THE SHIPPING LAW REVIEW

EIGHTH EDITION

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

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CONTENTS

PREFACE

The aim of the eighth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year. This year, we welcome Costa, Albino & Lasalvia Sociedade de Advogados as the new contributors of the chapter focusing on maritime law within Brazil. There are also two new jurisdictions in this edition – Israel (Harris & Co) and Mexico (Adame Gonzalez De Castilla Besil) – and Portugal makes a return, with Andrade Dias & Associados as the new contributors.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2019, the total value of annual world shipping

trade had reached more than US$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), swift recovery is anticipated. The pandemic truly brought to the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

Finally, mention should be made of the environmental regulation of the shipping industry, which has been gathering pace this year. At the International Maritime Organization's (IMO) Marine Environment Protection Committee, 72nd session (MEPC 72) in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement will now lead to some of the most significant regulatory changes in the industry in recent years, as well as much greater investment in the development of low-carbon and zero-carbon dioxide fuels. The IMO's agreed target is intended to pave the way for phasing out carbon emissions from the sector entirely. The IMO Initial Strategy, and the stricter sulphur limit of 0.5 per cent mass/mass introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies. Decarbonisation of the shipping industry is, and will remain, the most important and significant environmental challenge facing the industry in the coming years. Unprecedented investment and international cooperation will be required if the industry is to meet the IMO's targets on carbon emissions. The 'Shipping and the Environment' chapter delves further into these developments.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon
HFW
London
May 2021

Chapter 21

FRANCE

Mona Dejean[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The French flag is designated by the International Chamber of Shipping as one of the best flags in 2020 in terms of the quality of its fleet and of its environmental, security and social regulations.[2]

In July 2020, the merchant fleet under the French flag comprised 426 vessels of more than 100 gross tonnage (GT), of which 186 vessels were dedicated to transport and 240 were service vessels. This is the 28th largest world fleet by flag.

The average age of the French transport fleet was 9.9 years as at 1 July 2020 (the global average is 15.1 years).[3]

The unprecedented nature of the covid-19 outbreak had a significant effect on shipping activity during 2020, with a sharp fall in passenger transportation, although the traffic in containerised freight has remained quite steady. In 2019, about 315 million tonnes of freight were handled in the large ports of metropolitan France.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

France has ratified most of the major international maritime conventions. As a Member State of the European Union, France is also subject to European legislation addressing maritime issues. International conventions and European legislation can be directly applied by the French courts, but most of their provisions are also set out in domestic regulations.

Modern French shipping law was mainly developed in the 1960s. In the 2010s, it was codified in a Transport Code, which is now the main reference regarding legislation concerning shipping and transport, although some related provisions can still be found in other acts and codes.

Case law is considered to be a secondary source of law. There are no binding precedents, although higher court decisions can have a persuasive effect on lower courts.

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1 Mona Dejean is a senior associate at HFW.

2 International Chamber of Shipping, 'Shipping Industry Flag State Performance Table 2020/2021'.

3 Ministry of Ecology, Sustainable Development and Energy, 'Statistiques – Flotte de commerce sous pavillon français', July 2020'.

III FORUM AND JURISDICTION

i Courts

Apart from the traditional jurisdiction clauses, the French courts have jurisdiction to rule on international matters under specific jurisdiction provisions of international conventions, under the general provisions of Regulation (EU) No. 1215/2012 or under French law provisions such as Articles 14 and 15 of the Civil Code, which respectively enable any French claimant to bring proceedings before the French courts against a foreign defendant, and enable a foreign claimant to do likewise when the defendant is domiciled in France.

Most shipping disputes are heard before the commercial courts, or occasionally the civil courts (competent to order judicial sales or enforcement of judgments) or administrative courts (matters relating to damage to public assets such as port facilities).

The principal feature of the commercial courts is that the judges are lay magistrates, chosen from the local business community. These 'consular' judges' knowledge and understanding of complex legal issues will inevitably vary; moreover, not all commercial court judges will be familiar with maritime law or practice. Consequently, the decisions made by the French commercial courts are somewhat inconsistent at times with the generally accepted understanding of the law.

Regional courts of appeal are competent to hear appeals against decisions rendered by commercial courts. Since 2018, the Paris Court of Appeal includes an international chamber to deal with commercial litigation. Parties are able to choose English as the language for oral proceedings, judges are specialists in international commercial litigation and the procedure is faster than average by dint of shorter deadlines and fostering parties' cooperation.

The grounds for appeal are very broad, the underlying principle being that a party should always have access, as a matter of right, to two 'levels' of jurisdiction. An appeal can, therefore, always be made on questions of law or fact – the court of appeal is always free to reverse the court of first instance's findings of fact. A final appeal can be lodged with the Court of Cassation but only on points of law.

An interesting feature of French court procedures is that, unlike proceedings before English or US courts, witnesses are not called to give evidence and there is no equivalent system of disclosure or discovery of documents before the French courts. Each party is required only to provide documents that may be necessary to prove its case (i.e., to support its arguments). For questions of fact that require specialist knowledge, French commercial judges often appoint court surveyors, whose terms of reference usually encompass assessing the causes of the relevant incident, the implications thereof, the extent of the damage caused thereby and, in certain cases, providing solutions and discussing issues of loss mitigation. This process permits the courts to be guided by the experts and assists judges with rendering their final verdicts.

