

The Shipping Law Review: Mexico

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Commercial overview of the shipping industry

Mexico has a relatively long coastline with a strategic position facing the Pacific on the west and the Gulf of Mexico and Caribbean Sea to the east and south. It is a manufacturing country with a large economy, and imports goods on a large scale; however, the amount of maritime cargo handled by its ports does not reflect this. In 2020, Mexican ports handled 266,718,822 tonnes of cargo, a 12 per cent decrease from the 302,931,411 in 2019. Of this total, 100,879,579 tonnes of cargo were imported (a 20 per cent decrease from 2019), 119,513,279 tonnes were exported (a 4.4 per cent decrease from 2019) and 46,325,964 tonnes correspond to coastal trading (a 10.7 per cent decrease from 2019).

According to the Mexican Infrastructure Plan for 2020–2024, one of the objectives of the current administration is to double the amount of cargo handled in coastal trading by 2024.

The cruise industry is important in Mexico, with 865 arrivals and 2,293,126 passengers in 2020, which is a decrease of more than 70 per cent from the 2,951 arrivals and 8,926,617 passengers in 2019.

The Mexican merchant fleet was comprised of 2,697 vessels in 2019 (the 2020 figures are not yet public information); note, however, that this is in respect of vessels of more than 100 gross tonnage (GT). We believe the number of merchant vessels over 500 GT is between 600 and 650.

A vessel can only be flagged and registered in Mexico when it is owned or possessed under a financial lease agreement by a Mexican company or individual. Shipping companies that wish to carry out coastal trading in Mexico are limited to 49 per cent foreign investment.

Coastal trading is restricted to Mexico-flagged vessels; however, foreign-flagged vessels may obtain a permit to carry out coastal trading in Mexico provided certain conditions are met. By the end of December 2020, close to 40 foreign-flagged vessels were operating in coastal trading in Mexico.

General overview of the legislative framework

Maritime law is regulated by federal laws. In general, maritime law is regulated in the Navigation and Maritime Commerce Law, including maritime contracts, navigation regimes, ship registration, maritime liens, marine insurance, administrative structure of the maritime authority, maritime accidents, general average, salvage, limitation of liability, and certain rights of crew members.

Mexico is also a party to several international conventions on maritime law, such as the

United Nations Convention on the Law of the Sea, which with the Federal Law of the Sea provides the main legal framework

from the territorial perspective.

From the safety perspective, the main applicable convention is International Convention for the Safety of Life at Sea 1974 (SOLAS); however, there are other applicable rules, such as the Latin American Agreement on Port State Control of Vessels 1992 (Viña del Mar MOU), which is an agreement between Latin American countries on marine safety in port states, as well as other domestic regulations.

From an environmental perspective, the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL 73/78) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention) apply and are both incorporated or replicated in the domestic laws.

In respect of liability, the conventions ratified by Mexico include the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976), the International Regulation for Preventing Collisions at Sea 1972 (COLREGs), 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), and the International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC Convention).

Other laws and regulations that may apply to maritime cases, for example, when there is an absence of specific regulation in the Navigation and Maritime Commerce Law, one of the following general rules will apply, depending on the nature of the absence: Commerce Code, Federal Law of the Sea, Law of Ports, General Law of National Assets, Administrative Procedure Law, Antitrust Law, Civil Code, Civil Procedures Code, Labour Law, Insurance Contract Law.

Forum and jurisdiction

i Courts

All laws regarding maritime issues are federal laws, and as a general rule, disputes arising in connection with federal laws may be heard in local or federal courts at the choice of the plaintiffs; however, under Article 105, Section IV of the Mexican Constitution, all matters relating to maritime law are to be heard by federal courts. When resolving jurisdiction controversies, courts tend to have different opinions as to what disputes relate to maritime law; however, it is common for courts to consider that only the cases expressly contained in the Navigation and Maritime Commerce Law as being exclusively of federal jurisdiction cannot be heard by a local court. These types of cases include the arrest of vessels, enforcement of ship mortgages, procedures of limitation of liability, disputes in respect of marine insurance, collision, general average and salvage. There is no express provision, for example, in the case of disputes arising from ship repair contracts.

