THE SHIPPING LAW REVIEW

SEVENTH EDITION

Editors
George Eddings, Andrew Chamberlain and
Holly Colaço

THE LAWREVIEWS

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PREFACE

The seventh edition of this book aims to continue 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 and decommissioning. A new chapter on ship financing is also included, which seeks to demystify this interesting and fast-developing area of law.

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.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US$380 billion in terms of global freight rates, amounting to about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's 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 has led to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

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.

George Eddings, Andrew Chamberlain and Holly Colaço
HFW
London
May 2020

Chapter 21

FRANCE

Mona Dejean[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The French flag is designated by the International Chamber of Shipping among the best flags in 2018 in terms of the quality of the fleet and the quality of environmental, security and social regulations.[2] It was classed fourth on the white list of the Paris Memorandum of Understanding on Port State Control (the Paris MOU) in 2019.

In July 2098, the merchant fleet under the French flag comprised 415 vessels of over 100 gross tonnage (GT), of which 177 vessels were dedicated to transport and 238 were service vessels, including 69 coastal vessels and 138 port service vessels (i.e., dredgers, lighthouse tenders, pilot boats and tugs). This is the 29th largest world fleet by flag.

Owing to Brexit, container transportation and shipping company CMA CGM may soon effect a flag change from the UK flag to the French flag, as advantages (such as tonnage tax) will cease to apply. In March 2019, CMA CGM decided to reflag four vessels registered in the UK shipping register under the French flag (*CMA CGM Saint-Laurent*, her two sister ships and *CMA CGM Titus* (i.e., four out of 44 vessels have been reflagged)). CMA CGM's fleet under the French flag is currently made up of 28 vessels.

The average age of the French transport fleet was 10.5 years as at 1 July 2019 (the global average is 17.3 years).[3]

For freight transport, 359.3 million tonnes were handled in the large ports of metropolitan France in 2018. The port of Marseilles has the most developed activity (80.4 million tonnes), followed by Le Havre (72 million tonnes) and Calais (50.2 million tonnes).[4]

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

France has ratified most of the major international maritime conventions (the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules), the International Convention for the Safety of Life at Sea 1974 (SOLAS), the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976), etc.). As a Member State of the European Union, France is also subject to European legislation addressing maritime issues (for instance, the

1 Mona Dejean is a senior associate at HFW.

2 ICS, 'Shipping Industry Flag State Performance Table 2017/2018'; Ministry of Ecology, Sustainable Development and Energy, 'Statistiques – Flotte de commerce sous pavillon français – January 2019'.

3 Ministry of Ecology, Sustainable Development and Energy, 'Statistiques – Flotte de commerce sous pavillon français – January 2019'.

4 Ministry of Transports, 'Trafic 2017 des ports français millionnaires en tonnes'.

extensive role of the Commission in port sectors). 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 under the impetus of Professor René Rodière, a famous maritime lawyer and university lecturer, who wrote France's five basic maritime laws, including the 18 June 1966 Act on Contracts of Chartering and Transport by Sea and the 3 January 1967 Act relating to Ships and Other Sea Vessels. In 2010, these laws and others relating to shipping and transport were codified in a Transport Code. Since December 2016, most of the decrees relating to shipping, which had not yet been codified, have hence been incorporated in the Transport Code. The Transport Code is now the main reference regarding legislation related to shipping and transport, although some related provisions can still be found in other acts and codes.

In civil law systems, case law is considered to be a secondary source of law – statutory law being the primary source – and there are no binding precedents, although higher court decisions can have a persuasive effect on lower courts.

III FORUM AND JURISDICTION

i Courts

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 at times somewhat inconsistent with the generally accepted understanding of the law. A shipowner or operator will, however, usually be sued before one of the principal traditional 'maritime' jurisdictions, where judges may have considerable practical experience of maritime matters.

Regional courts of appeal are competent to hear appeals against decisions rendered by commercial courts. 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 only required 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. The court surveyor can be persuaded to request evidence that would be relevant or to hear witnesses, and if that evidence is not provided, the court surveyor may draw adverse inferences therefrom in his or her report.

On 8 February 2018, the Paris Court of Appeal made official the creation of an international chamber in the Court to deal with commercial litigation; it started hearing cases in March 2018. Parties are able to choose English as the oral proceeding's language, judges are specialists in international commercial litigation and the procedure will be faster than average by using shorter deadlines and fostering parties' cooperation.