As regards limitation periods, the general time bar under French law is five years. However, there are exceptions: all actions arising under a charter party or similar contract and all actions under a bill of lading are time-barred after one year. Claims arising out of a collision are time-barred after two years and in personal injury cases after 10 years.

ii Arbitration and ADR

The parties can also refer their disputes to arbitration, and French law implements the *kompetenz-kompetenz* principle, pursuant to which, when an arbitration clause is invoked, a state court can accept jurisdiction only if the arbitral tribunal has not yet been seized and, cumulatively, the clause is manifestly invalid or inapplicable.[4]

Paris is an established seat of arbitration and several arbitral courts have their seats in the city, such as the International Chamber of Commerce. In addition, the Paris Chamber of Maritime Arbitration (CAMP) deals exclusively with maritime disputes. CAMP was created in 1929. Arbitration costs before the CAMP are generally considered attractive compared with other arbitral institutions.

One of the major features of French arbitration rules is that no appeal against the award is possible before the courts of appeal. However, a peculiarity of the CAMP Rules – which is generally regarded as a downside – is the right to second-degree arbitration, which allows any party to request that a dispute for which an award has already been made be submitted to a second examination.

An application for the annulment of an award rendered in France can be lodged by a party before the local court of appeal within one month of the award being issued, unless the parties have waived the right to apply for annulment. Article 1520 of the French Civil Procedure Code provides a limited list of grounds under which the nullity can be invoked; for example, if the tribunal was not lawfully constituted or failed to comply with its assignment, if the principle of contradictory debate has not been respected or if the award infringes a rule of public interest.

iii Enforcement of foreign judgments and arbitral awards

Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is applicable in France. The Regulation, which is binding and directly applicable, facilitates the enforcement of judgments issued in other European countries. Pursuant to Article 39, 'a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required'. A declaration of enforceability from the Member State receiving the request is no longer necessary; the applicant only needs a certificate issued by the court of origin using the form set out in Annex I of Regulation (EU) No. 1215/2012, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information about the recoverable costs of the proceedings and the calculation of interest.

As regards judgments rendered outside the European Union, unless a bilateral convention on the reciprocal enforcement of judgments has been agreed by France, the question of enforcement of foreign judgments in France is subject to French procedural law. Pursuant to Article 509 et seq. of the Civil Procedure Code, the enforcement of foreign decisions is subject to *exequatur*.[5] The French courts will not review the merits of the dispute. Contrary to European judgments, there are conditions to be met: the party requiring the

4 In *The 'Uncle Jan'* case of 12 June 2019, the Paris Court of Appeal held that an arbitration clause can only be regarded as manifestly non-applicable if, in the absence of any necessary interpretation of its terms to assess its scope as well as any legal analysis of the nature of the contractual relations between the parties, it clearly does not govern the dispute between the parties.

5 A procedure resulting in the original decision being enforceable as a judgment of a French court.

exequatur will have to produce evidence testifying that the foreign court had jurisdiction, that the decision is enforceable in the country in which it was delivered, and that the decision was indeed notified to the defendant. The *exequatur* will not be granted if a conflicting judgment already exists in France on the same facts, if the decision contradicts French public policy, or if the French courts consider that the claimant introduced its claim before the foreign court for the sole purpose of avoiding the application of French law, which would have otherwise governed the dispute.

With respect to arbitral awards, France has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) allowing the enforcement of non-domestic awards in other Member States. Pursuant to Article 1487 et seq. and Article 1514 et seq. of the Civil Procedure Code, an arbitral award (regardless of whether it was issued in France) is enforceable in France once the *exequatur* has been granted by a civil court.

IV SHIPPING CONTRACTS

i Shipbuilding

The French shipbuilding industry is still active and has proved increasingly promising in recent years. Shipbuilding contracts are governed by Articles L5113-1 to L5113-6 of the Transport Code, which provide for a holistic approach to contractual freedom. Pursuant to Article L5113-2, the main requirement is for the contract to be in writing. Moreover, the shipyard is required to make a declaration to the competent maritime administration, to enable the administration to determine whether the necessary safety conditions for the construction are met.

The guiding principle is thus contractual freedom. Two types of sales coexist: the parties must choose between a sale that will be completed on delivery, or a sale in which the ownership is transferred during construction. The aim of the latter type of sale is to protect the owner if the shipyard goes bankrupt.

Regarding the actions that can be engaged against a shipyard for defects, Article L5113-4 of the Transport Code provides that the builder 'guarantees any hidden defect of the vessel, even if the buyer has accepted the delivery without reservation'. This action is time-barred one year after the defect is discovered. This provision sets out a strict liability regime, reinforced by the applicability of Article 1643 of the Civil Code, which imposes on the seller an obligation to reimburse the purchase price, or to compensate for damage that may have occurred because of the defects. Clauses limiting or excluding the builder's liability in the event of the existence of hidden defects are only valid in certain circumstances under French law.

ii Contracts of carriage

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) are enforceable in France. France signed the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) but did not issue the decree necessary for its entry into force; thus, the Hamburg Rules have not been ratified and are not applied by the French courts unless the parties have inserted a paramount clause in the contract of carriage.