The proceedings are governed in general by the procedural chapters of the Commerce Code; however, specific submissions regulated in the Navigation and Maritime Commerce Law, such as those concerning the arrest of vessels, enforcement of ship mortgages, claims for collision, general average, salvage and limitation of liability.

The following limitation periods apply to maritime claims in Mexico:

- a. six months from the agreed date of delivery for claims related to towing contracts;
- b. one year for charter disputes, cargo claims under a bill of lading and passenger claims;
- c. two years from the date of the occurrence for collision claims; and
- d. two years from the date of the occurrence for marine insurance claims.

In the case of shipbuilding, the limitation is two years from the date a latent defect is discovered, but no later than four years from the date of delivery of the vessel from the shipbuilder to the owners.

General average claims have a one-year limitation from the date of the first arrival in port following the event that caused the general average or four years from the date a general average guarantee is granted.

When not specified in the law, the applicable time limit will be 10 years.

Time limits cannot be extended by agreement unless the applicable law expressly authorises the extension. Courts and arbitral tribunals are not entitled to extend time limits.

ii Arbitration and ADR

Mexican law does not have a specific maritime arbitration procedure and there are no codified arbitration rules for commercial matters; however, parties are free to agree to resolve disputes by arbitration or other means of alternative dispute resolution and, in general, Mexican courts will honour arbitral clauses provided one of the involved parties requests the court to submit the controversy to arbitration as per the agreed arbitration clause or agreement.

There is no specific wording required for arbitration clauses to be valid; however, the parties must clearly submit to the jurisdiction of the courts.

Commercial arbitration is regulated in the Commerce Code, which incorporates the UNCITRAL Model Law of 1976 and vaguely regulates the commencement of arbitration, the composition of the tribunal as well as awards and their enforcement. The Commerce Code also provides for the attachment of assets as an interim form of relief that can be obtained from a court in support of arbitration.

iii Enforcement of foreign judgments and arbitral awards

Mexican courts will enforce public judgments in respect of commercial disputes, including those of a maritime nature. The rules for enforcement are included in the Commerce Code, at Articles 1346 to 1348. Pursuant to Article 1347-A, the requirements for the enforcement of a foreign judgment in Mexico are that:

- a. the court that heard the dispute had jurisdiction as per international law;
- b. it is not the consequence of an action *in rem*;

- c. the defendant was given proper notice of the complaint to guarantee the opportunity to present his or her case;
- d. the judgment is final and cannot be appealed in its country of origin;
- e. the controversy is not subject to a different procedure before the Mexican courts;
- f. the subject matter of the controversy is not against public policy in Mexico; and
- g. the formalities to be considered authentic are met, such as certification of signatures, legalisation and apostille.

Furthermore, Mexico has ratified a bilateral treaty with Spain for the recognition and enforcement of civil and commercial judgments; however, the existence of a treaty between Mexico and the country of origin of the judgment is not a requirement for enforcement.

Mexican courts do not require registration to enforce a foreign judgment, provided that the requirements in Article 1347-A of the Commerce Code are met.

Foreign arbitral awards may be enforced in Mexico under the rules of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which Mexico has ratified and is incorporated in domestic legislation, specifically the Commerce Code.

Both foreign judgments and awards must be translated into Spanish by a translator that has been duly authorised by the Mexican courts.

Shipping contracts

i Shipbuilding

There is not a significant amount of shipbuilding in Mexico. Shipyards are engaged mainly in ship repairs and building small fishing ships.

Under the Navigation and Maritime Commerce Law, all shipbuilding contracts to be executed in Mexico must be recorded in the Mexican Maritime Public Registry. Article 82 of the Navigation and Maritime Commerce Law allows the following options for shipbuilding contracts:

- a. future purchase agreement, in which the shipyard must supply the materials needed for the performance of the contract. In this case, title will be transferred once the construction is completed; and
- b. work agreement, in which the shipowner must supply the materials and the title over the ship is transferred to the shipowner at the time the building process starts.

Notwithstanding the foregoing, the parties may agree to a different scheme for the transfer of title.

As per Article 95 of the Navigation and Maritime Commerce Law, shipbuilders will have a lien over the built vessel; however, the lien expires when the vessel is delivered to the shipowner but will remain in force even if title over the vessel is transferred to a third party.

