



# Shipping

in 30 jurisdictions worldwide

Contributing editor: Jonathan Lux

# 2009



Published by  
**GETTING THE DEAL THROUGH**  
in association with:

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# Mexico

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## Newbuilding contracts

- 1 When does title in the ship pass from the shipbuilder to the shipowner?  
Can the parties agree to change the time when title will pass?

Pursuant to the new Navigation and Maritime Trade Law (LNCM 2006), the moment in which ownership over a vessel under construction will be transferred from the shipbuilder to the shipowner will depend on the type of shipbuilding contract. According to LNCM 2006, there are two possible types: a future purchase agreement or a construction agreement. In the first, the title is transferred once the construction process is duly completed; in the second, the transfer occurs right from the starting event of the construction itself. Although some safety regulatory issues are fundamental in shipbuilding, considering the commercial nature of them, the parties could agree to a different moment in which the title would pass.

- 2 What formalities need to be complied with for the refund guarantee to be valid?

Recording of maritime mortgages before the National Maritime Public Registry is mandatory with respect to large vessels (500 gross tonnage and over). Not recording would imply the risk of having a bona fide third party alleging property rights over the vessel.

- 3 Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Yes, although the yard has privileged retention rights over the vessel under construction, according to Mexican law, it can only be exercised as a result of lack of payment. If the money owed or the quality of services were in dispute, the shipowner would be entitled to obtain delivery of the vessel in an ordinary commercial litigation before a federal court, in which he would be obliged to guarantee payment to the shipyard.

- 4 Where the vessel is defective and damage results, would a claim lie in product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

According to Mexican law the defect would amount to a 'latent defect', which may be contractually determined between the shipyard and the shipowner. Additionally, a bill of sale over the vessel in a forthcoming transaction would determine the liability arising out of latent defects. Where no contractual relationship exists (ie, third parties), the general regime concerning product liability would operate. However, it would be a cap to the statutory limit of liability of the shipowner (ie, the 1976 London Convention).

## Ship registration and mortgages

- 5 What vessels are eligible for registration under the flag of your country?

Coastal trade in Mexican waters is reserved to Mexican shipowners and Mexican vessels. However, if there are no Mexican-flagged vessels available, foreign flagged vessels may engage in cabotage trade under temporary (cabotage) navigation permits granted by the Ministry of Communications and Transportation if certain conditions are met (for further information on cabotage permits, see 'Update and trends').

Vessels under ownership or authentic financial lease contracts are eligible for flagging. The leasing company may be located in Mexico or abroad.

A Mexican shipowner must:

- be a Mexican citizen or a company formed as per Mexican law;
- have a domicile in Mexico;
- be registered in the Mexican Shipping Registry; and
- own or possess one or more vessels of at least 500 gross register tonnage (GRT).

The last of these requirements is not applicable to shipowners of fishing and passenger vessels operated in internal waters, or to shipowners of minor sport or pleasure vessels rendering services to tourists.

- 6 What are the requirements for company formation?

Before forming any type of business entity in Mexico, a search and reservation of the proposed company name must be conducted at the Ministry of Foreign Affairs.

It is required that the new company has at least two partners or shareholders and a minimum capital of 3,000 Mexican pesos (approximately US\$300) for a *sociedad de responsabilidad limitada* (similar to a limited liability partnership) or 50,000 Mexican pesos (US\$5,000) for a *sociedad anónima* (a limited liability stock corporation). These are the two most common types of business entities. The new company may be managed by a board of directors or a sole director, which may consist of foreigners, residents or non-residents.

Having obtained the approval of the Ministry of Foreign Affairs, the constitutional documents, namely the by-laws and charter of formation, must be notarised by a Mexican notary public. The legal representatives appearing before the notary public on behalf of the shareholders or partners will need a power of attorney, which if granted abroad must be legalised or apostilled.

The notarised deed containing the constitutional documents has to be registered with the local Public Registry of Commerce.

The new company must be registered with the Taxpayers' Registry and obtain a tax identification number. Furthermore, if the company has any percentage of foreign investment participation, it must be registered with the Foreign Investment Registry.

The maximum foreign participation in the capital stock or equity of a Mexican shipping company engaged in cabotage trade is 49 per

cent. Foreign participation in Mexican shipping companies exclusively engaged in international navigation or rendering port services, such as towage, launching and line handling, may exceed that threshold (and even reach 100 per cent) upon favourable resolution of the Foreign Investment Commission.