The French Transport Code also contain provisions concerning contracts of carriage. Depending on the international nature of the contracts and other criteria, such as the port

of departure or destination, an international convention or a French law will apply. When applicable under the conflict-of-law rules, French law also governs issues not addressed by the Hague-Visby Rules.

French legislation does not contain specific provisions in respect of multimodal transport. Freedom of contract prevails, except in two cases where provisions on multimodal transport are set by an international convention: a rail–sea carriage is governed by the mandatory provisions of the Uniform Rules Concerning the Contract for International Carriage of Goods by Rail; and in the case of a road–sea carriage, provisions of the Convention on the Contract for the International Carriage of Goods by Road 1956 (the CMR Convention) are applicable if the goods are not unloaded from the road vehicle. It must be highlighted that under French law, a party that organises a carriage (multimodal or otherwise), acting for the account of another party but in its own name, is considered to be a forwarding agent, governed by Article L132-3 et seq. of the French Commercial Code. A forwarding agent is liable for its own acts and omissions. Unlike a freight forwarder, it is also vicariously liable for the acts and omissions of its subcontractors, including the carrier. As such, it has a strict liability for loss or damage to the goods. A forwarding agent, moreover, has a general duty to advise and inform its customer.

Cabotage in France is reserved to French and European nationals: Article 257 of the Customs Code provides that transport between the ports of mainland France is reserved for vessels operated by shipowners who are nationals of and registered in Member States of the European Union or the European Economic Area (EEA) and are flying a flag of one or more of those states. Maritime cabotage is also governed by the Maritime Cabotage Regulation.[6]

iii Cargo claims

As a contract of carriage will impose a strict liability on the carrier in most instances, cargo claimants will seek to file their claims on a contractual basis. Both the shipper and the consignee or endorsee will have a right of action against the carrier under the bill of lading, provided they have personally suffered losses. In addition, parties whose names are not mentioned on the bill can also sue the carrier on a contractual basis if they can establish that they are the actual shipper or consignee of a cargo (for example, because a freight forwarder or a non-vessel operating common carrier (NVOCC) is named in lieu of them). Cargo underwriters can act personally before the French courts on a contractual basis if they establish that they have been subrogated to the rights of the insured.

A frequent issue concerns the identity of the carrier. Contractual claims can be pursued against the carrier named on the bill, even if it is not the actual carrier (NVOCC bills). If the name of the carrier is not provided on the bill, a rule established in 1987[7] states that the registered owner of the vessel is deemed the carrier. Demise clauses cannot be invoked against shipowners in France.

Under French law, a party can claim full recovery of losses sustained – that is to say, not only resulting from the actual damage to the cargo but also as a consequence of, for example, the damage or loss and the extra costs incurred.

6 Council Regulation (EEC) No. 3577/92 of 7 December 1992 applying the principle of freedom to provide sevices to maritime transport within Member States.

7 Court of Cassation, Commercial Chamber, 21 July 1987 (*The 'Vomar'*).

Both the Hague-Visby Rules and the French Transport Code provide that action against the carrier for loss or damage is time-barred after one year. Pursuant to Article L5422-18 of the Transport Code, this period may be extended by agreement between the parties after the event that has given rise to the claim.

In contractual matters, French law attaches great importance to the parties' consent. A clause cannot be invoked against a party who has not accepted it. As a consequence, French courts have decided that the terms of a charter party to which a bill of lading refers cannot be invoked against the consignee or endorsee unless it is proved that these terms were known and accepted by it. Where reference is made to an arbitration clause, however, the *kompetenz-kompetenz* principle prevents French courts from deciding by themselves whether this clause applies.[8] The French Supreme Court has moderated its position regarding jurisdiction clauses and considered that where the consignee, on acquiring the bill of lading, succeeded to the shipper's rights and obligations by virtue of the relevant national law, then a jurisdiction clause can be invoked against the consignee with no need to establish the specific agreement.[9] Nevertheless, the enforceability of jurisdiction clauses remains much disputed before the French courts.

iv Limitation of liability

France has ratified the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) and the Protocol to amend the LLMC Convention 1996 (the 1996 LLMC Protocol) has been in force in France since 2007. This applies to vessels flying foreign flags (regardless of whether they are a party to the LLMC Convention 1976). French domestic law, which applies to vessels flying the French flag and subject to proceedings before the French courts, contains similar provisions to those of the LLMC Convention 1976 under Article L5121-1 et seq. of the Transport Code.

Constituting a limitation fund in France is relatively quick and simple. An *ex parte* application requesting the court's permission to constitute a limitation fund can be presented to the president of a commercial court, who will appoint a liquidator and stipulate the way in which the fund can be constituted. Funds made up by way of a P&I club guarantee are generally accepted, especially when provided by a first-rank international club. Once the letter of undertaking or the cheque has been handed to the liquidator appointed by the court, a second application must be presented for the court to acknowledge the constitution of the fund.