In general, shipbuilders and shipowners are free to agree on the terms of the shipbuilding contract and courts will honour those agreements provided they are not against the public policy of Mexico.

ii Contracts of carriage

Mexico is a signatory to the Hague-Visby rules and Mexican courts will honour them when invoked by the parties to a dispute. However, Mexico is not a signatory to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules). As per the Hague-Visby Rules, unless notice of loss or damage is given to the carrier at the time of delivery, or within three days of the date of delivery, removal of the cargo is *prima facie* evidence that it was delivered in the same condition as described in the bill of lading.

The Navigation and Maritime Commerce Law also provides a set of general rules for contracts of carriage in Chapter IV (Articles 128 to 137), which are in line with the Hague-Visby Rules. For Chapter IV to apply to a contract of carriage, the following, as a minimum, must be met:

- a. the port of loading or unloading in the bill of lading is located in Mexico; or
- b. the bill of lading expressly stipulates that Mexican law applies.

The aforementioned Articles of the Navigation and Maritime Commerce law provide that freight rates may be freely agreed between carriers and shippers making reference to the United Nations Convention on a Code of Conduct for Liner Conferences; however, the Maritime Authority may intervene when there are anticompetitive conditions in the market.

It also provides the minimum information that a bill of lading must contain, namely:

- a. name and domicile of the carrier and shipper;
- b. name and domicile of the consignee;
- c. name and country of registry of the vessel, voyage and bill of lading number;
- d. goods to be carried, including the necessary elements for their identification;
- e. freight rate and any other charges consequent to the carriage;
- f. an indication of whether the freight rate has been paid;
- g. port of loading and unloading;
- h. mode and type of transport;
- i. place of delivery of the goods to the consignee; and
- j. clauses outlining the terms and conditions agreed by the parties.

Shippers will be liable for whatever losses or damage are caused as a consequence of misdeclaration of cargo.

iii Cargo claims

Mexico is a signatory to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules) and, therefore, the bill of lading and the removal of the cargo are considered *prima facie* evidence.

Under Mexican law, the shipper and any other lawful holder of a bill of lading will be entitled to bring claims under the contract of carriage documented by the bill of lading. Claims can be brought against the carrier; however, shipowners can also be liable when they are not the contractual carrier if the loss or damage was a direct consequence of their management of the vessel. Notwithstanding this, demise clauses are enforceable in Mexico.

The carrier can also bring claims against the shipper if there has been a misdeclaration of cargo, even when that cargo is not inflammable, explosive or dangerous in nature.

The terms of a charter party can be incorporated into a bill of lading provided the parties clearly express that it is their will, including dispute resolution clauses. Whether the dispute resolution clauses will be binding for a lawful holder of the bill of lading who is not the shipper will depend on the wording of the clause.

Unpaid credits from the carriage of goods, handling of the cargo, storage, loading and unloading will grant a lien to the creditor, which will remain in effect for a month from the date the cargo was unloaded.

Once the cargo is being unloaded from the vessel, the carrier cannot retain the goods on board because of a lack of payment of the freight rate; however, the carrier may request a court of law to order attachment and arrest of the cargo.

iv Limitation of liability

Despite Mexico being a party to the LLMC Convention 1976, neither the 1996 Protocol to amend the LLMC Convention nor the 2012 Amendment have been signed by Mexico. Mexico is also a party to the CLC Convention and the Protocols of 1976 and 1992. Although these Conventions are not properly incorporated into domestic legislation, they are referenced throughout the Navigation and Maritime Commerce Law and are established as the legal instruments to determine liability as a consequence of marine casualties and to determine the limitation of liability.

Articles 304 to 322 of the Navigation and Maritime Commerce Law stipulate the procedure for parties to limit their liability under the LLMC Convention and the CLC Convention.

The final purpose of the procedure is to establish the sum that the liable party will be bound to pay, to create a fund with the relevant sum and to determine how that fund will be distributed between the different creditors; therefore, it is a procedure at which many parties with an interest may appear.

The procedure must be heard by the federal court with jurisdiction over the port where the occurrence that gave rise to the liability took place or the first port of arrival after the occurrence. If the vessel never reached a port, the procedure may be heard at the port of departure or the destination for that last voyage.

