

**International
Comparative
Legal Guides**



Practical cross-border insights into shipping law

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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

According to article 339 of the Spanish Shipping Act (SSA), collision shall be regulated by the 1910 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (Brussels Collision Convention), as well as the other conventions on such matters to which Spain is a party (i.e., the 1952 International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, signed at Brussels; the 1952 International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in matters of Collision or Other Incidents of Navigation, signed at Brussels; and the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGs)) and by the provisions of Chapter I, Title VI of SSA.

(ii) Pollution

The civil liability for pollution caused by:

- (a) radioactive or nuclear substances is ruled by the Act/Ley 12/2011, 27th May;
- (b) oil pollution is ruled by the International Convention on Civil Liability for Oil Pollution Damage (CLC);
- (c) bunkers are ruled by the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage; and
- (d) other toxic substances are ruled by articles 384 to 391 of the SSA and the provision of the Act/Ley 26/2007, 23rd October, on Environmental Liability and the Act/Ley 41/2010, 29th December, on the Protection of the Marine Environment.

(iii) Salvage / general average

Salvage is governed by article 357 of the SSA, which refers to the 1989 International Convention on Salvage. General average is ruled by articles 347–356 of the SSA, according to which the parties are free to agree on the rules to be applied in order to perform the liquidation, failing which the most recent version of the York Antwerp Rules (2004) shall be deemed to apply.

(iv) Wreck removal

Wreck removal is generally governed by the Spanish Ports Act (article 304), and is left to the discretion of the Port

Authority and/or Harbour Master, depending on the case; articles 369–383 also regulate wreck removal of shipwrecks in Spanish territorial waters, subject to the terms established in the 2001 UNESCO Convention on Protection of the Underwater Cultural Heritage of 2nd November 2001.

(v) Limitation of liability

Articles 392–405 of the SSA provide the limitation of liability regime by reference to the Protocol of 1996 that amends the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), signed at London, with the reservations made by Spain in the Instrument of Adhesion, and in the reservation contained in Title VII of the SSA.

(vi) The limitation fund

Articles 403 to 405 of the SSA deal with the limitation fund, which mirrors the regime provided for by the LLMC.

1.2 Which authority investigates maritime casualties in your jurisdiction?

The competent Authority is the Standing Commission for Maritime Accident and Incident Investigations (CIAIM) (<https://www.mitma.gob.es/organos-colegiados/ciaim>), which is part of the Spanish Ministry of Transport; however, the Port Authorities and the Harbour Master are also empowered to carry out investigations after the casualty.

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

The CIAIM, the Port Authorities and the Harbour Masters, together with the Fire Brigade of the Spanish Civil Guard (in case of a major fire on board), would be fully empowered to investigate the casualties and collect means of evidence from the involved parties; some investigations may lead to the commencement of sanctioning files.

2 Cargo Claims

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

Article 277.2 of the SSA expressly refers to the Hague-Visby Rules, which are in force in Spain. Contractual clauses that aim directly or indirectly to attenuate or annul such liability to the detriment of the person entitled to receive the goods shall not take effect. On top of that, article 280 of the SSA contains a

short and vague provision regarding the carrier's liability for delay in delivery, which shall be determined by reference to the factual circumstances of the case.

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

Some of the key principles are as follows:

- (a) The carrier is liable for all damage or loss of goods, as well as delay in their delivery caused while they are under custody.
- (b) The liability shall jointly and severally be borne both by the contractual and performing carriers (the contractual carrier shall be entitled to be reimbursed by the performing or actual carrier within one year running from the time when the former was bound to pay the compensation).
- (c) The liability of the carrier for custody and conservation of the goods shall be from the period when it takes charge of them at the port of origin until they are made available to the consignee at the destination port.
- (d) The liability of the carrier for loss or damage of the goods transported shall be limited according to the Hague-Visby Rules, irrespective of whether there is a contract, or in tort actions *vs* the carrier, and unless the damage was caused by the carrier's gross negligence or wilful misconduct.
- (e) Provided that there is no wilful misconduct or gross negligence on the carrier's part, the liability for delay is limited to a figure equivalent to two-and-a-half times the freight payable for the goods affected by the delay, but it shall not exceed the total amount of the freight that must be paid by virtue of the charterparty.
- (f) The terms and conditions of the carriage agreement may be agreed by means of a charterparty or a bill of lading. The terms of a charterparty will be considered incorporated into the bill of lading when the latter contains an express and clear reference to the charterparty.
- (g) The burden of proof lies with the carrier, which must demonstrate that it acted with due diligence, and that the damage or loss was caused due to inherent vice, *force majeure* or nautical fault on the part of the dependants of the carrier.