France is known for being very strict with regard to shipowners seeking to limit their liability. The French courts have indeed adopted an objective approach of the conduct-barring limitation, considering that an inexcusable fault has been committed when the shipowner 'should have known' that the loss 'may' result from the conditions in which the voyage was undertaken. For instance, in *The 'Heidberg'*, concerning an incident in March 1991 involving a Germany-flagged vessel that constituted the first major case in France to examine the right to limit under the LLMC Convention 1976, a court of appeal deprived a shipowner of limitation as he failed to ensure that there existed between the master and the crew 'the

8 Court of Cassation, First Civil Chamber, 22 November 2005 (*The 'Lindos'*); Court of Cassation, Commercial Chamber, 21 February 2006 (*The 'Pella'*).

9 On 16 December 2008, the Commercial Chamber and the First Civil of the Court of Cassation rendered similar decisions inspired by the European Court of Justice ruling in *The 'Tilly Russ'* (C71/83 of 19 June 1984). These decisions were confirmed by the Commercial Chamber on 17 February 2015.

confidence and cohesion indispensable to permit them to overcome difficulties which whilst unforeseen were not unforeseeable'.[10] Later decisions, however, suggest that the French courts are gradually overcoming their claimant-friendly approach. In *The 'Rosa Delmas'*[11] and in the latest decision in *The 'Heidberg'*,[12] the courts have adopted a subjective approach in line with a strict application of the terms of the LLMC Convention 1976.

V REMEDIES

i Ship arrest

The International Convention Relating to the Arrest of Sea-Going Ships 1952 (the Brussels Convention) has been ratified by France. Ships flying the flag of a country that is a signatory to the Brussels Convention can be arrested only on the grounds of securing maritime claims. Ships flying flags of states that are not signatories to the Brussels Convention can be arrested either on the basis of a mere allegation of a maritime claim as defined in the Convention, or under French domestic law in respect of any type of claim the arresting party might have against the owner of the ship; this is subject to demonstrating that the arresting party has a valid *prima facie* claim, as provided in Article L5114-22 of the Transport Code.

Bunker arrest is possible in theory, although rarely put into practice because of the need to discharge bunkers in shore tanks when the vessel herself is not under arrest. Moreover, although the issue is debated, some French courts adopt a permissive interpretation of the Brussels Convention by considering that a ship can be arrested and the shipowner ordered to provide a security for a claim for unpaid bunkers ordered by a former charterer to supply the arrested vessel without a maritime lien. Many such arrests have taken place in France since the bankruptcy of OW Bunker A/S in 2014.

Arrest of an associated ship used to be possible in France as a result of the French courts' interpretation of the wording of the Brussels Convention that allows the arrest of associated vessels; however, the courts have narrowed their approach in recent years. Essentially, an applicant seeking authorisation to arrest an associated ship must now prove that either (1) there is a confusion of assets between the company whose assets have been arrested and the company that is alleged to owe the debt in question[13] or (2) the shipowner or the debtor company is, in reality, fictitious. This is referred to as an absence of *affectio societatis*,[14] meaning, for example, the shareholders have no participation in the profits and losses of the company, the shareholders are employed by the fictitious company or there is an inequitable allocation of the share capital.[15]

The procedure of ship arrests is set out in Articles R5114-15 to R5114-19 of the Transport Code. An *ex parte* petition to arrest a ship must be made to the enforcement

10 Court of Appeal of Bordeaux, 31 May 2005, subsequently overruled by the Court of Cassation.

11 Court of Cassation, 19 October 2010, concerning the Hague-Visby Rules limitation.

12 Court of Cassation, Commercial Chamber, 22 September 2015.

13 *Confusion de patrimoine*.

14 Shareholders' mutual intention to create and run the corporate entity together.

15 See the decisions of the Rennes Court of Appeal, 4 February 2014, *The 'AG Vartholomeos'* and Aix-en-Provence Court of Appeal, 15 November 2018, *The 'Songa Alya'* (the creditor may then seize a vessel operated by a holding of the debtor company because of the confusion of their assets and the fictitious nature of the holding).

judge[16] or, if no proceedings on the merits have been commenced, to the president of the commercial court of the vessel's port of call. The petition must be supported by documents evidencing the claim, such as bills, contracts and letters concerning payment. If any documents are in English, the relevant sections must be translated into French. A power of attorney from the claimant's solicitors is not required and documents do not need to be notarised in France. The arresting party is generally not required to provide counter security to obtain an arrest order; however, the courts have complete discretion to decide otherwise, and systematically requiring counter securities has become an idiosyncrasy of a few local courts.

In practice, an arrest order can be obtained within a few hours of a local lawyer having been fully instructed, if one is dealing with a straightforward arrest with 'simple' supporting documents. In serious emergencies, this period can be reduced, although much will depend on the availability of a magistrate, who rule on individual arrests. However, French law does allow for petitions to be presented to the president of the commercial court at his or her home in extreme emergencies. Conversely, to carry out an associated vessel arrest in France, more time is usually needed. Obtaining the authorisation to arrest a vessel will thus generally be possible before the vessel is at berth or even before it arrives in a French port.

Once the order authorising the arrest has been issued, it will need to be served by a bailiff on the ship's master and the port authority, which can be done within a few hours. Depending on the means available for serving the order on the ship's master, it is possible for a bailiff to arrest a vessel that is anchored in a port's roads when there are reasons to believe that the ship will try to escape arrest.

The claimant is generally required to initiate legal proceedings on the merits (either in France or abroad, in a court or via arbitration proceedings) within one month of the arrest, otherwise the arrest or the security provided to lift the arrest will be held null and void.