The procedure must be initiated within a year of the date on which the shipowner or the person entitled to limit his or her liability became aware of the existence of a claim that entitled him or her to limit his or her liability. When applying to limit liability, the shipowner or party entitled to the limitation must submit security for the full amount equivalent to the limitation of liability and must also inform the court of the possible claimants and their domiciles, outlining the nature of their possible claim.

The limitation fund will remain available to settle the claims arising from the relevant occurrence even if the shipowner is placed in bankruptcy procedures.

When accepting the right to limit the liability of the applying party and the security submitted, the court will stop any attachment ordered against the applicant for claims that may be credited against the limitation fund and all legal actions connected with the event against the applicant that are already in place will be allocated in the file of the limitation.

The security required to create the fund may be a cash deposit or a bond. It is possible that the judge may also allow a letter of undertaking from the protection and indemnity club. However, attempts to limit liability under the LLMC Convention have not always been successful in Mexican courts, especially in cases in which a vessel has caused damage to floating platforms.

Furthermore, Article 142 of the Navigation and Maritime Commerce Law provides the following limitations of liability of the carrier:

- a. for the death or injury of passengers: up to 16,000 special drawing rights (SDRs) per passenger;
- b. for loss of or damage to cabin luggage: up to 400 SDRs;
- c. for loss of or damage to vehicles being carried, including the luggage in those vehicles: up to 1,400 SDRs;
- d. for the loss of or damage to any other luggage: up to 600 SDRs.

Notwithstanding the contents of Article 142, the limitation applicable to death and injuries would be considered unconstitutional by a court of law and therefore it is null.

Remedies

i Ship arrest

Mexican law allows for more than one option for ship arrests, mainly, the general commercial remedy under the Commerce Code and the remedy under the Navigation and Maritime Commerce Law. Mexico is not a signatory to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships 1952 or the International Convention on Arrest of Ships 1999.

Arrest procedure under Navigation and Maritime Commerce Law

The procedure under the Navigation and Maritime Commerce Law is more consistent with international maritime practice and apparently more expeditious than the general rules under the Commerce Code; however, it only applies in the following specific cases:

- a. damage and losses caused through the use of the vessel;
- b. death or injuries connected with the use of the vessel;
- c. salvage operations;
- d. environmental claims;
- e. wreck removal or refloating expenses;
- f. charter claims;
- g. bill of lading and passenger claims;
- h. luggage and other cargo claims;
- i. general average;
- j. towage;
- k. pilot claims;
- l. goods, bunkers and supplies and services for the use of the vessel;
- m. shipbuilding and ship repairs;
- n. port duties;
- o. wages and salaries of crew;
- p. disbursements made on behalf of the vessel;
- q. insurance premiums, including protection and indemnity club calls;
- r. ship broker's commission or fees;
- s. disputes regarding ownership or use of the vessel;
- t. disputes between co-owners of the vessel;
- u. enforcement of mortgages; and
- v. disputes from sales contracts.

Any claim not included in this list should follow the general procedure under the Commerce Code to apply for an arrest.

The claimant may submit an application for the arrest of a vessel with the federal court where the vessel to be arrested is located and the court will review the case and resolve it *ex parte*. When accepting the application and ordering the arrest, the judge must also set the amount of the security that the claimant must place for the arrest to be enforced. The amount of the security will depend entirely on the criteria of the judge; the usual forms of security are bonds or bank deposits made with a specific government-owned bank.

When accepting the application and ordering the arrest, the court will notify the Mexican Maritime Authority and relevant harbour master office, ordering that the arrested vessel may not be cleared from the port and must remain in its current position. The court may request the assistance of the Navy or other government agencies to enforce the arrest. Arresting a vessel by helicopter while at anchor in territorial waters but not in the berth is possible and not uncommon owing to the operation of large offshore vessels in shallow draft ports in the Gulf of Mexico.

Enforcement of the arrest is made by a court clerk who visits the vessel, notifies that the arrest is in place, performs an inventory of the vessel and everything in it, and appoints a custodian who will be responsible for the maintenance of the vessel while under arrest. The custodian should be appointed by the claimant.