**7** Is dual registration and flagging out possible and what is the procedure?

In Mexico it is not possible to register a vessel that remains registered in another country. The maritime authorities require evidence indicating the deletion (as opposed to suspension) of the previous flag of the vessel in order to flag it as Mexican.

Flagging out and deregistration are possible provided that the shipowner proves to the maritime authorities that all tax and labour debts have been paid or secured and that all registered mortgages or charges have previously been deleted.

**8** Who maintains the register of mortgages and what information does it contain?

Vessel mortgage deeds must be notarised and registered with the Mexican Ships' Registry, which is maintained by the Ministry of Communications and Transport.

The mortgage deed must include a clear reference to the credit or obligations that are guaranteed thereby, and a clear and concise description of the mortgaged vessel.

The mortgage deed must be in Spanish or incorporate a translation into Spanish as part of the text thereof.

#### Limitation of liability

**9** What limitation regime applies? What claims can be limited? Which parties can limit their liability?

The limitation regime for maritime claims is contained in the Convention on Limitation of Liability for Maritime Claims (LLMC 1976), the International Convention on Civil Liability for Oil Pollution Damage (the 1992 Protocol, CLC 1992), the 1968 Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (the Hague-Visby Rules), as well as LNCM 2006.

Under LLMC 1976, shipowners, charterers, managers, operators and salvors may limit their liability in respect of loss of life or personal injury and property damage.

CLC 1992 provides that shipowners are strictly liable and may limit their liability for pollution damage caused by a spill of oil carried in bulk. Warships or vessels owned or operated by a state and engaged by the government in a non-commercial service are excluded from the convention.

The Hague-Visby Rules limit the liability of a carrier in respect of loss or damage to goods carried by sea, provided that:

- the bill of lading provides for loading or discharge in a Mexican port;
- the bill of lading provides that it shall be governed by Mexican law; or
- one of the optional ports of discharge is in Mexico.

LNCM 2006 provides further limits of liability for those passenger claims not covered by LLMC 1976, as follows:

- 16,000 special drawing rights of the International Monetary Fund (SDRs) for the death of or personal injury to each passenger;
- 400 SDRs for loss or damage in respect of cabin luggage;
- 1,400 SDRs for loss or damage to vehicles, including luggage in or on them; and
- 600 SDRs for loss or damage to other luggage.

**10** What is the procedure for establishing limitation?

For establishing limitation under LLMC 1976 and CLC 1992, a fund must be constituted with a Mexican federal court. The limitation fund is calculated as per the provisions in those conventions. A cash deposit or a bank guarantee may be provided. Once the shipowner has constituted a fund, claimants have no right against any other asset of the shipowner in respect of their claim. As per LNCM 2006, limitation of liability under LLMC 1976 and CLC 1992 may only be invoked if a fund has been set up.

The competent federal court would be:

- a district judge located in the port where the casualty happened;
- if the casualty occurred outside a port, the one located in the first port of call after the incident; or
- if the vessel cannot reach a port due to the casualty, the one at the port of origin or destination of the last voyage, at the claimant's choice.

The statute of limitations for the filing of a petition for a declaration of limitation of liability is one year counted as from the date of the casualty or from the moment the owner, operator or any legitimate party becomes aware of a claim against themselves.

Upon admitting the request, the court will grant a 30-day term to any existing creditors to make a claim against the party requesting the limitation of liability (60-day term in case of foreign creditors).

**11** In what circumstances can the limit be broken?

Under both LLMC 1976 and CLC 1992, the limit of liability may be broken if the wrongdoer caused the damaged intentionally or recklessly and with the knowledge that such loss or damage could result.

#### Port state control

**12** Which body is the port state control agency? Under what authority does it operate?

The authority in charge of port state control in Mexico is the Sub-Directorate of Inspection, Construction, Tonnage and Freeboard, which is part of the General Directorate of the Merchant Marine, within the organisational structure of the Ministry of Communications and Transport.

It must be noted that Mexico is a party to the Latin American Agreement on Ship Control by Port States, also known as the Viña del Mar Agreement or Latin American MOU. It was signed in Viña del Mar, Chile in 1992. As a result of this agreement, the maritime authorities of Latin American countries are committed to inspect at least 15 per cent of foreign vessels (without discrimination) entering their ports in a 12-month period to ensure that those vessels comply with the IMO conventions (MARPOL 73/78, Load Lines, SOLAS, STCW, as adopted by Mexico). The inspections procedures are those established in the IMO conventions.