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.

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 only accept jurisdiction if the arbitral tribunal has not yet been seized and, cumulatively, the clause is manifestly invalid or inapplicable.[5]

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.

Founded 52 years ago, the CAMP handles various types of shipping disputes, including charter parties, carriage of goods by sea, shipbuilding, salvage,[6] collision, sale and purchase, and ship agency contracts.

Arbitrators must be chosen from the list of the CAMP's arbitrators, of which there are approximately 50. Of these, two are members of the London Maritime Arbitrators Association.

Arbitrators are sorted into three categories according to their professional background: professionals of maritime trade (shipowners, charterers, ship brokers, etc.), lawyers (maritime law professors, in-house counsel, etc., but not private practitioners) and technicians (naval architects, master mariners, chief engineers, maritime surveyors). Each party chooses its own arbitrator and the CAMP nominates the chairman.

The administration costs of the CAMP and the arbitrators' fees depend on the total amount of the claims and counterclaims advanced by the parties. A sliding scale of arbitration costs for a three-member arbitration panel is listed in the CAMP's Rules. Arbitration costs before the CAMP are generally considered attractive compared with other arbitral institutions.

5 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.

6 Salvage rewards granted by the CAMP tend to be higher than those awarded by state courts.

For example, the total amount due to the Chamber and arbitrators will be €3,850 for total claims of up to €15,000, €18,800 for total claims of €200,000 and €45,900 for total claims of €1 million. Where a sole arbitrator is appointed, the cost is approximately 60 per cent of these amounts. Costs are payable at the beginning of the proceedings, half by the claimant, half by the defendant. The arbitral tribunal will be free to decide how to apportion the final burden of costs between the parties when issuing the award. In the event that proceedings are withdrawn before the final award is issued, there are detailed provisions in the Rules setting out the sums that can be recovered from the CAMP in respect of the monies paid on account.

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-degree examination, which will be conducted in the same way as the first arbitration. Any second award will override the first, which is then considered null and void. Apart from the obvious duplication of time and effort, as well as an almost redundant procedure, such an appeal leads to further expense.

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 on 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*.[7] 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 *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

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

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.

As for the procedure, the party wishing to enforce a foreign judgment in France must make an application to the French courts and give notice of this application to the defendant. The defendant has the right to file submissions in response to the application and will generally raise arguments based on the conditions set out above. Having heard the parties, the court will deliver a French judgment authorising or refusing the enforcement of the foreign judgment. Each party has one month to lodge an appeal against such a judgment. As a matter of French law, an appeal suspends enforceability unless the court orders otherwise, in which case it might be possible to take enforcement action while the appeal is pending.

Owing to Brexit, the European Union and the United Kingdom will likely negotiate a mutually beneficial recognition and enforcement regime. During the transitory period from 1 February to 31 December 2020, there is no change in the modalities of cooperation with the United Kingdom in the areas of civil justice. All the instruments provided for by Union law in this area will continue to apply (except for Regulation (EU) 2016/1191 on the circulation of public documents). In any case, French law contains provisions that enable decisions of the English courts to be enforced.

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. The party wishing to have the award enforced in France must file an *ex parte* application and disclose the original award, the arbitration agreement and certified copies thereof, with French translations if need be. If these conditions are met, the *exequatur* will be granted unless the decision is manifestly contrary to public policy.

IV SHIPPING CONTRACTS

i Shipbuilding

The French shipbuilding industry suffered a serious crisis in the early 1970s. Although still in decline, the sector is active and has proved increasingly promising in recent years. Built by the French shipbuilder STX, *Harmony of the Seas*, the biggest cruise ship in the world, was delivered to Royal Caribbean International in April 2016. In January 2020, MSC ordered two cruise ships from Saint-Nazaire's Chantiers de l'Atlantique. The two new passenger cruise vessels, each with capacity for 6,700 passengers, will enter into service in 2025 and 2027. One of these will be the first LNG-powered vessel built in France. The agreement also provides for the development of a new class of LNG vessel, as well as a new prototype of vessel propelled partly by sail.

In 2017, STX avoided bankruptcy with the assistance of the French government and is now 50 per cent owned by the global leader in the shipbuilding industry, Fincantieri.