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

According to article 260 of the SSA, the shipper would be liable (*vis-à-vis* the carrier) in respect of the accuracy of the marks, number, quantity and weight, as furnished by him, and would be bound to indemnify the carrier against all loss, damages and expenses resulting from the lack of accuracy.

Agreements by the shipper to indemnify the carrier for misdeclaration of the cargo are permitted; however, they will not bind third parties.

There is also an obligation to verify the weight of containers for export (verified gross weight), according to the SOLAS requirements.

2.4 How do time limits operate in relation to maritime cargo claims in your jurisdiction?

According to article 286 of the SSA, the limitation period applicable to contractual actions under a charterparty or a bill of lading will be of one year, running from the delivery date. Such limitation period can be extended by means of an out-of-court Letter of Claim.

3 Passenger Claims

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

Article 298 of the SSA refers expressly to EU rules, as well as to the international conventions in force in Spain, meaning:

- (a) Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24th November 2010 concerning maritime passengers' rights when travelling by sea and inland waterway.
- (b) The 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (1974 Athens Convention), as modified by its 1976 Protocol, London.
- (c) Regulation (EC) No. 392/2009 of the European Parliament and the Council of 23rd April 2009 on the liability of carriers of passengers by sea in the event of accidents.

Any contractual clauses (in the passenger contracts) that are directly or indirectly aimed at attenuating the compulsory legal regime of liability to the detriment of the passenger shall be deemed null.

3.2 What are the international conventions and national laws relevant to passenger claims?

See the response to question 3.1 above. It is also worth noting that, according to article 300 of the SSA, passengers have a direct action against the carrier's insurer and the latter would be entitled to raise the same objections and limitations provided by articles 3 and 7 of the above-mentioned 1974 Athens Convention.

3.3 How do time limits operate in relation to passenger claims in your jurisdiction?

The relevant limitation period would be of two years.

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?

Articles 470 to 479 of the SSA, together with the Spanish Civil Procedural Rules (CPR), set out the regime for the arrest of vessels in Spain. Spain is party to the 1999 International Convention on Arrest of Ships, signed in Geneva (1999 Arrest Convention).

According to article 3 of the Convention (and article 474 of the SSA), a ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

- (a) The procedure would start by means of an allegation of the relevant maritime claim under articles 1 and 3 of said Convention (no evidence shall be required; only the allegation of the cause of the maritime claim). An application (including an offer to provide a counter security) must be produced by the claimant before the Commercial Courts (*Juzgados de lo Mercantil*) of the port at which the vessel is located or expected to arrive.