Once the arrest is in place, the claimant will have five days to produce evidence that court or arbitral proceedings have been initiated; otherwise, the arrest will be lifted. Therefore, it is not possible to effect an arrest only to obtain security; the claim must be pursued. The claim may be pursued before whichever court has jurisdiction over the dispute. The arrest will be lifted if the shipowner posts counter security.

Arrest rules under Commerce Code

The general arrest rules in the Commerce Code allow for the retention of any assets, including vessels, when there is fear that the debtor may transfer the property or hide the asset.

The requirements that the claimant must meet for the arrest to be ordered under the rules of the Commerce Code including provision of proof of any existing credit. When applying for the arrest, the claimant must demonstrate the existence of the credit and must post security to guarantee payment of damages arising from wrongful arrest. When initiated as a pretrial action, the process or the arrest will take place *ex parte*.

The arrest will be lifted if the shipowner posts counter security.

Once the arrest is in place, the claimant will have three days to produce evidence that court or arbitral proceedings have been initiated; otherwise, the arrest will be lifted. The three-day period may be extended at the discretion of the court when the claim is being pursued elsewhere.

The arrest of bunkers may be pursued under these general rules of the Commerce Code.

In both cases, wrongful arrest will be determined if the claim fails or if security is not posted.

ii Court orders for sale of a vessel

The parties to a court procedure may agree to a specific procedure for the sale of the vessel, and the courts will honour such an agreement. If there is no agreement in place, the procedure under the Commerce Code and the Federal Civil Procedures Code must be followed.

A claimant can apply for a court order to sell an arrested vessel once an unappealable judgment has been issued.

If the vessel has not yet been appraised, the procedure will commence with each of the parties appointing an expert to value the vessel and the court will take the average of the two appraisals as the value. If there is a difference of 20 per cent or more between the two appraisals, the court will appoint a third independent expert.

The court will request a report from the National Maritime Public Registry in respect of any liens or encumbrances over the vessel and will serve notice of the sale to all the creditors that appear in the report. These creditors and any other creditor that can demonstrate the existence of their credits through registry certificates may participate in the sale procedure and may contest the decisions made by the court.

Notice of the sale must also be published twice in a local newspaper and in the *Official Gazette* and the latest publication must be at least five days before the day of the auction.

On the day of the auction, the vessel will be sold to the highest bidder, provided the offer is at least two-thirds of the appraised value of the vessel. If there is no offer of at least two-thirds of the appraised value, the court will call a second auction, in which the same rules will apply but the value of the vessel will be reduced by 10 per cent. If no offer of at least two-thirds of this amount is made, a third auction with an additional 10 per cent reduction will be conducted.

If there is no offer for two-thirds of the value of the vessel at the third auction, the claimant may opt to acquire the vessel for two-thirds of the appraisal and will reimburse the debtor with the difference, if any.

Regulation

i Safety

As of June 2017, the Mexican Navy is the government agency in charge of regulating and supervising maritime safety. To perform this task and to act as the maritime authority in Mexico, a Harbour Masters and Maritime Affairs Unit (UNICAPAM)² was created within the Navy. Before that, the Ministry of Transportation was responsible for maritime safety.

The maritime safety system incorporates SOLAS (as amended), which is the main safety regulation. Mexico is also a signatory to the International Convention for Safe Containers 1972, the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 79), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), the COLREGs, International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the STCW Convention).

In addition to the international conventions into which Mexico has entered, the domestic Regulation of the Navigation and Maritime Commerce Law provides specific rules and regulations regarding maritime safety that are mandatory in Mexico. These rules categorise vessels, determine which rules and requirements apply to which vessels, certifications, surveys, inspections, minimum manning, and other aspects of maritime safety.

ii Port state control

Mexico is a signatory to the Convention and Statute on the International Regime of Maritime Ports and most importantly, and is a party to the Viña del Mar MOU, which is the Latin American agreement on port state control of vessels.

Port state control responsibilities fall within the scope of the work of UNICAPAM. The instruments to be applied under the Viña del Mar MOU are the following:

- a. International Convention on Load Lines 1966 (the Load Lines Convention);
- b. Protocol of 1988 relating to the Load Lines Convention;
- c. SOLAS;
- d. Protocol of 1988 relating to the International Convention for the Safety of Life at Sea 1974;
- e. MARPOL (73/78);
- f. the STCW Convention;
- g. the COLREGs; and
- h. International Convention on the Tonnage Measurement of Ships 1969 (the Tonnage Convention).