In 2017, the French Navy awarded a public procurement to the French shipyards CMN and Merré for the delivery of 29 12-metre tugs. In view of its prospective contracts (with Saudi Arabia and Angola, inter alia), CMN intends to extend its infrastructure.

CMN has been working on a hydroelectric power project, and its first marine turbine was installed at the end of April 2019, at Paimpol, under the OceanQuest project. It is the first marine hydro turbine to be connected to the national power grid. The companies involved in the project intend to install other tidal turbines globally, and these will be the most powerful tidal turbines in the world.

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. The shipyard is moreover required to make a declaration to the competent maritime administration, to enable the administration to determine whether the safety conditions related to 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. This second type of sale aims to protect the owner if the shipyard goes bankrupt.

Regarding the actions that can be engaged against the shipyard for defects, Article L5113-4 of the Transport Code provides that '[t]he 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 damages 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 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 UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules) have also been signed but not ratified by France. The Geneva Convention on international multimodal transport of goods has been ratified by France, but is not yet in force and probably never will be.

The French Transport Code also contain provisions related to 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. For instance, Article L5422-1 of the Transport Code provides that the regime of the contract of carriage 'shall apply from the taking over of the goods until the delivery', which can occur after the period governed by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules), 'from the time when the goods are loaded on to the time they are discharged from the ship'.

The duties and obligations of shippers are addressed by French law: the shipper is in charge of the wrapping and packaging of the goods; it must present the goods properly packed, secured and identified at the time and place specified in the parties' agreement. The shipper has an obligation to provide any relevant information about the goods and must indicate to the carrier the nature of the goods, and if it necessitates special requirements for transport by sea. Under Article L5422-10 of the Transport Code, the shipper is liable in the event of damages to the vessel or to any cargo owned by other cargo interests. Finally, the shipper owes the freight to the carrier. Under Article L5422-8, the carrier has a lien over the cargo until 15 days after its delivery, unless it has been sold to a third party. The carrier is also entitled to retain the cargo onshore.

As regards multimodal transports, French legislation does not contain specific provisions. 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 EU or European Economic Area (EEA) Member States and are flying a flag of one or more of those States. Maritime cabotage is also governed by the Maritime Cabotage Regulation.

iii Cargo claims

As a contract of carriage will, most of the time, impose a strict liability on the carrier, 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).

Where the name of the carrier is not provided on the bill, a rule established since 1987[8] 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.

Both the Hague-Visby Rules and the 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.[9] A few years ago, the French Supreme Court also moderated its position regarding jurisdiction clauses and considered that where the consignee, upon 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.[10] A recent decision accepted the opposability to the consignee of a jurisdiction clause inserted in the bill of lading governed by French law, on the mere ground that it is part of the spirit of an international contract of carriage.[11] By contrast, the French Supreme Court recently ruled that a jurisdiction clause could not be invoked by the carrier against the actual consignee whose name was not mentioned on the bill of lading and who was not an endorsee either.[12]

iv Limitation of liability

France has ratified the LLMC Convention 1976, and the Protocol to amend the LLMC Convention 1996 (the LLMC Protocol 1996) has been in force in France since 2007. This applies to vessels flying foreign flags (regardless of whether they are 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

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

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

10 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.

11 Court of Cassation, Commercial Chamber, 12 March 2013.

12 Court of Cassation, Commercial Chamber, 27 September 2017 (*The 'Santa Catarina'*); CA Versailles, 15 May 2018.

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'*, a 25-year-old saga 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 confidence and cohesion indispensable to permit them to overcome difficulties which whilst unforeseen were not unforeseeable'.[13] Recent decisions, however, suggest that the French courts are gradually overcoming their claimant-friendly approach. In *The 'Rosa Delmas'*[14] and in the latest decision in *The 'Heidberg'*,[15] the courts 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) relating to the arrest of seagoing ships has been ratified by France. Ships flying a flag of a country that is a signatory to the Brussels Convention can only be arrested 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.

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

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

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

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

and the company that is alleged to owe the debt in question[16] or (2) the shipowner or the debtor company is, in reality, fictitious. This is referred to as an absence of *affectio societatis*,[17] 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.[18]

The procedure of ship arrests is set out by Articles R5114-15 to R5114-19 of the Transport Code. An *ex parte* petition to arrest the ship must be made to the enforcement judge[19] 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. Where 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 the magistrate, who rules on individual arrests. French law does, however, 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.