**13** What sanctions may the port state control inspector impose?

The maximum penalty for a serious infringement of port state control provisions is 10,000 times the minimum daily salary in force in Mexico City at the time the sanction is imposed (the maximum penalty currently equals 525,900 Mexican pesos (US\$51,110)).

**14** What is the appeal process against detention orders or fines?

To challenge a detention order or fine arising out of a port state control inspection, an affected party may either file an administrative recourse with the same authority (ie, the maritime authority), or initiate an *amparo* proceeding (similar to a judicial review) at a court of law.

Mexico has adopted the 1982 United Nations Convention on the Law of the Sea, pursuant to which, upon the posting of a reasonable bond or other security, a detained vessel must be promptly released, unless it does not comply with international regulations regarding seaworthiness or its sailing means a possible danger to the marine environment.

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#### Classification societies

**15** Which are the approved classification societies?

In accordance with LNCM 2006, the Ministry of Communications and Transport or Mexican individuals or entities or classification societies duly approved by the said Ministry, may issue the relevant certificates and carry out the relevant surveys required by domestic and international regulations.

**16** In what circumstances can a classification society be held liable, if at all?

There is no provision in Mexican law excluding classification societies or their inspectors from liability. However, in Mexico, classification societies have not yet been found liable for the unseaworthiness of a vessel.

As per article 175 of the LNCM 2006, the shipowner is the ultimate responsible and is strictly liable for any damages caused by the vessel to third parties.

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#### Collision, salvage, wreck removal and pollution

**17** Can the state or local authority order wreck removal?

The maritime authorities may order the removal, marking, repairing or cleaning up of a wreck, so long as it constitutes a hazard or obstruction to navigation, port operation, fishing or other maritime related activities or for the preservation of the marine environment.

**18** Which international conventions or protocols are in force in relation to collision, salvage and pollution?

The following international conventions and protocols are in force:

- the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910, in force in Mexico since 1 March 1913;
- the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREG), in force in Mexico since 15 July 1977;
- the International Convention of Salvage 1989, in force in Mexico since 14 July 1996; and
- CLC 1992, and in a supplementary manner, when the compensation under CLC 1992 is inadequate, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971, as amended by its Protocol 1992 (Fund Convention 1992), binding in Mexico since 26 October 1993.

**19** Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

Parties to a salvage agreement may freely decide on the salvage terms, provided they do not contravene the International Convention of Salvage 1989.

There is no mandatory local form of salvage agreement and Lloyd's standard form of salvage agreement (LOF) is acceptable and often used.

An LOF was actually used for the prominent salvage of the motor vessel APL Panama (an 835-foot, 52,267 deadweight-ton (DWT) and 4,038 twenty-foot equivalent unit (TEU) containership, which

grounded on 25 December 2005 on a public beach off a residential neighbourhood in the tourist port of Ensenada, Mexico).

Any party entitled to salvage a vessel, as per a salvage agreement, or bound by law to salvage a vessel in peril, may carry out salvage operations.

If the refloating of a vessel is ordered or authorised by the maritime authorities, it might become necessary that the party in charge of refloating the vessel posts a guarantee in an amount to be determined by the same authorities.

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#### Ship arrest

**20** Which international convention regarding the arrest of ships is in force in your jurisdiction?

Mexico is not a party to either the International Convention Relating to the Arrest of Sea-Going Ships 1952 or the International Convention on the Arrest of Ships 1999. However, LNCM 2006 has effectively incorporated most of the causes by which an arrest can be authorised, in accordance with the 1999 convention.

**21** In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?

A claimant may seek to arrest a vessel in Mexico only under a claim for or in respect of any of the following:

- damage or loss resulting from the operation of the vessel;
- death or injury, whether at sea or not, in direct connection with the operation of the vessel;
- salvage operations;
- damage or threat of damage by the vessel to the environment;
- wreck removal;
- charterparties;
- contracts of affreightment, bills of lading or passenger tickets;
- damages or loss caused to goods or luggage carried onboard;
- general average;
- towage;
- pilotage;
- goods, materials, supplies, fuel, equipment, containers or services provided or rendered for the operation, management, conservation or maintenance of the vessel;
- construction or repairs;
- port or berthing fees;
- salaries owed to the master, officers and crewmembers, including repatriation expenses;
- expenses on the account of the vessel or its owners;
- insurance premiums;
- commissions or brokerage or agency fees;
- disputes related to ownership title to a vessel;
- disputes between co-owners of a vessel in relation to its operation or proceeds arising out of its operation;
- guaranteed credits by a pledge or mortgage; and
- disputes regarding the bill of sale.