Under the Viña del Mar MOU, port state authorities are required to inspect at least 20 per cent of foreign-flagged vessels in their territories; however, in recent years, UNICAPAM has been inspecting close to 50 per cent of the foreign-flagged vessels operating in Mexico and the authorities are working to implement a rigorous system of port state control.

UNICAPAM has the power to inspect any foreign-flagged vessel in Mexican waters. As a result of the inspection, the surveyor may determine that a second inspection is required and deny clearance or dispatch to a vessel for safety concerns until the deficiencies are duly corrected. UNICAPAM may also impose fines, the amounts of which will depend on the level of the safety breaches.

iii Registration and classification

The Mexican ship registry is the National Public Maritime Registry. Under Article 17 of the Navigation and Maritime Commerce Law, the following must be registered:

- a. shipowners, shipping companies, operators and ship agents. In respect of companies, the deed of incorporation should be recorded; in respect of individuals, the birth certificate is required;
- b. title over vessels, such as bills of sale, mortgages and other liens and encumbrances;
- c. bareboat charters and financial lease agreements with purchase options over Mexico-flagged vessels;
- d. shipbuilding contracts when the vessel is to be Mexico-flagged; and

e. court resolutions in connection with registered vessels;

To documents to be registered must be notarised. If drafted in any language other than Spanish, a certified translation must be attached. Foreign documents must be apostilled or certified by the Mexican consulate to the country of origin of the document.

Failure to register will not make the interest null, but it will not be opposable to third parties.

Only vessels owned or possessed by Mexican individuals or corporations may be flagged and registered in Mexico; dual registration and flagging is not possible in Mexico.

The National Maritime Public Registry's central office is located in Mexico City and has branch offices in every port in Mexico.

iv Environmental regulation

Mexico has extensive regulation in respect of marine pollution and, as with many jurisdictions, it may be considered complex.

On the international level, Mexico is a signatory to many international conventions on marine pollution such as MARPOL (73/78), the CLC Convention and its 1976 and 1992 Protocols, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention), International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (the OPRC Convention) and the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (Ballast Water Management Convention).

On a domestic level, the main laws dealing with marine pollution are the Navigation and Maritime Commerce Law, the General Law of Ecological Balance and Environmental Protection, the Federal Law of Environmental Liability, and the Marine Dumping Law.

The Marine Dumping Law was amended to be consistent with MARPOL (73/78) and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Protocol 1996).

There is a multiplicity of authorities in respect of marine pollution in Mexico: the Navy, the Ministry of the Environment, the Environmental Prosecutor and a special occupational, health, safety and environment agency created for the oil industry. Each has different scopes, powers and capacities.

v Collisions, salvage and wrecks

Collisions

Mexico is a signatory to the COLREGs, and Article 153 of the Navigation and Maritime Commerce Law expressly stipulates that all vessels must comply with the COLREGs when sailing. The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (the Collision Convention) has also been ratified by Mexico, and the Navigation and Maritime Commerce Law states that collisions will be resolved as per the Collision Convention.

Salvage

Mexico is a signatory to the Convention for the Unification of Certain Rules of Law with respect to Assistance and Salvage at Sea 1910 (the 1910 Salvage Convention), the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 1979) and the International Convention on Salvage 1989 (the 1989 Salvage Convention).

Mexican law does not provide a mandatory form of salvage agreement; therefore, the parties are free to negotiate salvage conditions to their best interest. The Navigation and Maritime Commerce Law does provide regulation regarding rescue, the role of the authorities in rescue and salvage operations, apportionment of liability, and compensation limits in cases where assistance is rendered by port tugs.

The Navigation and Maritime Commerce Law also provides that, unless agreed otherwise by the parties, contributions to general average will be regulated under the York Antwerp Rules 2016.

Wrecks

The Navigation and Maritime Commerce Law contains an administrative procedure for wreck removal.

