the claims subject to limitation have been initiated; that the fund may be comprised by depositing sums of money or an acceptable guarantee that the courts or competent authority deems sufficient; and that the limitation fund will be considered constituted by all of the liable parties.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

In the event of any maritime casualty that occurred in Panamanian jurisdictional waters, the competent authorities to investigate the same are the following:

- the Panama Maritime Authority through its Marine Accident Investigation Department: this department is constituted by inspectors duly authorised to make searches, collect and examine the information and documentation related to the

respective investigation and enable them to render a report. The main purpose of the mentioned report is to indicate the causal factors of the casualty and to recommend measures to avoid similar future incidents or accidents of Panamanian flagged vessels and other flag vessels while in Panamanian water (Resolution No. 106-12-DGMM dated February 17th, 2009);

- the Panama Canal Authority through its Board of Inspectors: when the incident or accident takes place in the waters of the Canal (Law 19 of 1997 – Chapter IV: Vessels and Navigation);
- the Public Ministry and National Police: in cases where there is any suspicion of a criminal act onboard the vessel; and
- the Maritime Courts: in cases of litigation.

In the event that a Panamanian flagged vessel is involved in a maritime casualty in international waters, the Panama Maritime Authority may assign an international inspector to carry out an investigation at the nearest port in which the incident took place.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

Panama's Maritime Commerce Law governs the substantive law of cargo claims. Panamanian rules of procedure recognise contractual freedom and as such, if the parties include a choice of law clause, the Maritime Courts will apply and enforce the selected law. Parties are therefore free to select The Hague, the Hague-Visby, the Hamburg Rules or any foreign law as their choice of law to govern cargo claim disputes.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

On cargo claims matters, it is important to note that the Maritime Commerce Law makes a distinction between the *carriers* and the *actual carrier*. The first one is the party who in his own name, or acting through another, agrees to a contract for the transport of goods by sea with a shipper; meanwhile, the *actual carrier* is the person to whom the *carrier* has entrusted the performance of the transport of said goods by sea and is in fact carrying out the transportation.

On the subject of liability, our Maritime Commerce Law considers that the *carrier* will be liable for the totality of the transportation even when the cause of damage to the cargo is on account of acts or omissions of the employees or agents of the *actual carrier*. In that respect, our law follows an objective responsibility theory.

An exception to this objective responsibility can be made when the transportation contract expressly mentions that part of the transportation will not be carried out by the carrier, but by a different carrier (the *actual carrier*). In those cases, the *actual carrier* will be liable as the carrier.

Arbitration Clauses in Cargo Claims

Panama's Maritime Procedural Law provides that for an arbitration clause to be recognised by the Maritime Courts, the clause needs to have been previously and expressly negotiated. Arbitration clauses in *pro forma* or adhesion contracts are not viewed as having met this requirement, such as those found in BIMCO contracts.

On this point it is important to highlight that a party challenging the jurisdiction of the Maritime Courts in favour of an arbitration court must file a plea for lack of jurisdiction within the maritime proceedings.

Quality/Quantity Unknown Clause: Interpretation under Panamanian Law

Panama's Maritime Commerce Law establishes that it is the duty of the shipper to ensure the accuracy of the description, marks, number of packages or pieces, weight or quantity of goods at the time of loading (Article 70). If there is failure to comply with this obligation, the carrier shall be entitled to claim compensation from the shipper for any loss resulting from inaccuracies in this information.

The shipper's obligation to ensure the accuracy of the description of the goods arises at the time of booking and extends up until the time of delivery of the goods to the carrier.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

Our Maritime Commerce Law provides in its Article 70 that the shipper shall indemnify the carrier against any loss resulting from improper packing or inaccuracies in the description, marks, number of packages or pieces, weight or quantity of goods at the time of loading. However, the carrier's right to compensation shall not affect the obligations of the carrier under the contract of carriage of goods with respect to third parties, except for the shipper.