According to the Mobility Organisation Law of 24 December 2019 and Article L5243-6 of the Transport Code, French authorities are now able to arrest the vessel when the vessel has been used to commit an offence contrary to the general rules of conduct at sea, and in particular the rules established by the International Regulations for Preventing Collisions at Sea 1972 (COLREGs).

Once the order authorising the arrest has been issued, this 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, French courts have, to date, been reluctant to grant compensation unless the arresting party had manifestly acted in bad faith.

16 *Confusion de patrimoine*.

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

18 For a recent example of a company withheld fictitious see the decision 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).

19 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.

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, upon 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 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

As in most EU Member States, maritime safety is covered under French law by several 'levels' of legislation. France is a party to SOLAS and its successive protocols,[20] most provisions of which have been incorporated into EU legislation. France incorporated SOLAS into domestic law through an Act dated 5 July 1983 and the Decree of 30 August 1984. The former is now codified in the Transport Code and in some Regulations on the Safety of Life at Sea, which compile applicable rules in 'divisions' made available through the ministry in charge of transport and is frequently updated.

On 1 July 2016, new requirements under SOLAS entered into force in France,[21] imposing gross mass verification of packed containers to ensure that the mass declared is accurate and to avoid injury, cargo damage or loss of containers.

The safety regime also includes provisions for the treatment of casualties: Directive 2009/18/EC was transposed into the French 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.[22]

20 The 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.

21 Ministerial ruling of 28 April 2016 published on 28 May 2016 and modified on 30 December 2016.

22 Article L1621-1 et seq. of the Transport Code.

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

The case of *MSC SA v. Glencore International AG*[23] recently highlighted the type of cyber risk that could be encountered in the maritime freight transport chain. In this area, the Baltic and International Maritime Council (BIMCO) was the first to react by publishing the Guidelines on Cyber Security Onboard Ships in February 2016. The updated version was published in December 2018. In particular, the Guidelines provide full and detailed guidance to ship owners and operators on how to strengthen cyber resilience on board their ships.

In June 2017, the International Maritime Organization (IMO) adopted Resolution MSC.428(98) on Maritime Cyber Risk Management in Safety Management System (SMS). The Resolution stated that an approved SMS should take into account cyber risk management in accordance with the objectives and functional requirements of the International Safety Management Code 1998 (the ISM Code). The aim is to ensure that cyber risks are appropriately managed through existing SMSs. The IMO has given stakeholders until 2021 to include cyber security management procedures in their SMS, as defined in the ISM Code.

On 5 July 2017, the IMO published its Guidelines on maritime cyber risk management. These contain high-level recommendations on maritime cyber risk management and offer guidance on procedures and actions required to maintain security of cyber systems in the company and on board ships and, consequently, to ensure and safeguard the shipping business.

BIMCO has now developed a clause dealing with cyber security risks and incidents that might affect the ability of parties to perform their contractual obligations. Companies involved in drafting this clause include Navig8, the UK P&I Club and HFW. BIMCO published the Cyber Security Clause in May 2019. The aim is to raise awareness of cyber risks among the stakeholders in maritime business and provide a mechanism for ensuring that they have procedures and systems in place to help minimise the risk of an incident occurring and mitigating the effects of such an incident. The BIMCO Cyber Security Clause requires parties to have plans and procedures in place to protect computer systems and data, and to be able to respond quickly and efficiently to a cyber incident. The affected party would have to notify the other party immediately so that any necessary countermeasures can be taken. The Clause is also designed to cover arrangements with third-party service providers, such as brokers and agents. The contractual liability of the parties for claims is limited to an amount agreed during negotiations, and a sum of US$100,000 will apply if no other amount is agreed. Due to the general terms, it appears that the Clause can easily be adopted into any contract or chain of contracts to ensure that the various parties' obligations concerning this issue are back to back.

ii Port state control

France is a member of the Paris MOU, 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.

23 (2017) EWCA Civ 365 (*MSC Eugenia*).

Inspections are conducted by inspectors of the ships' safety centres, which are part of the Maritime Affairs Administration.