Although claims for wrongful arrests are admissible in theory, to date, French courts have been reluctant to grant compensation unless the arresting party has manifestly acted in bad faith.

ii Court orders for sale of a vessel

Under French law, the judicial sale of a vessel requires a creditor holding an enforcement title against the owner of the vessel, to proceed with the executory arrest of the vessel. These proceedings generally follow a conservatory arrest (attachment) ordered by the court to prevent the vessel from leaving the port until the creditor obtains an enforcement title, which can be an enforceable judgment or an authentic instrument (i.e., a deed).

An executory arrest gives creditors the right to sell the vessel at a public auction and to obtain satisfactory proceeds therefrom. Article R5114-20 et seq. of the Transport Code set out the steps of such a procedure. First, an order to pay must be served by a bailiff on the shipowner or the ship's master. Within 10 days of the order to pay being served, the creditor must instruct a bailiff to carry out the executory arrest of the vessel, the minutes of which must be served on the port authorities and the consulate of the state the flag of which the foreign ship flies. Notice of the arrest must be served on creditors having a publicly registered claim on the vessel. The judicial sale of the vessel takes place, at the request of the claimant, by the civil court in the jurisdiction where the vessel is located, and is carried out by auction. The court sets the reserve bid, the sale conditions and the date of the sale. After

16 The French *juge de l'exécution* is a judge in a civil court who is in charge of the implementation of judgments for issues relating mainly to seizure proceedings.

the auction sale, creditors of the shipowner or those who have a lien on the ship must file an application requesting to partake in the distribution of the sale proceeds. The enforcement judge determines the sharing of the price after having considered the observations that the creditors may send him or her.

The entire procedure generally takes between six and 12 months and can be costly. For this reason, judicial sales are very rare in France, especially for merchant vessels, although the recent economic crisis has increased the use of this procedure.

VI REGULATION

i Safety

France is a party to the International Convention for the Safety of Life at Sea 1974 (SOLAS) and its successive Protocols,[17] most provisions of which have been incorporated into EU legislation and codified in the Transport Code and in some of the French Regulations on the Safety of Life at Sea.

The safety regime also includes provisions for the treatment of casualties: Directive 2009/18/EC was transposed into the domestic provisions relating to the French Marine Accident Investigation Office, which established a procedure for investigating and for facilitating the exchange of information in the event of marine incidents.[18]

A step was made towards cybersecurity in May 2018, when France transposed the European Network and Information System Security Directive,[19] which prompts shipping companies to protect their navigation devices, databases and network technology against third-party intrusions.

ii Port state control

France is a member of the Paris Memorandum of Understanding on Port State Control 1982, the provisions of which were incorporated in Council Directive 95/21/EC, now replaced by Directive 2009/16/EC on port state control, which has been transposed into French domestic law, in particular, under Division 150 of the Regulations on the Safety of Life at Sea.

Inspections are conducted by inspectors of the ships' safety centres, which are part of the Maritime Affairs Administration. In 2019, more than 1,000 vessels were inspected in France. Half of these inspections revealed deficiencies and 24 vessels were detained.

Within the framework of port state control, the ship safety centres in France are fixing targets for controlling the sulphur content of marine fuels in increasing numbers, and the public prosecutor is demonstrating a clear intention to seek out and prosecute the instigators of air pollution. Hence, there is reason to expect that France will carry out more and more controls on board ships that call at France, whether they are under French or foreign flags.

17 The International Regulations for Preventing Collisions at Sea 1972 (COLREGs), the International Safety Management Code 1998 (the ISM Code), the International Ship and Port Facility Security Code 2004 (the ISPS Code), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995 (the STCW Convention), etc.

18 Transport Code, Article L1621-1 et seq.

19 Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

iii Registration and classification

There are six registers under French law: five national registers and one international register:

a the applicable register in metropolitan France and overseas departments;
b the French International Register (RIF);
c the French Southern and Antarctic Lands (TAAF) Register;[20]
d the New Caledonia Register;
e the Wallis and Futuna Register; and
f the French Polynesia Register.

As at 1 July 2020, the French transportation fleet of vessels over 100 GT, now including coastal and port service vessels, comprised 86 vessels registered in the RIF, 61 in the metropolitan register and 39 in the overseas registers (including 22 in French Polynesia).[21]

A distinction must be made between registration proceedings and 'francisation' proceedings. Although the two proceedings are quite similar in respect of administrative formalities, which were simplified by the law on 'the blue economy' of 20 June 2016, they have different purposes: francisation gives the ship French nationality whereas registration gives the ship the right to sail by issuing all the necessary sail and security certificates.

Francisation is the formality that gives the ship the right to fly the French flag and benefit from all advantages attached to it, and is officialised with a deed of francisation. The procedure is governed by the Transport Code and the French Customs Code, which lists several conditions: the vessel must have passed a safety inspection and it must have been built in an EU Member State, or the import costs and fees must have been paid in an EU Member State. A ship built outside the European Union can be francisised if at least 50 per cent is owned (or intended for ownership or bareboat chartered) by nationals or companies from an EU or EEA Member State that have an actual presence in France. If these conditions are not met, francisation can also take place on a discretionary basis by the granting of a special licence by the government.