With respect to the obligations placed upon a shipper regarding the declaration of the nature and weight of the cargo relating to dangerous goods, our Maritime Commerce Law establishes that the shipper has to notify the carrier in writing of the correct description, nature and the precautions he should take regarding this burden. It further establishes three scenarios for the determination of liability in the event that there are damages:

1. When the shipper fails to make the notification, for lack of notification or inaccuracy, the shipper is liable for the damages suffered by the carrier, the ship or the cargo on board.
2. When both the shipper and the carrier are unaware of the dangerous nature of the goods, under an objective liability criteria, the liability for damages is of the shipper.
3. When the carrier knows of the dangerous nature of the goods and accepts to transport these, he will be strictly liable for the damages that occur.

The obligation to notify the carrier with respect to dangerous goods, as well as the obligation to describe the quantity and quality of the goods arises at the time of booking. Once there is a booking confirmation, the obligation of the carrier to carry out any preparation needed to transport the dangerous goods arises. On this matter, the Maritime Courts have considered the *booking confirmation* as the transportation contract on account of which the rights and obligations of the parties arise, while the *bill of lading* is the evidence of the transportation contract.

With respect to ratified international conventions on dangerous goods, as previously mentioned, Panama has ratified the Civil Liability Convention of 1992 along with its FUND Protocol and the Bunker Convention 2001.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

The Athens Convention relating to Carriage of Passengers and their Luggage by Sea has been recently ratified by Panama.

In addition, our Maritime Commerce Law, rules in its Article 149 that passengers may pay only the proportional freight based on the distance navigated by the vessel when there is an interruption of a voyage due to unforeseen circumstances or *force majeure*. Legal action or claims to request compensation for damages is forbidden when the interruption is due to unforeseen circumstances or *force majeure*. Nevertheless, if the interruption of the voyage occurs solely because of the Master, then the law allows passengers to file claims for compensation.

The law further provides that if the delay of the voyage exceeds 10 days, passengers can request the refund of their tickets and may also demand compensation for damages in the event that the delay is due solely to the fault of the Master or the ship-owner.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Panama shares with most modern maritime nations the recourse of arrest or attachment of vessels. Law 8 of 30 March 1982, as amended, creates the Maritime Courts and contains provisions of maritime procedural law for the Republic of Panama (the "Maritime Procedural Law").

Our Maritime Procedural Law provides for two main options when seeking to obtain security for a maritime claim against a vessel or its owner: procuring the arrest of the vessel or filing for an injunction measure against the owner of the vessel.

The Maritime Courts have exclusive competence in cases arising out of acts related to commerce, transport and maritime traffic, occurring within the territory of the Republic of Panama, in its territorial seas, the navigable waters of its rivers and lakes, and in the waters of the Panama Canal.

The Maritime Courts shall also have exclusive competence with respect to claims arising out of acts mentioned in the previous paragraph, but occurring outside the scope mentioned in the preceding paragraph, in the following instances:

- When the respective claims are directed against the vessel, or its owners, and the vessel is seized within the jurisdiction of the Republic of Panama, as a consequence of such action.
- When the Maritime Court has seized other goods belonging to the defendant, even though such defendant is not domiciled within the territory of the Republic of Panama.
- When the defendant finds itself within the jurisdiction of the Republic of Panama, and has been personally served for any claims filed in the Maritime Courts.
- When one of the vessels involved flies the Panamanian flag, or the Panamanian substantive Law is applicable by virtue of the contract, or is contemplated by the Panamanian Law itself, or the parties submit themselves expressly, or tacitly, to the jurisdiction of the Maritime Courts of the Republic of Panama.

With respect to the **arrest of vessels**, to obtain an arrest order it is necessary to file an arrest request and complaint, with "*prima facie*" evidence of the claim. The plaintiff has to also cover the Court expenses to arrest the vessel and the expenses to preserve the vessel.

An arrest order is usually granted within 24 hours of the request being filed. The time for execution of the arrest depends on the location of the vessel (Pacific or Atlantic). Both Maritime Courts are located on the Pacific. It takes approximately two hours to drive from one ocean to the other and then some additional time for navigating to the vessel.

In the Panamanian jurisdiction, the arrest is available in three instances:

i. *Physically to seize property susceptible to sequestration in order to make effective privileged maritime liens over the same:*

If filing an *in rem* claim against the vessel, our Maritime Courts could order the arrest of a vessel of any nationality, if they are in Panamanian waters, in order to obtain jurisdiction in a particular case. It is necessary to physically arrest the vessel in Panamanian waters.