In 2004, France was found in breach of its obligations under Directive 95/21/EC by failing to carry out a total quota of annual inspections corresponding to at least 25 per cent of the number of vessels, as fewer than 15 per cent of vessels were inspected in 1999 and 2000.[24]

This performance has since improved, with 1,780 inspections in 2008, representing 30 per cent of ships calling at French ports,[25] and 1,072 inspections in 2018. The inspection efforts of France as a percentage of total Paris MOU member inspections represent 5.97 per cent.[26] In 2018, 518 inspections revealed deficiencies and 35 vessels were detained (48.3 and 3.3 per cent of inspections, respectively). In France, within the framework of port state control, the ship safety centres 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.

iii Registration and classification

There are six registers under French law: five national registers and one international register (the French International Register (RIF)):

a the applicable register in metropolitan France and overseas departments;
b the RIF;
c the French Southern and Antarctic Lands (TAAF) Register;[27]
d the New Caledonia Register;
e the Wallis and Futuna Register; and
f the French Polynesia Register.

As at 1 January 2017, the French transportation fleet of vessels over 100 GT, now including coastal and port service vessels, comprised 86 vessels registered in the RIF, 54 in the metropolitan register and 37 in the overseas registers (including 20 in French Polynesia).[28]

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

24 ICJ Case C-439/02, *Commission v. French Republic*.
25 Source: Union Professionnelle des Experts Maritimes.
26 Paris MOU, Port State Control, Annual Report 2018.
27 The RIF will eventually replace the TAAF register, which is used nowadays only for fishing vessels.
28 Ministry of Ecology, Sustainable Development and Energy, 'Flotte de commerce sous pavillon français', July 2019.

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 will depend upon 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. In contrast, the following cannot currently be registered in the RIF: passenger vessels trading between EU countries and on some lines between the EU and third countries, vessels operating only on national cabotage or providing services in areas in which port regulations apply (such as boatmen and pilot launches, harbour tugs, signalling vessels and harbour maintenance dredgers) and professional fishing vessels.

France has recently adapted the rules concerning the French International Register to increase the competitiveness of the French flag and thus attract shipping companies and ship owners.[29] For example, the knowledge and language requirements for access to the International Register are now less stringent (Article L5521-3 of the Transport Code).

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 GL and RINA Services. Classification societies can be held liable to shipowners, third parties (the victims) or the state when a party claims against 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'*,[30] 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

The International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)) is in force in France. Sea pollution is also addressed by EU directives; in particular, the Directive on Ship Source Pollution,[31] incorporated into French law by Act No. 2008-757, dated 1 August 2008, relating to environmental liability and other provisions.

Under French law, criminal sanctions against oil pollution are set out in Article L218-10 et seq. of the French Environment Code, pursuant to which oil spillage in breach of 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, where the owner, operator or person is responsible for illegal spillage

29 Mobility Orientation Law of 24 December 2019.

30 Cassation Court, Criminal Chamber, 25 September 2012.

31 Directive 2005/35/EC, modified by Directive 2009/123/EC.

or has not taken the necessary steps to avoid it. Although the European Directive requires intent, recklessness or serious negligence, individuals can be held criminally liable under French law for mere negligence or imprudence, as illustrated in *The 'Erika'*.[32]

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.[33]

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.[34] As regards civil liability, France has ratified the International Convention on Civil Liability for Oil Pollution Damage 1969, replaced by 1992 Protocol (the CLC Convention) and 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[35] as illustrated by the *Commune de Mesquer v. Total* case.[36]

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.

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) has 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 Sea). The master, convicted in the first instance, was released on appeal because there was no intent to commit the offence.

32 Paris Court of Appeal, 30 March 2010, where Mr Pollara (director of Panship, the vessel's technical manager), Mr Savarese (director of Tevere shipping, the vessel's registered owner), RINA (the classification society) and Total (charterer) were found guilty of pollution.

33 The *Trefin Adam Maritime* case, Court of Cassation, 10 November 2015, conviction for marine pollution in 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.

34 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.

35 EU directives and Article L541-1 et seq. of the Environment Code.

36 See ICJ Case C-188/07 of 28 March 2007.

Most French coastal areas are emission control areas (ECAs) in which emissions are the most strictly limited. Following an impact study, there will also soon be an ECA zone in the Mediterranean Sea. From 1 January 2020, with a view to reducing the impact of maritime transport on the environment (amendment of MARPOL (73/78), Annex VI), 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 prior to 31 December 2019). Inside controlled emission areas, the rate remains unchanged, at 0.1 per cent.