The criteria for registration (i.e., for obtaining the necessary sail and security certificates) will depend on the register concerned. With regard to the RIF, which is most frequently used nowadays, there are some specific criteria as to the type of vessels that can be registered. Vessels employed in deep-sea trade or international cabotage, and commercially operated leisure vessels exceeding 15 metres in overall length manned by a professional crew, can be registered.

France has adapted the rules concerning the RIF to increase the competitiveness of the French flag and thus attract shipping companies and shipowners.[22] For example, the knowledge and language requirements for access to the RIF are now less stringent (Transport Code, Article L5521-3).

Classification societies in France are subject to an amended ministerial order on ship safety dated 23 November 1987. There are currently three approved or recognised classification societies in France: Bureau Veritas, DNV and RINA Services. Classification societies can be held liable to shipowners, third parties (the victims) or the state when a party claims against

20 The French International Register will eventually replace the French Southern and Antarctic Lands Register, which is used nowadays only for fishing vessels.

21 Ministry of Ecology, Sustainable Development and Energy, 'Flotte de commerce sous pavillon français', July 2019.

22 Mobility Orientation Law of 24 December 2019.

the state in relation to control duties that have been delegated to classification societies. Their liability can be contractual, tortious or criminal. Both the managers and the classification society itself can be held criminally responsible. For instance, in the case of *The 'Erika'*,[23] the classification society was found guilty of polluting because of the behaviour of its inspector, who had renewed a class certificate despite the ship's poor condition.

iv Environmental regulation

Under French law, criminal sanctions against oil pollution are set out in Article L218-10 et seq. of the Environment Code, pursuant to which oil spillage in breach of the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)) can lead to up to 10 years' imprisonment and a €15 million fine. These sanctions can be ordered against the master, the registered owner and the operator of the vessel. They can also be ordered against the legal representatives or managers of the owner or operator, or against any other person exercising a control over, management in or running of the vessel, when the owner, operator or person is responsible for illegal spillage or has not taken the necessary steps to avoid it.

The French courts are generally severe on polluting vessels. Each year, several vessels are diverted to the French coast and arrested by order of the authorities. Masters are generally found guilty on the basis of aerial pictures taken by the customs authority, the evidentiary weight of which is almost impossible to rebut.[24]

The French courts very often impose criminal sanctions against the interests of polluting vessels. In the most recent decisions, the courts have imposed fines of €800,000 and €1.5 million, plus civil damages granted to environmental associations.[25] As regards civil liability, France has ratified the International Convention on Civil Liability for Oil Pollution Damage 1969, replaced by its 1992 Protocol (the CLC Convention), the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the Oil Pollution Fund Convention) and the Protocol of 2003 establishing an International Oil Pollution Compensation Supplementary Fund. France has also ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunker Convention), which came into force in 2011.

Pollution can also give rise to the application of provisions on waste[26] as illustrated by the *Commune de Mesquer v. Total* case.[27]

Moreover, the Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (the Ballast Water Management Convention) has been applicable in France since 8 September 2017.

23 Cassation Court, Criminal Chamber, 25 September 2012.

24 The *Trefin Adam Maritime* case, Court of Cassation, 10 November 2015, conviction for marine pollution in the absence of evidence other than the official report issued by the French Navy; *The 'Carthage'* case, Court of Cassation, 19 April 2017, conviction for marine pollution solely based on video and data records collected by plane.

25 See *The 'Tian Du Feng'*, Rennes Court of Appeal, 27 February 2014; *The 'FastRex'*, Court of Cassation, 18 March 2014; *The 'Thisseas'*, Criminal Court of Brest, 16 January 2017; and the *Total oil refinery of Donges* case, Rennes Court of Appeal, 9 December 2016, illustrating damages granted to associations for environmental harm.

26 EU directives; and Environment Code, Article L541-1 et seq.

27 See European Court of Justice, Case C-188/07 of 24 June 2008.

Air pollution from ships is mainly addressed by Directive 2005/33/EC of 6 July 2005 as regards the sulphur content of marine fuels, which has been transposed into French domestic law, and Regulation (EU) 2015/757 of 29 April 2015 on carbon dioxide emissions from maritime transport, applicable as of 31 August 2017 to ships above 5,000 GT.

For the time being, there is very limited case law in France concerning air pollution. Nevertheless, for the first time, a French court of appeal (Aix-en-Provence) ruled on the criminal liability of a master for air pollution in a decision dated 12 November 2019. The master of the passenger vessel *Azura* was prosecuted for using fuel with a sulphur level exceeding the authorised limits in French territorial sea (the Mediterranean). The master, convicted in the first instance, was released on appeal because there was no intent to commit the offence. However, this decision was reversed by the French Supreme Court.[28]

Most French coastal areas are emission control areas, in which emissions are the most strictly limited. Since 1 January 2020, the limit for sulphur in fuel oil is 0.5 per cent for all ships sailing outside controlled emission (compared with 3.5 per cent previously) and 0.1 per cent inside controlled emission areas. These constraints are challenging for shipping companies, many of which are making efforts to make their ships more environmentally friendly, notably through the use of low-sulphur fuels, liquefied natural gas (LNG) propulsion or the installation of scrubbers. The chief executive officer of Total Marine Fuels Global Solutions announced in February 2020 that the group was focusing on low-sulphur fuel and the development of LNG, which currently represents less than 1 million tonnes per year on the market but could reach 10 million in 2025.[29]

A law enacted in 2018 encourages shipping operators to use cleaner energy sources.[30] Between 1 January 2019 and 31 December 2021, companies using vessels built, acquired, hired or leased using certain less-polluting energies as part of their activities may deduct between 20 per cent and 30 per cent of the original value from their taxable income, excluding financial expenses.