It is necessary to deposit before the Maritime Tribunal the following:

- Security to act without a power of attorney, which is returned in full once the power of attorney and certificate of legal existence of the plaintiff is filed with the Court.
- US\$1,000.00 security for damages that the arrest may cause for each vessel.
- US\$2,500.00 initial maintenance fees for each vessel. Bear in mind that if the arrest is not lifted quickly, the Marshall may request plaintiffs to post additional fees to maintain the vessel. The failure to post such fees may result in lifting the arrest.

Our rules of procedure provide that an action *in rem* may be filed in order to assert a maritime lien or levy execution thereon, when the substantive applicable laws permit a right of persecution and/or grant priority against the vessel, whether this is named maritime lien or statutory action *in rem* or another name. If such laws recognise a maritime lien on the vessel for this type of claim, the plaintiff would be able to file an action *in rem* against the vessel.

The plaintiff must file the evidences in respect the applicable laws (i.e. copy of the laws, Legal Opinions, Lawyer Affidavit and/or others).

ii. *To bring within the jurisdiction of the Panamanian Maritime Courts, cognizance of causes emerging within, or outside the National territory, as a result of facts, or acts related to navigation, when the defendant is outside its jurisdiction:*

This is the case when the plaintiff has not been able to start proceedings in his jurisdiction because the defendant is not there.

In this case the plaintiff may request the arrest of the vessel (regardless of her nationality or of the ship owner's nationality) while this is navigating in Panamanian waters or touching Panamanian ports, even if there are no other contacts with the Panamanian jurisdiction.

In that scenario it is necessary to deposit before the Maritime Court the following:

- Security to act without a power of attorney, which is returned in full once the power of attorney and certificate of legal existence of the plaintiff is filed with the Court.
- US\$1,000.00 security for damages that the arrest may cause for each vessel.
- US\$2,500.00 in initial maintenance fees for each vessel. It must be noted that if the arrest is not lifted shortly, the Marshall may request plaintiffs to post additional fees to maintain the vessel. The failure to post such fees may result in lifting the arrest.

iii. *To assure that the proceedings will not have any illusory effect, and keep the defendant from transposing, dissipating, encumbering, alienating, or impairing properties susceptible to the said measure:*

This is the case where the plaintiff has an action "*in personam*" against the ship-owner and has reasons to believe or fear that the ship-owner will transpose, dissipate, encumber, alienate or impair the property that he owns, leaving the claimant without assets from which to recover his credit or claim.

In this case the plaintiff may request the arrest of the vessel involved in the transaction that gave birth to his claim, or any other vessel or property belonging to the defendant.

In such case, the Maritime Court would request security in an amount between 20% and 30% of the amount of the claim. The amounts would be affixed discretionarily by the Judge within such percentages.

After filing the complaint and arrest motion, as a general rule of proceedings, the arresting party will need to file before the Maritime Court the following documents:

- Power of Attorney: the signature of the grantor must be notarised and legalised and the Notary Public must state by way of knowledge that the grantor has full power and authority to grant the Power of Attorney on behalf of the company. This document must be notarised as authentic and legalised according to the 1961 Hague Convention on the Apostille or legalised before a Panamanian Consulate at the place of issuance.
- Certificate of legal existence of the plaintiff.
- Certificate of legal existence of the defendant, this document will be necessary only if the claim is filed against the owner of the vessel ("*in personam* complaint").
- Evidence of the claim.

With respect to **injunction measures**, our Maritime Procedural Law allows a person with reason to believe that during the time prior to a judicial recognition of his right, he will suffer imminent or irreparable danger, to request from the Maritime Court the most appropriate conservatory or protection measure which will provisionally guarantee, depending on the circumstances, the effect of a judgment on the merits (i.e. injunction order). Such measures normally are in the form of an order against the sale, transfer or mortgage of Panamanian vessels.

Accordingly the Maritime Court may issue an order restraining the sale of a Panamanian registered vessel upon filing of a complaint against the vessel or her owner with a petition accompanied with evidence of the existence, and the merits of the claim. The plaintiff will need to deposit court expenses and security damages that the injunction may cause, which is fixed by the Court between US\$10,000 to US\$50,000.