These modifications 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, LNG propulsion or the installation of scrubbers. The chief executive officer of Total Marine Fuels Global Solutions announced 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.[37]

A law was recently enacted to encourage shipping operators to use cleaner energy sources.[38] From 1 January 2019 to 31 December 2021, companies using vessels built, acquired, hired or leased using certain less-polluting energies as part of their activities may deduct 20 to 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 recently 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 IMO Resolution MEPC.265, of 15 May 2015, which makes the environment-related provisions of 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 (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 (Article L5312-14-1 of the Transport Code). Lastly, it is planned that the ports will be equipped with electrical connections (Article L1521-4 of the Transport Code). France is, therefore, fully involved in the maritime industry's energy transition.

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 Brussels Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910 (the 1910 Salvage Convention), the provisions of which

37 *Le Marin*, 12 February 2020.

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

have been incorporated into French domestic law in Article L5132-1 et seq. of the Transport Code, and 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 upon 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., where the danger was no longer an issue at the time assistance was provided).

French provisions relating to maritime wreckage are set out under Article L5142-1 et seq. of the Transport Code. Where 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. 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 Basel Convention of 22 March 1987 and Regulation (EC) No. 1013/2006. More recently, Regulation (EU) No. 1257/2013 of 30 November 2013 on ship recycling, which has applied since 31 December 2015, aims at '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 only be recycled in recycling facilities listed on a 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. Concerning the application for inclusion on the European list, the EU Commission adopted an implementing decision of 17 December 2015 (2015/2398) on the information and documentation needed for application from a facility located in a third country.

Inspections of ships to be recycled are carried out by the administration or by an accredited agency. All vessels under the Regulation 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.

In November 2016, the European Maritime Safety Agency published a non-binding Best Practice Guidance on the Inventory of Hazardous Materials for practitioners in the field, ship owners and national authorities.

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 having been ratified internationally at the time; it came into force internationally in 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 LLMC Protocol 1996.

The PLR applies to international carriage of passengers on seagoing vessels, but also, under certain conditions, to Class A and B vessels[39] 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 covers 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, 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 where 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.[40] 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.

39 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 4 metres, as defined by amended Directive 94/25/EC on recreational craft.

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

In some cases, maritime cruises will be considered package travel, governed by the French Tourism Code, implementing the EU Package Travel Directive,[41] which provides for a strict liability regime that differs from that of the PLR.[42]

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, where no specific provisions depart from the general regime. These provisions relate particularly to the company's work council, staff representatives, minimum wage, 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 with other states in the same situation, France wished to promote the universal application of the MLC by incorporating it immediately into its domestic legislation. Rules of the French Transport Code on Seafarers were thus adapted in July 2013 and April 2015. As the French social legislation is relatively comprehensive, the implementation of the MLC did not require major reform.

The MLC officially came into force in France on 28 February 2014, and since then, approximately 24 vessels have been detained in France because of deficient labour conditions.

VII OUTLOOK

In January 2019, Prime Minister Édouard Philippe announced the launch of a 'plan linked to a Brexit without agreement', which comprises legislative measures to ensure that the rights of businesses are effectively protected. One of the government orders (No. 2019-36) issued pursuant to this plan provides for measures to restore border controls on goods. The forthcoming investments in French ports and airports are estimated to cost roughly €50 million.

A plan to support the fishing sector, which is likely to be severely impacted in the event of a no-deal Brexit, is also under study. Despite the diverse areas set to be affected, the French government is taking steps on several levels to minimise the impact of the UK's withdrawal from the European Union on businesses and on shipping.

The United Kingdom left the European Union on 31 January 2020. In that respect, new legislation enacted on 19 January 2020 empowers the French government to issue orders to prepare for the retirement of the United Kingdom from the European Union.

41 Directive 90/314/EEC.

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

In particular, the government is allowed to decide legal measures to prepare for a possible re-establishment of controls at the border with the United Kingdom. Consequently, Brexit will certainly have consequential impacts on the transport of goods and cargo between France and United Kingdom. The port traffic will have to be organised accordingly.

Appendix 1

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Mona Dejean specialises in shipping law and has over 10 years' experience handling complex shipping and transport matters as part of HFW's Paris shipping team.

She advises and represents shipowners, P&I clubs, H&M 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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