**22** What is the test for wrongful arrest?

Mexican law follows an objective standard. Accordingly, the test for the wrongful arrest would be the ultimate failure of the claim. Thus, once a definitive judgment declares the lack of merits on the case, the arrest would have to be cancelled. Additionally, it should be noted that the party seeking the arrest is obliged to guarantee that measure and submit its claim on the merits in a short period of time. Further, the party seeking to avoid the arrest is entitled to counter-guarantee the said measure.

**23** Will the arresting party have to provide security and in what form and amount?

When an arrest petition is made to a court with the intention of securing property, the claimant must disclose to the court the amount of the claim or the value of the property against which the action is directed to enable the court to determine the amount of the security against wrongful attachment. The defendant could release the attachment by posting counter-security or proving to the court that he possesses additional assets that are sufficient to satisfy an adverse judgment.

**24** Who is responsible for the maintenance of the arrested vessel?

Two issues are to be distinguished in this question: (i) the fact of having a vessel arrested does not imply that her master/crew are to be disembarked. Accordingly, the maintenance will be continued by the shipowner; (ii) the issue on who is to bear the financial costs related to the maintenance of the vessel will depend on the failure or success of the arrest itself. Should the arrest be in good order and duly guaranteed, then the maintenance of the vessel should be at shipowner's expense. However, in case of wrongful arrest, the party seeking said arrest would ultimately have to incur those costs.

#### **Carriage of goods by sea and bills of lading**

**25** Are the Hague Rules, Hague-Visby Rules, Hamburg Rules, or some variation in force and have they been ratified or implemented without ratification?

The Hague-Visby Rules (HV Rules) are in force in Mexico since 20 August 1994. Further, its regime has been incorporated by reference in LNCM 2006 (article 134).

**26** Who has title to sue on a bill of lading?

The consignee is primarily entitled to sue on a bill of lading. In addition, as a document of title (title of credit under Mexican law) the endorsee is also entitled to sue based on the bill of lading. Finally, due to the shipper's obligations concerning dangerous goods, the carrier may also sue the shipper in accordance with the HV Rules.

**27** To what extent can the terms in a charterparty be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charterparty, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

None of these questions have been specifically addressed under LNCM 2006 or solved by Mexican case law. However, taking into consideration the commercial nature of both contracts of affreightment under Mexican law, provided the terms of the charterparty do not contravene the HV Rules (which are effectively incorporated in LNCM 2006), those terms could be found as fully applicable.

At any rate, it would be advisable that the endorsement text indicates in a clear manner that the arbitration clause is also binding on the endorsee. This way, a 'separability of the arbitration clause' argument cannot be used by a party seeking to avoid arbitration.

**28** Is the 'demise' clause or identity of carrier clause recognised and binding?

Because of the reasons mentioned above, the demise clause or identity of carrier clause would be recognised and binding in Mexico.

**29** Is the shipowner liable for cargo damage where he is not the contractual carrier and what defences can he raise against such liability? In particular, can he rely on the terms of the bill of lading even though he is not a contractual carrier?

Although no authority exists in Mexican law, the interpretation of the situation should not be different from other jurisdictions applying the HV Rules. In essence, the shipowner would be regarded as the carrier since, despite the existence of the charterparty, he remains responsible – and thus legally liable – for the management of the ship and the master signs any bills of lading as his or her agent.

Further, taking into account that the contractual charterer signs on behalf of the master and shipowner, the latter should be entitled to rely on the exact same terms of the bill of lading, even though he is not a contractual carrier.

**30** What is the effect of deviation from a vessel's route on contractual defences?

Both in contracts of affreightment and in marine insurance the effect of deviation is severe. Because of the fundamental breach of such an implied obligation, the carrier would lose all its defences against the claimant, unless the case involves a justified deviation, as set forth by the HV Rules, including deviation in saving or attempting to save life or property at sea.

**31** What liens can be exercised?

Under Mexican law liens cannot arise out of a contract. Liens over goods carried by sea are granted by operation of law in the following cases:

- freight and its accessories, such as fees for handling, loading, discharging and storing cargo;
- removal of wrecked cargo;
- rewards for the salvage of cargo; and
- general average contributions.