Once the injunction order is issued, the Court sends the order to the Department of Registration of Titles and Encumbrances of the Shipping Bureau and the Public Registry of Vessels and these authorities make a note on the records of the vessel.

4.2 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

The two main procedural actions to obtain security, as described above, are the arrest measure and the injunction. Article 167 of the Maritime Procedural Law allows for the arrest of vessels, its cargo, freight or fuel. The particular provisions of the applicable law of the claim would need to be reviewed on a case by case basis to determine the appropriate course of action.

4.3 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

Our Maritime Procedural laws allow for security to be posted in cash, by way of a judicial deposit certificate to be purchased at the National Bank of Panama, or by way of certified checks issued by banks licensed to operate in Panama. It further allows alternative forms of security if the parties involved reach an agreement to that effect.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

The Maritime Procedural Law regulates evidence in its Chapter VIII and the securing of evidence is covered in particular in Section 2, which provides for a “discovery” procedure in which any of the parties may request the other to reveal information and produce any of the following documents: (1) sworn declarations through oral or written questions; (2) written interrogatories addressed to the parties; (3) inspection of documents or other objects; (4) permission to enter on land or other properties for the purpose of making visual inspections and for other purposes; (5) physical and mental exams; and (6) request for the admission of facts, things or documents.

5.2 What are the general disclosure obligations in court proceedings?

Unless the Judge has set limitations, any party may request the others to provide or show information, things or documents with respect to any business not subject to a professional secret; which is relevant as to the object of a lawsuit and is related to the claim or the defence of any party. The term to furnish documents shall be 45 days following receipt of the petition, and not requiring intervention of the court or of any edict.

With respect to insurance, the law states that the parties may obtain information with respect to the existence and the contents of any insurance contract under which any person dedicated to the insurance business may become liable, in whole or in part, for the judgment rendered in the lawsuit or for the indemnity or reimbursement of payment made in order to comply with the judgment.

Upon request by the party from whom the discovery is requested and for just cause, the Court may order the resolutions necessary to protect a party against grievances, humiliation or unjustified expenditures, or any other abuse.

The Maritime Procedural Law also allows for testimonies, oral interrogatories, written interrogatories, depositions, including pre-judicial depositions, inspection of documents, physical and mental examination of persons, judicial inspections, and acknowledgment of private documents.

As indicated above, unless the Judge has set limitations, the parties must disclose requested information within 45 days following receipt of the petition, provided it is not subject to a professional secret. The Court can set fines of up to US\$1,000.00 to parties that do not respond to the request.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

A typical maritime procedure shall undergo the following phases:

- Filing of the claim. It can only be amended once, by order of the Court or by application of one of the parties.

- Possibility of filing an Application for an Injunction or attachment together with the claim against the defendant (for example: attachment; precautionary or general protective measure against defendant’s assets; properties; and money).
- Service of the claim.
- Counterclaim by the defendant. This must be filed before the hearing to answer the complaint.
- Possibility of Application for Measures for Securing of Evidence.
- Preliminary Hearing.
- Ordinary Hearing.
- Examination of evidence. During this step we will require expert witnesses, reports and all the necessary evidences to prove the facts, claim, defendant responsibility and amount in controversy.
- Filing of pleas at first instance.
- Filing of an Appeal before the First Division of the Supreme Court of Justice against the ruling of the Maritime Court.
- Appeal for Maritime Review.
- Enforcement of judgment.

With respect to the time-scale applicable in maritime claims, given the circumstances, the processing, as regards time expended, shall depend on their complexity, the procedural elements used by the parties, the litigating abilities of the parties, the use of subterfuge by the parties, court backlog, and others. Hence, these types of proceedings can, on occasion, be of indeterminate length, and the full process could therefore take more than two years, or even longer.

With respect to arbitration, mediation and conciliation, there is a recently established maritime conciliation and arbitration centre in Panama called “*Centro de Conciliación y Arbitraje Marítimo de Panamá*”. While the Centre has not yet processed a maritime arbitration case, arbitration has growing relevance in commercial and transactional matters.