- (b) Then, the Court would have to determine the counter security to be provided by the claimant, according to article 472 of the SSA. In all cases, the Court shall demand a counter security for a sufficient sum to respond to the damages, losses and costs that may arise. That security may be of any of the classes recognised by law, including a bank guarantee.
- (c) Once that guarantee is established, which shall be at least 15 per cent of the amount of the maritime credit alleged, the Court may review its amount, of its own motion or at the request of a party, according to the carriage and the size of the ship, the cost arising from the ship staying in the port, its market price by day, whether or not it is on a regular line, whether it is loaded or not, as well as its contractual commitments.
- (d) Once the Court will have granted the arrest, which is usually carried out without hearing the defendant (*“inaudiata parte”*), for the sake of urgency, and to prevent the departure of the vessel, the defendant shall be notified to the Harbour Master, who will take all measures needed to detain the vessel.
- (e) According to article 477 of the SSA, once the arrest has been ordered, the Court shall notify the Harbour Master of the port where the ship is located, or that where it is expected to arrive, by the swiftest means, and he shall adopt the necessary measures to arrest and prohibit departure by the ship.
- (f) To that end, the Maritime Authorities may withdraw the ship’s documentation, as well as obtain collaboration by the Port Authority, by the Security Forces and Corps and public entities dedicated to coastal surveillance, which shall be bound to provide the required collaboration pursuant to their respective powers.
- (g) The arrested vessel shall be released when sufficient security has been provided in a satisfactory form; in the absence of an agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship, including interests and costs.
- (h) The claim shall be formally served on the defendant in order to submit its opposition within 20 days. The opposition shall be solved after a hearing before the Court, which may lift the arrest (ordering the claimant to pay damages and legal costs) or confirm the same (a decision that can be appealed).
- (i) The Court shall grant a period ranging from 30 to 90 days so that the claimant may provide evidence about the starting of proceedings on the merits before the proper jurisdiction. If no such evidence is provided, then the arrest shall be lifted, and the claimant shall have to pay damages and costs to the defendant.
- (j) If the proceedings on the merits are decided against the claimant, then the latter shall also be bound to pay damages to the defendant as per article 745 of the CPR.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Arrest for bunker supplies is permitted by article 1 of the 1999 Arrest Convention; however, the claims are limited to those bunkers supplied to the ship owner.

4.3 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

Vessels flying a 1999 Arrest Convention State flag can only be arrested in Spain on the basis of the claims listed in the 1999 Arrest Convention.

The Spanish flagged vessels can be arrested for any other claim in addition to said listed claims provided that the creditor has its principal place of business in Spain.

Vessels not flying a flag of a 1999 Arrest Convention signatory State can be arrested in Spain for maritime claims as well as for any other claims (article 473.3 of the SSA).

Under the 1999 Brussels Convention, a ship may be arrested for claims derived from any dispute arising out of a contract for the sale of the ship.

4.4 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?

Time- and voyage-chartered vessels can also be arrested if the claim amounts to a maritime lien, or where the ship owner is legally liable for the claim.

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

Bank or cash guarantees are the most common securities. P&I letters of understanding (LOUs) would only be acceptable if the claimant expressly agrees with the same.

4.6 Is it standard procedure for the court to order the provision of counter security where an arrest is granted?

According to article 472 of the SSA, in all cases, the Court shall demand a counter security for a sufficient sum to respond to the damages, losses and costs that may arise. As mentioned above, once that guarantee is established, which shall be at least 15 per cent of the amount of the maritime credit alleged, the Court may review its amount, of its own motion or at the request of a party.

4.7 How are maritime assets preserved during a period of arrest?

According to article 477 of the SSA, once the arrest has been ordered, the Court shall notify the Harbour Master of the port where the ship is located, or where it is expected to arrive, by the swiftest means, and he shall adopt the necessary measures to arrest and prohibit departure by the ship.

To that end, as mentioned above, the Maritime Authorities may withdraw the ship’s documentation, as well as obtain collaboration by the Port Authority, by the Security Forces and Corps and public entities dedicated to coastal surveillance, which shall be bound to provide the required collaboration.

4.8 What is the test for wrongful arrest of a vessel? What remedies are available to a vessel owner who suffers financial or other loss as a result of a wrongful arrest of his vessel?

The test for wrongful or unjustified arrest is usually related to the lack of *periculum in mora* (implying a risk of imminent and irreparable harm to be avoided by means of an arrest as a precautionary measure) or *fumus boni iuris* (lack of *prima facie* justification, whether in fact or in law, of the interim measure).

The claim shall be formally served on the defendant in order to submit its opposition within 20 days. The opposition shall be solved after a hearing before the Court, which may lift the arrest (ordering the claimant to pay damages and legal costs).

The Court shall also request the claimant to provide evidence about the starting of proceedings on the merits before the proper jurisdiction. If no such evidence is provided, then the arrest shall be lifted, and the claimant shall also have to pay damages and costs to the defendant.