**32** What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

Taking into consideration the bill of lading's nature as a title of credit under Mexican law, the consequence of a delivery without the production of said document would be wrongful delivery. Consequently, the carrier would be liable against the bill of lading holder. Despite the lack of specific case law on the subject, as wrongful delivery goes beyond the scope of the HV Rules' regime, there are elements to ascertain the carrier's liability without a limit. Further, depending on the conduct of the individuals implied, criminal allegations might arise out of a wrong delivery.

**33** What are the bill of lading holder's responsibilities and liabilities?

The obligations would vary depending on the text of the bill of lading. In essence, the holder's responsibility is limited to the production of the bill of lading as a condition of entitlement for delivery. However, depending on the text of the bill of lading the holder's responsibilities and liabilities might go beyond and cover aspects that are technically under the scope of the shipper, such as providing information and in-transit information and instructions, as well as obligations and liabilities concerning dangerous goods, as set forth by the HV Rules.

#### **Jurisdiction and dispute resolution**

**34** Which courts exercise jurisdiction over maritime disputes?

The competent courts to resolve maritime disputes under LNCM 2006 and the maritime international treaties adopted by Mexico are the federal courts. There are no specialised courts for maritime matters.

**Update and trends****Mexican Supreme Court confirms constitutionality of cabotage permits**

Following an *amparo* proceeding initiated by the Mexican state-owned oil company, Pemex, the Supreme Court recently decided that the procedure laid down in the LNCM 2006 by which foreign companies may request and obtain cabotage permits does not contravene the Mexican Constitution.

In their request for constitutional review, Pemex put to the court that giving preference to Mexican shipowners with chartered foreign vessels may violate constitutional principles, such as equality, legal certainty, freedom of employment and commerce, and best value for money in public procurement procedures.

In reviewing the constitutionality of the bidding procedure, the Supreme Court found that the fact that Mexican shipping companies are preferred over foreign ones does not create a monopoly, favours certain companies in particular or have negative repercussions on the general public or a social class.

The Supreme Court held that even though the bidding procedure intends to promote national maritime activities, protect the national shipbuilding industry and, consequently, benefit the Mexican economy, the procedure does not force Pemex to hire Mexican vessels exclusively. Indeed, when the Mexican vessels available do not fulfil the technical specifications required by Pemex, foreign vessels with cabotage permits may be hired.

**New criteria to determine uniqueness**

Cabotage permits are granted for three-month periods and can be renewed up to seven times only. Thus, the maximum period for foreign vessels to operate under these permits is two years, after which, vessels must be flagged Mexican in order to continue operating in Mexican waters (this rule does not apply to vessels deemed unique, as cabotage permits for the latter may be extended for longer periods). However, the question yet to be answered is which vessels are to be considered as unique.

According to the new draft bill of Regulations to the Navigation and Maritime Trade Law, a technical commission will be created to determine on a case by case basis if a vessel or naval artefact is unique due to its degree of specialisation.

If the draft bill is passed without amendments, the following criteria will be used to determine if a vessel is unique:

- the state of technology in the international market;
- the availability of technology in the international market; and,
- construction and equipment reports in respect of vessels and naval artefacts that may be considered as extraordinary.

Supply vessels, tugs, crew boats, tankers, cargo vessels and fixed oil rigs will not to be considered as unique in any case.

It is noteworthy that, upon the entry into force of the new Regulations, mobile oil rigs will be permitted to operate for up to 13 years under cabotage permits, and support vessels and units will be allowed to stay for up to seven years.

**35** In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

As per LNCM 2006, service of court proceedings on a defendant located out of Mexico may be carried out through its ship agents in Mexico. If no ship agent is available in Mexico, service of proceedings must satisfy all formal requirements for letters rogatory.

According to the Mexican Commercial Code (supplementary to LNCM 2006), letters rogatory shall be written official communications containing the relative request and be accompanied by relevant documentation to be delivered to the defendant. They may be transmitted to the authority to which they are addressed by the interested parties, through judicial channels, diplomatic or consular agents, or the Mexican Ministry of Foreign Affairs or similar central authority at the state of destination, as the case may be.

**36** Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

No.

**37** What rules govern recognition and enforcement of foreign judgments and awards?

**Foreign judgments**

Mexico is a party to the following conventions for the enforcement of foreign judgments:

- the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards; and
- the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments.

According to the Mexican Commercial Code, judgments, private arbitral awards, and other foreign jurisdictional resolutions shall be valid and be recognised in Mexico provided they are not contrary to the internal public policy.