Arbitration is regulated by Law 131 of December 31, 2013, which regulated national and international commercial arbitration in Panama. Arbitrations generally follow the following phases:

- Request for Arbitration.
- Service of the Request for Arbitration and Response.
- Composition of the Arbitral Tribunal.
- Formalisation of the Arbitration Complaint.
- Counter Arbitration Complaint.
- Fixing the Terms of Reference.
- Hearings.
- Evidentiary Phase.
- Final Submissions.
- Issuance of the Arbitral Award.
- Request for Clarification or Correction of the Award.
- Annulment Request before the Supreme Court of Justice.

Arbitration proceedings will take approximately eight to 12 uninterrupted months, counted from the date of the acceptance of the chairman of the arbitration tribunal.

6.2 Highlight any notable pros and cons related to Panama that any potential party should bear in mind?

A notable advantage of Panama with respect to claims arising from acts of maritime commerce is the existence of two specialised Maritime Courts with specific rules of procedure. Additionally, our Maritime Procedural Law contemplates instances in which the Maritime Courts shall also have exclusive jurisdiction even if the

object of the lawsuits occurred outside national waters or territory of Panama, such as when the vessel has been arrested by the Maritime Judges as a precautionary measure to ensure the results of a future judgment (i.e. Forum Arresti). This allows potential parties or claimants to request the arrest of vessels when they arrive or sail through Panamanian national waters and the Panama Canal.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Panama's Maritime Procedural Code contains a special provision on recognition of foreign judgments and awards. Article 422 provides that final judgments, arbitration awards, interlocutory judgments and resolutions which decree precautionary measures rendered by foreign states shall have the force accorded thereto in the respective treaties in the Republic of Panama, previous to the declaration of enforcement or exequatur, which is to be decreed by the Fourth Chamber of General Business of the Supreme Court of Justice.

A petition requesting the declaration of enforcement must be filed before the Fourth Chamber of the Supreme Court of Justice, and a notice shall be served to the respondent of the action, as provided for in article 403 of the Maritime Procedural Code.

During the time that the enforcement proceeding is pending, an authenticated copy of the foreign resolution shall be ground to request for precautionary measures before the Maritime Courts of Panama.

The general rule on enforcement of foreign judgments can be summarised as follows.

A final foreign judgment issued by a foreign court would be recognised and enforced in the Courts of the Republic of Panama without retrial of the originating action by instituting exequatur proceedings in the Courts of Panama and upon determination by such tribunal:

- i. That the courts of the country where the foreign judgment is issued would in similar circumstances recognise a judgment issued by the courts of the Republic of Panama.
- ii. That the judgment has been issued as a consequence of an action "*in personam*".
- iii. That the judgment was rendered after personal service on the defendant.
- iv. The cause of action upon which the foreign judgment is based does not contravene the public policy of the Republic of Panama.
- v. That the documents evidencing the foreign judgment are in authentic form according to the law of the relevant foreign court and have been duly legalised by a Consul of the Republic of Panama or pursuant to the 1961 Hague Convention on the legalisation of documents (apostilled).
- vi. That the foreign judgment has been translated into Spanish by a licensed translator in Panama.

Jurisdiction is on the Fourth Chamber of the Supreme Court who will discretionally decide whether or not to recognise the foreign judgment.

If the Fourth Chamber of the Supreme Court decides to recognise the foreign judgment, the plaintiff must then file an execution proceeding of the foreign judgment before the Panamanian Courts.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

A foreign arbitration award issued would be recognised and enforced in the Courts of the Republic of Panama without retrial of the originating action by instituting exequatur proceedings in the Courts of Panama and upon determination by such tribunal that:

- 1) The courts of the country where the arbitration award is issued would in similar circumstances recognise an award issued by the courts of the Republic of Panama.
- 2) The cause of action upon which the arbitration award was based does not contravene the public policy of the Republic of Panama.
- 3) The documents evidencing the arbitration award are in authentic form according to the law of the relevant foreign court and have been duly legalised by a Consul of the Republic of Panama or pursuant to the 1961 Hague Convention on the legalisation of documents (apostilled).
- 4) The documents evidencing the arbitration clause are in authentic form according to the law of the relevant foreign court and have been duly legalised by a Consul of the Republic of Panama or pursuant to the 1961 Hague Convention on the legalisation of documents (apostilled).
- 5) The arbitration award and the arbitration clause must be translated into Spanish by a licensed translator in Panama.