When a vessel, aircraft, rig, barge or cargo is drifting, in peril of sinking, sunk or stranded and, in the opinion of the maritime authority, it represents a danger or obstruction to navigation, port operations, fishing or other marine activities, the maritime authority will notify the shipowner or operator and order it to take the relevant action to correct the situation, such as removal, signalling, repair, sinking or cleaning. The shipowner will have three months to comply with the order, otherwise the Navy will conduct the ordered activity at the shipowner's cost.

All wreck removal operations require authorisation from the Navy and from the environmental authorities.

vi Passengers' rights

The Navigation and Maritime Commerce Law guarantees compensation to passengers within the limits of the LLMC Convention 1976; however, it is possible that the limitation of liability in respect of personal claims, such as injury and death, is considered unconstitutional.

Additionally, there is a complete regime of consumers' rights available for passengers with claims. Mexico is not a party to the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention).

vii Seafarers' rights

Mexico is not a signatory to the Maritime Labour Convention 2006. Therefore, seafarers' rights are mainly protected in the Mexican Labour Law, which contains a full chapter on the subject. These stipulations include working hours, weekly rest days, annual vacation period, redundancies, quality of the lodging and food on board, and repatriation. There are other labour regulations of lesser hierarchy which mainly deal with occupational health and safety issues.

Additionally, under Mexican law, all workers must be registered in the workers compensation system (the Mexican Institute of Social Security), which will provide all workers and their families with medical services, a retirement fund and, in some cases, a retirement pension.

Crew members of a Mexico-flagged vessel must be Mexican nationals.

Outlook

i Amendments to the dumping regime

On 13 April 2020, the federal government published in the *Official Gazette* an amendment to the Marine Dumping Law. The amended Law, which came into effect in July 2014, succeeded a Regulation issued by the Executive Branch in 1979 that had not been amended following the London Protocol 1996, which became effective in Mexico in 2006. Therefore, the Mexican dumping regime was not completely in line with the latest international regulations before the 2014 Dumping Law came into effect. Notwithstanding, the inconsistencies with the London Protocol 1996 and MARPOL have been eliminated with this latest amendment.

First, the word 'deliberate' has been reinserted within the concept of dumping. Therefore, accidental disposal into the sea of waste or other matter from vessels, aircraft, platforms or other man-made structures are no longer considered dumping. Furthermore, the Dumping Law as amended, provides that the disposal needs to have the sole intention of jettisoning the waste or matter. The same sole intention of jettisoning is required for the sinking into the sea of vessels, aircraft, platforms or other man-made structures for it to be considered dumping.

The 2020 amendment to the Dumping Law also introduces two additional Articles: Article 3 *bis* and Article 3 *ter*.³ Article 3 *bis* lists several activities that are not to be considered dumping, in line with Article 1, Paragraph 4.2 of the London Protocol 1996. Article 3 *ter* is in line with Article 1, Paragraph 4.3 of the London Protocol 1996, save for cases in which the environmental authorities note that the relevant activity will clearly have an adverse effect on the Mexican marine environment.

The new Article 4 *bis* is, for practical purposes, the insertion of Annex 1 of the London Protocol 1996.⁴

Finally, the amendments introduce an exclusion that is a consequence of the legal regime regarding oil and gas, which is that in the case of dumping related to activities in the oil and gas industry, the Navy and the Safety and Environmental Agency for the Hydrocarbons Sector will work together to enforce their respective policies.⁵

ii Administrative changes to maritime authority

Currently, maritime authority is divided between the Navy and the Ministry of Transportation, with the latter concentrating on the Maritime Registry and permits for foreign vessels to operate in Mexican waters, and the Navy controlling harbour master offices, marine inspection and safety. As of June 2021, the Navy will be the sole maritime authority in Mexico.

Footnotes

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² Unidad de Capitanías de Puerto y Asuntos Marítimos.

³ See Mexican Marine Dumping Law (Ley de Vertimientos en las Zonas Marinas Mexicanas).

⁴ See <https://www.epa.gov/sites/production/files/2015-10/documents/lpamended2006.pdf> at p. 17.

⁵ For a fuller description of the 2020 amendments to the dumping regime, see <https://www.lexology.com/library/detail.aspx?g=badb4211-7240-4a0c-9cc7-efbe7b15af8b>.

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