France is concerned about the effects of maritime transport on the environment. As such, the country has undertaken to develop a strategy to reduce global carbon emissions and accelerate the transition to carbon-neutral propulsion by 2050. France will also take measures to comply with European Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from the shipping industry and International Marine Organization Resolution MEPC.265, of 15 May 2015, which makes the environment-related provisions of the International Code for Ships Operating in Polar Water (the Polar Code) mandatory (MARPOL (73/78), Annexes I, II, IV and V). It also allows large ports to set their fees under the terminal agreement (an agreement giving temporary authorisation to use public land), which may include a decreasing portion depending on traffic or the environmental performance generated by the operator concerned (Transport Code, Article L5312-14-1). Last, it is planned that the ports will be equipped with electrical connections (Transport Code, Article L1521-4). France is, therefore, fully involved in the maritime industry's energy transition.

28 Cassation Court, Criminal Chamber, 24 November 2020, No. 19-87651 *The 'Azura'*.

29 *Le Marin*, 12 February 2020.

30 Law No. 2018-1317, of 28 December 2018; Article 56, OJ of 30 December 2018.

v Collisions, salvage and wrecks

France has ratified the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 (the Collision Convention 1910), the International Convention for the Unification of Certain Rules relating to Civil Jurisdiction in Matters of Collision 1952 (the Collision Convention 1952) and the International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision and Other Incidents of Navigation 1952 (the Criminal Collision Convention 1952). Furthermore, the Collision Convention 1910 regime has now been incorporated into French domestic law in Article L5131-1 et seq. of the Transport Code. Liability for damage will rest with the vessel at fault for causing the collision. In the event that fault is shared between each vessel, the principle of proportional liability, according to the respective faults, is applicable. France has also ratified the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910 (the 1910 Salvage Convention), the provisions of which have been incorporated into French domestic law in Article L5132-1 et seq. of the Transport Code. In 2002, France ratified the International Convention on Salvage 1989 (the 1989 Salvage Convention).

Most salvage disputes raise the question of whether the assistance provided to a vessel constitutes salvage and thus gives rise to a salvage reward. There is no mandatory form of salvage agreement under French law. An agreement can be made in writing, using general standard contracts, such as the Lloyd's Open Form or the French Villeneau form, but most of the time the contract is made orally by radio. Moreover, there can be salvage without any salvage contract having been agreed between the parties in the event that special assistance is given to a vessel in great danger. Reciprocally, French courts can decide that no salvage reward is due, even if the parties have agreed a 'salvage contract', if the conditions of salvage are not met (e.g., if the danger was no longer an issue at the time assistance was provided). Moreover, the level of salvage awards granted by the French courts are usually lower than in the United Kingdom, for instance.

French provisions concerning maritime wreckage are set out under Article L5142-1 et seq. of the Transport Code. If a maritime wreck could be dangerous for navigation, fishing, the environment or the access to a port, the owner of the wreck has an obligation to proceed with recovery, removal, destruction or any other operation to remove all danger in relation to the wreck. Pursuant to Article L5242-18 of the Transport Code, the administration is entitled to carry out the removal of the wreck itself in three situations: in cases of emergency, if the owner does not carry out the removal operations within the time allotted to it, or if the owner is unknown. In these cases, the administration may remove or destroy the wreck itself, or hire a company specialising in this type of operation, and the owner of the wreck or its insurer will have to bear the final cost of the operation. The LLMC limitation of liability is not applicable to claims for removal costs by the French state.[31] In November 2015, France ratified the Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi WRC 2007), which came into force in France on 4 May 2016 and applies to wrecks in the exclusive economic zone.

Ships that constitute waste and that are subject to a trans-boundary movement for recycling are regulated by the Basle Convention of 22 March 1987 and Regulation (EC)

31 Article 18 of the LLMC Convention 1976 confers the right on signatory states to exclude these claims from the scope of limitation. France made a declaration in that respect and reiterated this notification when ratifying the 1996 LLMC Protocol and when ratifying the Nairobi WRC 2007.

No. 1013/2006. One aim of Regulation (EU) No. 1257/2013 of 30 November 2013 on ship recycling, which has applied since 31 December 2015, is 'facilitating a rapid ratification' in both EU Member States and non-EU countries of the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships 2009 (the Hong Kong Convention). The Regulation applies to vessels of 500 GT or greater sailing under the flag of an EU Member State, but includes some provisions for third-country ships calling at or mooring in an EU Member State. Regarding facilities for ship recycling, it applies to those located in the territory of a Member State and of a third country. According to the Regulation, such vessels can be recycled only in recycling facilities listed on the European List, following a ship recycling plan to be drawn up on the basis of the information provided by the shipowner and approved by the competent authority. In this regard, the European Commission adopted Commission Implementing Decision (EU) 2015/2398 of 17 December 2015 on information and documentation related to an application for a facility located in a third country for inclusion in the European List of ship recycling facilities.