Jurisdiction is on the Fourth Chamber of the Supreme Court who will discretionally decide whether or not to recognise the arbitration award.

In accordance with our Arbitration Law, the recognition and enforcement of a foreign arbitral award would only be rejected if one of the following circumstances occurs:

1. At the request of the party against whom it is invoked, if the said party proves before the Fourth Chamber of the Supreme Court of Justice that:
 - a) One of the parties to the arbitration agreement was under some incapacity under the law applicable to it, or the said agreement is not valid pursuant to the law to which the parties subjected it or, if no provision was made in this regard, pursuant to the law of the country in which the award was rendered.
 - b) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable, for whatever reason, to present its defences.
 - c) The award refers to a dispute which was not contemplated by the arbitration agreement or which did not fall within the terms of the submission to arbitration or contains decisions which go beyond the scope of the arbitration clause or the submission to arbitration. However, if the provisions of the award which refer to the matters submitted to arbitration can be separated from those which have not been submitted to arbitration, the former may be recognised and enforced.
 - d) The constitution of the arbitral tribunal or the arbitral proceedings did not conform to the agreement entered into between the parties or, if there is none, it did not conform to the law of the country in which the arbitration was held.
 - e) The award has not yet become binding on the parties or set aside or stayed by a court of the country in which it was made or pursuant to whose law it was.

If a court has been asked to set aside the award pursuant to the applicable law, the competent court to whom the application for recognition and enforcement is addressed may, if it considers it appropriate to do so, defer its decision and at

the request of the party seeking recognition and enforcement it may also order the other party to provide appropriate and adequate guarantees.

2. If the court finds:
 - a) That pursuant to the Arbitration Law the subject matter of the dispute may not be resolved through arbitration.
 - b) That the recognition or enforcement of the award would be contrary to Panamanian international public policy.

If the Fourth Chamber of the Supreme Court decides to recognise the arbitration award, the plaintiff should file an execution proceeding of the arbitration award before the Panamanian Courts.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

Panamanian maritime legislation, both substantive and procedural, is up to date with the most modern and efficient traditions of maritime countries and jurisdictions. Our Maritime Commerce Law (Law 55 of 2008), our law on ports (Law 56 of 2008) and our

law on the merchant marine (Law 57 of 2008) have compiled our maritime regulations in an accessible manner, while our Maritime Procedural Law (Law 8 of 1982) has also been kept up to date with jurisdictional trends in the maritime area.

Moreover, Panama has enacted the Law 27 of 28 October, 2014 whereby our Maritime Commerce Law has been modified to allow, *inter alia*, the optional registration of Panamanian naval mortgages in the English language as opposed to the previous procedure that required translation into the Spanish language as “*sine qua non*” requisite for registration thereof. This option will lead to saving costs and will add to the efficiency in the completion of financial maritime transactions.

Finally, it is important to state that the Panamanian National Assembly has ratified, as of 22nd April, 2015, the Nairobi International Convention on the Removal of Wrecks which had already entered into force on 14th April, 2015. Panama will shortly be able to issue on its own certificates of Insurance or other Financial Security in respect of Civil Liability in relation to this convention. In the meantime, however, for its fleet it will be recognising the certificates issued by the maritime registries of the United Kingdom, Palau and the Cook Islands.

With two specialised courts handling maritime cases around the clock and an efficient Maritime Authority and Public Registry of Vessels, there is a reason why Panama is currently the largest ship registry in the world, and will endeavour to continue on this path.



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Nadya Price had an early interest in pursuing a shipping practice, as evidenced by the thesis, “Panama as an Open Ships Registry” (Universidad de Panama, 2013). She has had an active shipping and shipping finance practice for more than 10 years, and has recently returned to Panama from Patton, Moreno & Asvat’s London offices, where she was responsible for all shipping transactions in the European region.



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The head office of Patton, Moreno & Asvat is located at the heart of the new business centre at Costa el Este in Panama City. In addition, other offices were opened in London, British Virgin Islands, Anguilla, the Bahamas, Belize, and Uruguay all focusing on meeting customers’ needs and carrying out its goals and objectives.

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