In examining the foreign judgment, the court is limited to determining the authenticity of the foreign judgment and whether it should be enforced in conformity with the laws applicable in Mexico.

Foreign judgments may be enforceable in Mexico if the following conditions are met:

- they fulfill all the formal requirements for letters rogatory;
- they were not rendered as a consequence of an action in rem;
- the judge or tribunal rendering the judgment is competent in the international sphere to try the matter and to pass judgment on it in accordance with the law of the state in which the judgment, award or decision is to take effect;
- the defendant has been summoned or subpoenaed in person so that he had an opportunity to present his defence;
- they are final or, where appropriate, have the force of *res judicata* in the state in which they were rendered (the judgment must be final);
- the action that originated the trial is not a matter of a pending judgment between the same parties before Mexican courts;
- they are not manifestly contrary to the principles and laws of the public policy; and
- they fulfill all the formal requirements necessary for them to be deemed authentic.

**Arbitral awards**

The parties to an arbitration procedure may seek the domestication and enforcement of a foreign award before a competent Mexican court.

Mexico ratified the 1958 New York Convention on the Enforcement of Foreign Arbitral Awards. Its provisions have also been incorporated into the Mexican Commercial Code.

As provided by the Mexican Commercial Code, the arbitration agreement must exist in writing in a document signed by the parties, ie an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

Arbitral awards shall be recognised as binding, whichever be the country in which they are made and, after due filing of a written application to a court is made, be enforced in conformity with the provisions of the Mexican Commercial Code.

**38** What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

As provided by the Mexican Commercial Code, the claimant may bring an 'inhibitory action' before the competent Mexican court. Then, the competent court will request the non-competent court to decline from entertaining the claim.

**39** What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

Under the Mexican Commercial Code, the claimant may bring an action before the non-competent Mexican court requesting the latter to decline in favour of the competent foreign court or arbitral tribunal.

#### Limitation periods for liability

**40** What time limits apply to claims? Is it possible to extend the time limit by agreement?

LNCM 2006 provides for different time limits depending on the type of claim. The following are some of the applicable time limits:

- Passenger claims – one year
- Towage claims – six months
- Collision claims – two years as from the date of the incident
- General average claims – one year as from the date of arrival to the first port of call after the casualty occurred
- Insurance contract claims – two years after a causality
- Claims for shipbuilder liability for construction defects – two years as from the moment the defects are discovered but no later than four years after delivery to the purchaser
- Enforcement of a vessel mortgage – three years
- Charterparty and bill of lading claims – one year

LNCM 2006 is silent as to the possibility of extending time limits by agreement; the Commercial Code, however, which is supplementary to LNCM 2006, does not permit it. This prohibition has been confirmed by Mexican case law in relation to commercial claims. Consequently, some practitioners are of the opinion that it is not possible to agree on the extension of time limits applicable to maritime claims.

**41** May courts or arbitral tribunals extend the time limits?

Mexican courts cannot extend time limits. Likewise, if the dispute is to be resolved under Mexican law, then the arbitral tribunal cannot extend the time limits.

#### Miscellaneous

**42** Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

As mentioned in question 5, cabotage is reserved to Mexican shipowners and Mexican vessels, but foreign vessels may engage in cabotage if certain conditions are met, that is, when there are no Mexican-flagged vessels available.

Cabotage permits are of special importance as nearly 500 are granted or renewed every year. The great majority of them are granted to vessels operating in the offshore oil fields in the Gulf of Mexico.

If there are no Mexican-flagged vessels available, foreign flagged vessels may engage in cabotage trade under temporary (cabotage) navigation permits granted by the Ministry of Communications and Transportation if certain conditions are met.

Cabotage permits are temporary permits granted by the Ministry of Communications and Transport, through the General Directorate for Ports and Merchant Marine, authorising foreign flagged vessels to engage in cabotage. Cabotage, or coastal trade, is defined as the navigation between two ports or spots within Mexican maritime zones.

A special bidding procedure is conducted to award these permits and bidders must compete in equal technical conditions. The bidding procedure comprises two stages. In the first stage, only Mexican shipowners may participate and the priority ranking is as follows:

- Mexican shipowners with foreign vessels under a bareboat charter (under this category the whole crew must be Mexican); and
- Mexican shipowners with foreign vessels under any other charter agreement (under this category priority is given to the vessel having a higher number of Mexican crew members).

In the event that no vessels are available under the above categories, the second stage of the special bidding procedure takes place and foreigners with foreign vessels may participate.

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