Finally, if the proceedings on the merits are decided against the claimant, then the latter shall also be bound to pay damages to the defendant as per article 745 of the CPR.

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?

Access to documental evidence that the parties cannot provide on their own is quite limited in our jurisdiction, and relates to:

- **Public documents:** article 317 of the CPR sets out that any public document can be provided as evidence in a proceeding (this includes administrative resolutions, notarised documents, registry certifications, public files and archives, etc.). In this case, to access this type of document, any party can request the Court to demand the public body to submit them in due time if the evidence is linked to the proceeding's object.
- **Private documents:** with regard to access of private documents, the procedure is less simple. Article 328 sets out that the parties can request the exhibition of documents held by the counterpart or by a third party if they prove to be linked with the proceedings' object; however, the parties must show enough justification that this evidence exists, which usually presents some challenges.

Furthermore, in industrial and intellectual property (IP) commercial cases, this request can be extended to financial documents only by presenting the products or goods for which the infraction has allegedly been committed.

Furthermore, in relation to the procedures available for the preservation of physical evidence and examination of witnesses, the Spanish CPR establish two options:

- Firstly, the request of "anticipated evidence" (article 293 of the CPR): this enables the parties to obtain the probative outcome or the practice of evidence before the trial or even before the initiation of the proceedings. This can be requested when there is well-founded fear that this evidence, either due to personal situations (illness, imminent death or foreign nationals) or to the state of things (risk of loss, damage or disappearance), will be impossible to be provided in the normal course of the proceedings.

To access this procedure, the requesting party must prove both its urgency and indispensability.

- Secondly, the "securing of evidence" (article 297 of the CPR): with this procedure, any party can request the Court to adopt measures to secure any type of evidence that, due to human conducts or natural events, can be destroyed or altered. These measures can consist in the preservation of things or situations but also can relate to obligations to act with the risk of incurring in disobedience to authority. This procedure cannot be confused with the "interim measures" also set out in the CPR and the criminal proceedings as these are directed to enforce an eventual judgment but are not related to the preservation of evidence as such.

5.2 What are the general disclosure obligations in court proceedings? What are the disclosure obligations of parties to maritime disputes in court proceedings?

In Spain, there is no duty to disclose, unlike Common Law jurisdictions. Under the Spanish CPR, there is no discovery phase as understood in the Common Law jurisdictions. Documentary evidence is normally presented with each party's writs of claim and defence, and the rest of the evidence (witness testimonies, access to public documents, etc.) is requested in a pre-trial hearing, where the other party can also challenge it for its authenticity and/or probative value.

5.3 How is the electronic discovery and preservation of evidence dealt with?

Electronic evidence, as any other type of evidence under the Spanish CPR, must undergo three phases:

- The first one is evidence collection, which must be carried out through legal means and attending to fundamental rights as established in the Spanish Constitution (privacy, intimacy, etc.). It is also important to note that normally, electronic evidence is confidential, which means that even if used in a Court of law, this content cannot be distributed or published, as this would be considered a crime in terms of secret revealing and discovery (article 197 of the Criminal Code).
- Secondly, the incorporation of this evidence to the proceedings. The requirements to provide this type of evidence are the same as any other evidence: pertinence and necessity, legality and respect to the probative procedure for each jurisdiction (civil, criminal, administrative and social).
- And finally, the valuation of this evidence by the Court.

The submission of this type of electronic evidence is normally made by the provision of a CD or any other electronic storage mean; however, it also can be provided through printed documents (in case of e-mail exchanges, instant messaging, social media, etc.), which are also admitted.

Usually, this type of evidence presents the problem of factually demonstrating its authenticity, which is normally challenged by the counterpart in a pre-trial hearing (see first paragraph of question 5.1). For this reason, electronic evidence is often followed by an expert report that analyses the content and certifies that the information contained has not been manipulated in any way, or a notarial deed may be raised, in which this evidence is certified by an authorised individual.

With regard to the procedures of preservation of evidence, the rules established in the previous question will apply in the same form to the electronic one with no exemptions.

