

## SPANISH SHIPPING ACT 2014

A new Shipping Act will come into force in Spain on the 25<sup>th</sup> September 2014. This article flashes the main issues of interest for Skuld members trading in Spain.

### **Letters of Indemnity:**

The Shipping Act now recognizes full validity to such instruments in the internal relationship between Shipper and Carrier (certainly not in respect of Cnee, who will be protected by the “clean on board” notation on the B/L). However, the Act introduces an element of confusion by providing an exception to the general rule: The LOI shall not be valid in case of bad faith when the reserves about the actual condition of the cargo have been omitted with the intention to harm a third party.

*Skuld commentary : this exception is not too dissimilar from the position under English Law which holds LoIs to be unenforceable if there is no “genuine dispute” over its subject matter, e.g. : a Lol issued for a cargo of clearly rusted and damaged steel which is shipped “clean on board”.*

### **Limitation of liability of Maritime Claims:**

The Act establishes a detailed procedure to invoke limitation which now includes the obligation to deposit the fund within 10 days after having invoked the benefit in court proceedings. An important issue to bear in mind is that the possibility to *deposit the fund* (read to *invoke limitation*) gets time barred after two years following the date when the first claim was filed *in court* (no reference is made to arbitration). The fund can be deposited either in cash or by way of an “acceptable” guarantee. So far, only bank guarantees or insurance bonds are regarded as “acceptable” by courts, not LoUs. Lastly, the benefit of limitation shall be applied to any and all vessels, claimants and debtors, irrespective of their nationalities / flag. The claims which are subject to limitation are those of the LLMC/96, with the exception of the reserve made to paragraphs d) and e) of article 2. 1 (costs of removal of sunk vessels / cargo).

### **Pilotage:**

The Captain keeps the nautical management/command of the vessel whilst manoeuvring with Pilot on board. Pilot’s authority does not substitute the Captain’s. On liability, the new article 328 provides that the damages and incidents caused to the vessel or to a third party due to inaccuracy or omission in the advice provided by the Pilot, will be attributable to him, *without prejudice* to any concurrent liability if the Captain also incurred in error or negligence when following the instructions received from the Pilot. If the damages are fully attributable to the Pilot, he will be exclusively liable. In case of concurring fault, the Captain and the Owner will also be liable, on a joint basis. In that case, there will be an exposure for Owners due to the Pilot’s limitation of liability (€ 20.00 per the vessel’s gross tonnage with a maximum of EUR ONE MILLION).

### **Towage:**

The new Act contemplates the assistance given by tugs in port maneuvering, salvage and carriage. In harbour assistance, the direction /control of the maneuvers fall on the towed vessel *unless* otherwise agreed by the parties. In case of damage or loss to third parties the tug operator and the owner of the towed vessel will be held jointly liable, notwithstanding the possibility of a recourse action. Court actions get time barred within one year.

### **Stowaways:**

The Act foresees four “extraordinary” scenarios where the stowaway can be disembarked: i) inhuman or degrading situation on board, ii) medical assistance needed, iii) humanitarian reasons (asylum), iv) repatriation by competent authorities (*laissez-passer*). In such cases the Authorities will be entitled to seek security from the ship-owner and vessel’s agent to cover costs for his maintenance, legal assistance, translations and repatriation. The vessel will be detained until such security is posted.

### **Arrest of sea-going ships:**

Two novelties have been introduced. First one is that vessels not flying a flag of a State party of the Geneva Convention of 1999 shall be arrested in respect of any claim, not limited to those maritime claims listed in art. 1 of the Convention. Second one is that the guarantee to be posted by the applicant will be *at least* 15% of the sum claimed. According to our previous experiences, we must say that this 15% was in average the amount requested by the Judges.

### **Jurisdiction & arbitration clauses:**

Jurisdiction and arbitration clauses shall not be valid unless they have been singularly negotiated and accepted by the parties. Council Regulation (EC) 44/2001 on jurisdiction shall certainly prevail when: i) the jurisdiction clause refers to EU Courts (e.g. High Court of London) and, ii) it is raised against the contracting party. Referred Council Regulation does not require said singular/separate negotiation of the jurisdiction clause inserted on B/L and other customary documents. The Act plainly establishes that the jurisdiction and arbitration clause will have no effect if not expressly accepted by third parties, such as the rightful holders of negotiable bills of lading, what will likely prove impossible.

### **Agent’s liability:**

Up to date, ship agents in Spain were held jointly liable with the carrier for the damages sustained to the cargo during the sea-leg of the voyage. The scenario will now change. Ship agents will be no longer liable vis a vis shipper/consignee/forwarder. However, this assertion has an exception: when the agent signs B/L on behalf of the owner/carrier, complete name *and address* of the latter will have to be inserted in the B/L, otherwise agent will be responsible on a jointly basis with owner/carrier.

### **Handling contract:**

A particular limitation of liability has been set for the terminals' benefit:

- Cargo damage: 2 SDR per kg of gross weight of the goods lost or damaged.
- Delay: two and a half times the price of the handling services provided to the goods effectively delayed.

Obviously these limits are more advantageous than the carrier's one. Our recommendation would be for owners/charterers contracting handling services in Spain to expressly agree that the Terminal limitation of liability would be the same one applicable to the carrier/charterer (i.e.: Hague Visby Rules).

### **Deposit and sale of undelivered goods:**

If Cnee does not take delivery at PoD the Act provides the possibility to auction the cargo before Notary Public. So far, these sales were being arranged by courts but such system had proved long and ineffective.

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