Inspections of ships to be recycled are carried out by the administration or by an accredited agency. All vessels under Regulation (EU) No. 1257/2013 must carry on board an inventory of hazardous materials present in the structure or equipment of the vessel, and that are listed in the Regulation's annexes. In this regard, France inserted Article L5242-9-1 in the Transport Code, which requires shipowners to notify the administration of its intent to recycle a vessel.

vi Passengers' rights

Regulation (EU) No. 392/2009 (the Passenger Liability Regulation (PLR)) on the liability of carriers of passengers by sea in the event of accidents came into force on 31 December 2012. This Regulation brought into force the 2002 Protocol to the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention) for all EU Member States, despite the 2002 Protocol not being ratified internationally until April 2014.

This produced some important changes in French law, as France had never ratified the Athens Convention or any amending Protocol. Before the entry into force of the new PLR, carriage of passengers by sea was exclusively subject to the French law of 18 June 1966, enacted in the Transport Code in 2010, which did not provide for specific limitations of liability in cases of personal injury or death, but these are contained in the LLMC Convention 1976, as amended by the 1996 LLMC Protocol.

The PLR applies to international carriage of passengers on seagoing vessels, but also, under certain conditions, to Class A and Class B vessels[32] engaged in domestic seagoing voyages in France.

The PLR covers the liability of the carrier for losses arising from incidents that occur during the course of carriage, which encompasses the period during which the passenger is on board the ship, in the process of embarkation or disembarkation, or being transported by water from land to the ship, or vice versa.

In the event of death or personal injury caused by a shipping incident, the carrier is under a strict liability up to a limit of 250,000 special drawing rights (SDRs) per passenger,

32 Recreational craft designed for winds up to and including Class B or that may exceed Class A wind force 8 (Beaufort scale) and significant wave height of four metres, as defined by amended Directive 94/25/EC on recreational craft.

unless it proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible nature, or was wholly caused by an act or omission by a third party, carried out with the intention of causing the incident. The carrier is also liable for shipping and non-shipping incidents up to a limit of 400,000 SDRs unless the carrier proves that the incident that caused the loss was not through his or her own fault or neglect. Moreover, contributory fault on the part of the passenger may wholly or partially exonerate the carrier. The carrier will lose its right to limit liability if it is proven that the damage resulted from an act or omission intended to cause damage or a reckless act, done with the knowledge that such damage would probably ensue. The French courts have a wide interpretation of the carrier's fault.[33] The carrier's limit of liability for loss or damage to luggage varies, depending on whether the loss or damage occurred in respect of cabin luggage, of a vehicle or luggage carried in or on it.

A provision for compulsory insurance, of no less than 250,000 SDRs per passenger per occasion, has been introduced. The ship's registry must issue a certificate evidencing the insurance.

In some cases, maritime cruises will be considered package travel, governed by the French Tourism Code, implementing the EU Package Travel Directive,[34] which provides for a strict liability regime that differs from that of the PLR.[35]

Finally, Regulation (EU) No. 1177/2010 on maritime passenger rights established a mechanism applicable in cases of interruption of travel, requiring operators to comply with a series of obligations regarding information, assistance and cruise lines and not discriminating against disabled passengers.

vii Seafarers' rights

French legislation on seafarers used to be included in the French Maritime Labour Code. This has now been almost fully replaced by Article L5511-1 et seq. of the Transport Code, which contains some provisions specific to seafarers, such as those on the execution of the employment contract, probationary period, performance and termination of contract, and collective labour relations. As provided in Article L5541-1 of the Transport Code, some general provisions of the Labour Code apply to seafarers employed under a French contract, when no specific provisions depart from the general regime. These provisions relate particularly to a company's work council, staff representatives, minimum wages, collective bargaining agreements, procedures for dismissal, hours of work, and the committee on health, safety and working conditions.

France ratified the Maritime Labour Convention 2006 (MLC) on 28 February 2013. As France's social legislation is relatively comprehensive, the implementation of the MLC into domestic legislation did not require major reform.

33 Court of Cassation, First Civil Chamber, 18 June 2014.

34 Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

35 See, for instance, Court of Cassation, 9 December 2015.

VII OUTLOOK

In early 2021, shipping in France, as elsewhere in the world, was coping with the challenges posed by the global health and economic crisis. Tourism has been badly hit and there remains much uncertainty regarding the upturn in activity.

The French government is taking a series of measures to assist the affected businesses. In July 2020, the government created a Ministry of the Sea (previously sea-related matters were dealt with by various ministries), thus responding to a long-standing wish of shipping industry professionals. In addition to the covid-19 crisis, the fishing industry (as a consequence of Brexit) and the balance between the economy and ecology are some of the key topics for 2021.

Appendix 1

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Mona Dejean specialises in shipping law and has 14 years' experience in handling complex shipping and transport matters as part of HFW's Paris shipping team.

She advises and represents shipowners, P&I clubs, hull and machinery underwriters, charterers and cargo interests. She advises on all types of shipping disputes, including both major casualties (collisions, grounding, sinking) and other more common disputes, such as cargo claims, ship arrests, demurrage claims, marine insurance and shipbuilding contracts.

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