6 Procedure

6.1 Describe the typical procedure and timescale 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 (ADR).

6.1.1 Which national courts deal with maritime claims?

The Commercial Courts deal with maritime claims. The proceedings are basically divided into four stages (i.e., submission of the statements of the case, a preliminary hearing, named case management hearing, and the trial); it takes about six to 12 months to receive a decision from the Courts, depending on their workload (which varies among the different Spanish regions).

6.1.2 Which specialist arbitral bodies deal with maritime disputes in your jurisdiction?

There are three major general arbitration bodies in Spain – the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration and the Spanish Court of Arbitration – which have built over the past 30 years robust expertise in handling both international and domestic cases, including marine cases. None of them, however, can claim to have developed an international profile akin to other international maritime arbitration centres.

6.1.3 Which specialist ADR bodies deal with maritime mediation in your jurisdiction?

There are no relevant ADR specialists apart from the above-mentioned arbitral bodies.

6.2 What are the principal advantages of using the national courts, arbitral institutions and other ADR bodies in your jurisdiction?

Arbitral institutions are more specialised, expensive, flexible and faster than the Commercial Courts.

6.3 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

The Spanish jurisdiction is cheap and reasonably fast (in comparison with other EU jurisdictions); however, the degree of specialisation in the marine field is modest, and they do not always produce well-defined marine case law, so to speak.

7 Foreign Judgments and Awards

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

If the foreign judgment is issued within the EU, its recognition and enforcement in Spain will be ruled by Council Regulation (EC) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters.

If the judgment is issued out of the EU, then bilateral treaties may apply (if any), failing which the Spanish CPR would apply.

The reciprocity principle shall be applied when granting the *exequatur* of a foreign judgment.

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

Recognition of arbitral awards is governed by the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention). The proceedings to apply for the recognition of an award are set forth in the Law on International Legal Cooperation in Civil Matters (Act 29/2015, 30th July).

Spain is a party to treaties relating to recognition and enforcement, such as the 1958 New York Convention, the 1961 European Convention on International Commercial Arbitration (Geneva Convention), the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington Convention) and several bilateral treaties.

8 Offshore Wind and Renewable Energy

8.1 What is the attitude of your jurisdiction concerning the maritime aspects of offshore wind or other renewable energy initiatives? For example, does your jurisdiction have any public funding programme for vessels used in offshore wind? Summarise any notable legislative developments.

In February 2023, the Council of Ministers approved the maritime spatial planning plans – the so-called POEM – of the Spanish marine demarcations: North Atlantic; South Atlantic; Strait and Alboran; Levantine-Balearic; and the Canary Islands. What is intended is to organise the uses and economic activities of the million square kilometers of sea that Spain has, including offshore wind energy because of its potential in the fight against climate change, but also because of the possible conflicts with other uses.

Of that million square kilometers, 4,948 are reserved as areas of high potential for offshore wind. The Ministry for the Ecological Transition indicates the areas in which this technology can be developed, still incipient in the case of floating wind turbines, which are the most successful in Spain due to the characteristics of its coast. These almost 5,000 square kilometers, which are divided into 18 polygons, represent only 0.46% of the national waters affected by the new POEM.

Attention has been paid to the non-impact on biodiversity (e.g. cetacean corridors in the Mediterranean) of potential projects and compatibility with other priority uses, such as marine and air navigation, and national defence.

It is expected that conflicts with fishing shall arise once this recent regulation finally unblocks the development of offshore wind projects, still under careful study and consideration.

Given the above, there is still no specific public funding programme for vessels used in offshore wind.

8.2 Do the cabotage laws of your jurisdiction impact offshore wind farm construction?

Indeed. The Wind Farms would have to comply with the provisions of the SSA (article 31) and the Spanish Coasts Act, among a number of regulations which limit the possibility of installing these floating generators in our territorial waters.

9 Updates and Developments

9.1 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.

The SSA and the Spanish Ports Act are currently being reviewed in order to introduce new regulations on vessels' registration or yachting. Decarbonisation and recycling will be of great importance given the need to renew the Spanish Merchant Marine Fleet in order to adapt the same to the IMO regulations and face legal challenges resulting from climate change.



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Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms