

THE SHIPPING LAW
REVIEW

FIFTH EDITION

Editors

George Eddings, Andrew Chamberlain
and Rebecca Warder

THE LAWREVIEWS

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FIFTH EDITION

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PREFACE

The fifth 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 the previous four editions, 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, marine insurance and environmental issues. We once again feature offshore shipping and look at the key changes in the revised SUPPLYTIME 2017 form, published since our fourth edition.

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 or counter-security requirements and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their country, 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 freight 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 has been taking 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.

Environmental regulation continues to be a hot topic in shipping and the maritime industry has made headlines during the past year by making its first major commitment to cut emissions. The shipping sector has signed up to reduce air emissions by an impressive 50 per cent by the year 2050 as compared with 2008 emissions levels. This, and the stricter sulphur limit of 0.5 per cent m/m coming in from 2020, is generating increased interest in alternative fuels, alternative propulsion and green vessel technologies.

The United Kingdom's projected exit from the European Union is another key development. The UK is currently expected to leave the EU in 2019 but it is now likely that there will be transitional arrangements for withdrawal lasting until 2020. Some concerns have been expressed about the effects of Brexit on enforcement of maritime contracts. However, we expect the bulk of shipping contracts globally to continue to be governed by English law and that Brexit will not significantly affect enforceability. The vast majority of shipping contracts call for disputes to be resolved by London arbitration and London arbitration awards will continue to be enforceable internationally (both within and outside the European Union) under the New York Convention, as they are today. It is anticipated that reciprocal EU–UK enforcement of court judgments may also 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 Rebecca Warder

HFW

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May 2018

PHILIPPINES

*Valeriano R Del Rosario, Maria Theresa C Gonzales, Daphne Ruby B Grasparil
and Jennifer E Cerrada¹*

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

There are two sides to the Philippine shipping industry, and both can only be described in superlative terms. The Philippines is an archipelagic country of more than 7,000 islands, and so shipping provides a vital link throughout the country. The domestic shipping industry, however, is probably best remembered for the ill-fated collision between the passenger ferry *Doña Paz* and the petroleum product tanker *Vector*, which happened on 20 December 1987 and resulted in more than 4,000 deaths – the worst disaster at sea in peacetime. As could be expected, it spawned numerous litigations in the Philippines and the United States. In 2017, the Philippine domestic fleet consisted of 33,347² registered vessels, which moved people and cargo throughout the archipelago.

The Philippines is one of the largest providers of seafarers to the world's merchant marine fleet. In fact, it provides more than 30 per cent of the world's seafarers.³ In 2016, the Philippines deployed 442,820 seafarers internationally,⁴ and the number is projected to grow each year. In 2017, the nation earned more than US\$28.059 billion⁵ from overseas Filipino workers, and of that total, almost US\$5.9 billion came from Filipino seafarers employed by the world's merchant marine fleet.⁶ In 2017, the remittances of overseas Filipino workers constituted 10 per cent of the Philippines' gross domestic product.⁷

The largest port in the Philippines is Manila, on the island of Luzon in the northern part of the country. In central Philippines, the country's second-largest city, Cebu, serves as the main hub for the distribution of goods within the central islands. Davao and Cagayan de Oro are the major ports in the southern Philippines' island of Mindanao, which is largely the source of agricultural exports.

1 Valeriano R Del Rosario, Maria Theresa C Gonzales, and Daphne Ruby B Grasparil are partners, and Jennifer E Cerrada is a managing associate at VeraLaw (Del Rosario Raboca Gonzales Grasparil).

2 Maritime Industry Authority data as at 2017, available at http://marina.gov.ph/sectoral/summary_domfleetinventoryjune2017andprevious.pdf.

3 Lucas, 'Seafarers' Day: PH is world's manning capital', *Philippine Daily Inquirer*, 12 April 2017, available at <http://globalnation.inquirer.net/125167/seafarers-day-ph-is-worlds-manning-capital>.

4 Philippine Overseas Employment Administration, 'Compendium of OFW Statistics', www.poea.gov.ph/ofwstat/compendium/2015-2016%20OES%201.pdf.

5 Bangko Sentral ng Pilipinas statistics, available at www.bsp.gov.ph/statistics/keystat/ofw2.htm.

6 Ibid.

7 Cuaresma, 'OFW remittances hit \$28.1 billion in 2017', *Business Mirror*, 15 February 2018, <https://businessmirror.com.ph/ofw-remittances-hit-28-1-billion-in-2017/>.

In 2017, the Philippines imported US\$84,108 million (free on board (FOB) value) worth of goods, while at the same time exporting goods worth US\$57,406 million (FOB value).⁸ This trade is almost entirely dependent on shipping, which is the vital link between the islands of the Philippines and the rest of the world.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

The Philippines is a civil law country. The New Civil Code of the Philippines,⁹ which was enacted in 1949, was based on the Spanish Civil Code, but it is written in English rather than Spanish. The Philippines is no longer a Spanish-speaking country, so all enacted laws are in English and court proceedings are conducted in English. The Philippines also has a Code of Commerce, which is based on the Spanish Code of Commerce 1885. The Law on Obligations and Contracts is part of the New Civil Code, while the rules on domestic carriage of goods are set out in both the New Civil Code and the Code of Commerce. The latter also provides for the law on charterparties, collision and general average. Salvage is covered under a special law.

The Philippines also follows the system of judicial precedents and, therefore, the decisions of the Philippine Supreme Court, written in English, interpreting the provisions of the Civil Code, the Code of Commerce and other legislation, have the force of law. For the carriage of goods to and from Philippine ports in foreign trade, the Philippines adopted the United States Carriage of Goods by Sea Act of 1936¹⁰ (the Philippine COGSA), which is basically the Hague Rules.

As mentioned above, the Philippines is a major provider of seafarers to the world's merchant marine fleet. More recent shipping-related legislation has tended to be with regard to overseas Filipino workers. As a result, on 13 March 2014, the Philippine Congress enacted Republic Act No. 10635,¹¹ which established the Maritime Industry Authority (MARINA) as the single maritime administration responsible for the implementation and enforcement of the STCW Convention, as amended, and the international agreements or covenants related thereto.

In August 2012, the Philippines became the 30th member country of the International Labour Organization to adopt the Maritime Labour Convention of 2006. The adoption of the MLC 2006, the 'seafarer's bill of rights', was a concrete effort to protect the rights of Filipino seafarers at home and overseas. By doing so, the Philippine government recognised the significant contribution by Filipino seafarers to the growth of the country's economy.¹²

8 Philippine Statistics Authority, 'National Quickstat – February 2018', available at <https://psa.gov.ph/statistics/quickstat>.

9 An Act to ordain and institute the Civil Code of the Philippines [Civil Code], Republic Act No. 386 (1950).

10 Carriage of Goods by the Sea Act [COGSA], Public Act No. 521 (1936).

11 An Act establishing the maritime industry authority (MARINA) as the single maritime administration responsible for the implementation and enforcement of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended, and international agreements or covenants related thereto, Republic Act 10635 (2014).

12 Press Release, Manila Philippines, International Labour Organization, 21 August 2012, www.ilo.org/manila/public/pr/WCMS_187754/lang--en/index.htm.

III FORUM AND JURISDICTION

i Courts

Jurisdiction of courts

The Philippine courts' jurisdiction over shipping disputes is determined by law. Under the Judiciary Reorganization Act of 1980 (BP 129), as amended by Act No. 7691,¹³ the regional trial courts have exclusive original jurisdiction over admiralty and maritime matters.

An interesting jurisdictional issue was dealt with in *Negros Navigation Co., Inc. v. Court of Appeals*¹⁴ and *Tsuneishi Heavy Industries (Cebu) Inc (THI) v. Negros Navigation Co Inc.*¹⁵ THI commenced an action to enforce a maritime lien for ship repairs with the Regional Trial Court of Cebu (the Cebu RTC) against the properties of Negros Navigation Co Inc (NNC). NNC subsequently commenced rehabilitation proceedings with the Regional Trial Court of Manila (the Manila RTC) and filed for suspension of payments. The Manila RTC issued a stay order of all claims against NNC. Meanwhile, the Cebu RTC issued an arrest for NNC's vessels in the *in rem* aspect of the case. NNC sought the suspension of proceedings in Cebu on account of the stay order issued by the Manila RTC. The appellate court restrained the implementation of the Manila RTC stay order. The Supreme Court overruled the argument by THI that the Manila RTC divested the Cebu RTC of jurisdiction acting as an admiralty court when it issued the stay order, but affirmed that the maritime lien must be upheld notwithstanding NNC's rehabilitation proceedings. The Supreme Court ruled that:

[t]he Manila RTC acting as a rehabilitation court merely suspended the proceedings in the admiralty case in the Cebu RTC. It did not divest the Cebu RTC of its jurisdiction over the maritime claims of THI against NNC. The preferred maritime lien of THI can still be enforced upon the termination of the rehabilitation proceedings, or if such be unsuccessful, upon the dissolution of the corporation.

Limitation period

Actions based on written contracts have to be filed within 10 years of when the cause of action occurred, and four years in the case of quasi-delict, which is similar to tort under common law.

The 10-year prescriptive period is applied to contracts of carriage of goods by sea in domestic trade, but not to cases covered by the Philippine COGSA. In particular, Section 3(6) of the Philippine COGSA provides that the carrier is discharged from liability for loss or damage of the goods unless suit is brought 'within one year of delivery of the goods or the date when the goods should have been delivered'. However, the period of time during which the goods have been discharged from the ship and given to the custody of the *arrastre*¹⁶ operator is not covered by the Carriage of Goods by Sea Act. The *arrastre* operator cannot invoke as a defence that the suit was instituted beyond the one-year limitation period.¹⁷

13 An Act expanding the jurisdiction of the metropolitan trial courts, municipal trial courts and municipal circuit trial courts, amending for the purpose Batas Pambansa, Blg 129, otherwise known as the 'Judiciary Reorganisation Act of 1980', Act No. 7691 (1994).

14 GR No. 163156, 10 December 2008.

15 GR No. 166845, 10 December 2008.

16 'Arrastre' is a Spanish word (meaning dragging, pulling) but is defined in the Philippines as 'the operation of receiving, conveying and loading or unloading merchandise on piers or wharves'. Merriam-Webster.com, www.merriam-webster.com/dictionary/arrastre.

17 *Insurance Company of North America v. Asian Terminals*, GR No. 180784, 15 February 2012.

ii Arbitration and ADR

An international commercial arbitration concerning the carriage of goods or passengers by air, sea, rail or road, where the seat of arbitration is in the Philippines, shall be governed by the Model Law, as provided in Republic Act No. 9285 and its Implementing Rules and Regulations. Before the constitution of an arbitral tribunal, a party may request interim or provisional relief from the court. After the constitution of an arbitral tribunal or during the arbitration proceedings, the request may be directed to the court but only to the extent that the arbitral tribunal has no power to act or is unable to act effectively. The provisional relief may be granted in any of the following instances: (1) to prevent irreparable loss or injury; (2) to provide security for the performance of any obligation; (3) to produce or preserve any evidence; or (4) to compel any other appropriate act or omission.

A party to an international commercial arbitration may petition the regional trial court for the recognition and enforcement of the international commercial award in accordance with Rule 12 of the Special Rules of Court on Alternative Dispute Resolution.

A party to a foreign arbitration may likewise petition the regional trial court to recognise and enforce the foreign arbitral award, which shall be governed by the 1958 New York Convention.

A foreign corporation not licensed to do business in the Philippines may seek recognition and enforcement of the foreign arbitral award in accordance with the provisions of the Alternative Dispute Resolution Act of 2004.

IV SHIPPING CONTRACTS

i Shipbuilding

Recognising that shipping is a necessary infrastructure and that the shipping industry plays a vital role in the country's economic development, the Philippine Congress has passed a law¹⁸ granting certain incentives to domestic or foreign corporations wishing to engage in shipbuilding within the country. Among the incentives granted¹⁹ is the tax-free importation of capital equipment to be used in the construction or repair of any vessel.

As at 2014, the Philippines was ranked as the fourth-largest shipbuilding nation in the world in terms of newbuild completion volume, following South Korea, China and Japan. This was mainly attributable to the presence of industry heavyweights such as Tsuneishi Heavy Industry of Japan, which owns and operates a shipyard in Balamban, Cebu, and Hanjin Heavy Industries of Korea, which owns and operates a shipyard in Subic Bay, Olongapo.

With respect to shipbuilding contracts entered into with MARINA-accredited Philippine shipyards, there is no specific law governing the same. As such, they are governed by the general rules on contracts under the New Civil Code, which recognises freedom of contract. Title, as well as risk, to the vessel is passed from builder to buyer upon signing of a protocol of delivery and acceptance. With respect to dispute resolution, the parties are also free to stipulate their preferred mode. Ordinarily, parties opt for arbitration.

18 An Act promoting the development of Philippine domestic shipping, shipbuilding, ship repair and ship breaking, ordaining reforms in government policies towards shipping in the Philippines and for other purposes [Domestic Shipping Development Act of 1994], Act No. 9295 (1994).

19 Ibid., Chapter V, Section 14.

In practice, local counsel are able to assist foreign owners, buyers or banks, in cases where ship financing is involved, in the actual delivery of the vessel at a Philippine shipyard by having pre-agreed forms of the delivery documents and an appropriate power of attorney. Communication between a foreign owner, buyer or bank with local counsel is made easier when done through electronic means. In cases where ship financing is involved, the mortgage is usually pre-positioned at a foreign registry to be registered upon confirmation by local counsel that the protocol of delivery and acceptance has been signed.

ii Contracts of carriage

The New Civil Code, the Code of Commerce and the Philippine COGSA apply to contracts of carriage by water. The Code of Commerce and special laws apply in matters not regulated by the New Civil Code,²⁰ while the Philippine COGSA applies to the carriage of goods by sea to and from Philippine ports in foreign trade.

The Philippines has not adopted the Hague-Visby Rules, the Hamburg Rules or the Rotterdam Rules.

The New Civil Code requires extraordinary diligence in the carriage of goods by common carriers,²¹ while in the Philippine COGSA,²² the carrier is bound only to exercise due diligence. For private carriers of goods by water under the Code of Commerce, the requirement is only ordinary diligence.²³

Under the Ship Mortgage Decree, maritime liens are exercised through an action *in rem*.

With regard to the shipowner's lien on the cargo for unpaid freight,²⁴ the lien can be exercised only as long as it has possession. Once the cargo is unconditionally delivered to the consignee at the port of destination, the shipowner is deemed to have waived the lien.

Under Republic Act No. 10668²⁵ promulgated on 28 July 2014, foreign vessels are now allowed to transport and co-load foreign cargoes for domestic transshipment. The Carriage of Goods by Sea Act, and not the Civil Code, applies in the determination of the liability of the foreign vessel for the loss of, or damage to, the goods carried on board the vessel. Foreign vessels engaging in carriage conducted in accordance with Republic Act No. 10668 are neither considered common carriers with the duty to observe extraordinary diligence in the transportation of goods nor are they considered as offering public service so as to fall under the provisions of the Domestic Shipping Development Act of 2004.

iii Cargo claims

There are two sets of rules for cargo claims in the Philippines. For claims arising out of domestic carriage, meaning the carriage of cargo between the Philippine islands, the rules are stated in the Code of Commerce and the New Civil Code. For international carriage of goods, the applicable rules are set out in the Philippine COGSA.

For domestic carriage, notice of loss or damage to the goods must be provided by the cargo owner to the carrier within 24 hours of delivery of the goods. The 24-hour notice is a condition precedent, and provided such notice is given, the cargo owner has 10 years within

20 Civil Code, Article 1766.

21 Ibid., Article 1753.

22 COGSA, Section 3(1).

23 Code of Commerce, Article 362.

24 *Ouano v. Court of Appeals*, 211 SCRA 740 (1992).

25 An Act Allowing Foreign Vessels to Transport and Co-Load Foreign Cargoes for Domestic Transshipment.

which to sue for the loss or damage to cargo. However, the 10-year time bar can be reduced by contract. The duty of care for common carriers is set out in the New Civil Code, and the threshold is very high: extraordinary diligence. Under the New Civil Code, in the event of cargo loss or damage, the carrier is presumed to be at fault, and the burden of proof shifts to the carrier, which must show that it had discharged its duty to exercise extraordinary diligence. Through judgments of the Supreme Court during the past 20 years, the lines between private carriers and common carriers have been blurred to the point of being almost indistinguishable: all cargo claims against carriers are treated as if they are common carriers. Common carriers have only three defences available under the New Civil Code: (1) *force majeure*, (2) inherent fault in the goods, and (3) defects in the packaging.

For the international carriage of goods to and from the Philippines in foreign trade, the carrier's liability is based on Philippine COGSA. However, the Philippine Supreme Court judgments in COGSA cases have applied the high threshold of care as found in the New Civil Code, and the COGSA defences are being ignored. In the case of *Planters Products v. Court of Appeals (Sun Plum)*,²⁶ which involved a cargo of fertiliser from an overseas port to the Philippines, the Supreme Court applied the common carrier rules to the ship, and that precedent has been reiterated in subsequent Supreme Court judgments. The cargo of fertiliser was carried by the ship *Sun Plum*, and there was cargo shortage and damage. The ship was on time charter and the question arose whether the shipowner was a common carrier or a private carrier. If the *Sun Plum* was a common carrier, then the ship would be presumed to be at fault, and the burden would be on the shipowner to prove that he discharged his duty of care. On the other hand, if the *Sun Plum* was a private carrier, then the consignee would have the burden of proving the ship's fault or negligence in order to recover. The Supreme Court ruled that a shipowner who had time-chartered its vessel should be considered a common carrier, and therefore *Sun Plum* had the burden of proving that it had exercised extraordinary diligence in the care of the cargo. As a result of this case and those that followed, the liability regime stated in the Philippine COGSA is more often disregarded by Philippine courts in favour of the common carrier regime, which is set out in the New Civil Code. The only constant from the Philippine COGSA that is applied by Philippine courts is the limitation amount of US\$500 per package or customary freight unit.

The Supreme Court noted in the *Sun Plum* case, as an obiter, that in instances when the charter gives control of both the vessel and its crew, as in a bareboat or demise charter, the shipowner is converted into a private carrier by virtue of the charter. The definitive answer was provided by the Supreme Court in a 2015 case.²⁷

The shipowner, Fortune Sea Carriers, Inc (Fortune Sea), time-chartered its ship *Ricky Rey* to Northern Mindanao Transport Co Inc (Northern Transport). The time-charter party included provisions that gave control of both the ship and the crew to Northern Transport.

While the *Ricky Rey* was on charter, Northern Transport transported 2,069 bales of abaca fibres, which caught fire. The cargo was insured by Federal Phoenix Assurance Co Ltd (Federal Phoenix), which commenced proceedings against the shipowner, Fortune Sea, alone after paying the insured.

Fortune Sea denied liability and insisted it was acting as a private carrier at the time the incident occurred.

26 GR No. 101503, 15 September 1993.

27 *Federal Phoenix Assurance Co. Ltd v. Fortune Sea Carriers, Inc*, GR No. 188118, 23 November 2015.

The Supreme Court rendered judgment in favour of Fortune Sea and held that Fortune Sea was a private carrier. The Supreme Court also held that the time-charter party agreement and the evidence demonstrated that the control of the ship and its crew had been given to the charterer. The issue that remained unanswered was whether the charterers, having the full control of the ship and the crew, would be treated as the common carrier. The issue never came up because Federal Phoenix did not implead the charterer Northern Transport. As a matter of practice, Federal Phoenix should have named the ship, its owners, the charterers and the ostensible carrier in the proceedings. Federal Phoenix failed to do so and, as a result, was unable to recover for the damaged cargo.

As far as demise clauses are concerned, the judgment in the case of *Federal Phoenix Assurance Co. Ltd v. Fortune Sea Carriers, Inc.* seems to indicate that the Philippine Supreme Court will be willing to distinguish between the owners and the charterers as to which should carry the heavy burden of being identified as a 'common carrier'.

There is a party in the logistic claim which is peculiar to the Philippines. He is the *arrastre* operator, a term that harks back to the Spanish colonial era. The Spanish word *arrastre* refers to the act of dragging a dead bull from the ring. In the Philippines, the term has been adopted and refers to the cargo handler who loads and unloads the cargo between the ship and the pier side. In the modern world, the *arrastre* operator can be equated with the terminal operator.

The duty of care of the *arrastre* operator in the event of loss or damage to the goods was the subject of the judgment in *Asian Terminals Inc v. Allied Guarantee Insurance Co. Inc.*²⁸ A shipment of 72,322lb of kraft liner board was offloaded by the *arrastre*, Marina Port Services Inc (Marina Port Services), from the vessel M/V *Nicole*. Fifty-four rolls were found to have been damaged while in the custody of Marina Port Services. The lower court found Marina Port Services liable for the damaged cargo, and the matter was eventually elevated to the Supreme Court. The *arrastre* insisted that it was not liable for the 54 damaged rolls.

The Supreme Court judgment declared that the *arrastre* operator, in the performance of its function, should observe the same degree of care as that required of a common carrier. As a consequence, the *arrastre* operator is presumed to be at fault for the damage and carries the burden of proof to disprove liability. In this case, Marina Port Services failed to discharge the burden of proof and was found liable.

As an update, the Supreme Court's 2016 decision in *Designer Baskets Inc v. Air Sea Transport Inc and Asia Cargo Container Lines*²⁹ concerned the usual practice of carriers releasing cargo against an indemnity letter in instances where the consignee did not have possession of the original bill of lading. The judgment clarified that the carrier cannot be held responsible to the unpaid seller for the value of the goods by delivering the cargo without presentation of the original bill of lading.

iv Limitation of liability

The limitation of liability in the Philippines is based on the value of the ship and freight at risk. In collision cases, the shipowner is allowed to limit its liability for collision damage and any cargo claim that may arise. As far as cargo claims are concerned, the owner may exercise the right to abandon the ship and freight at risk to cargo interest in order to limit its liability.

28 GR No. 182208, 14 October 2015.

29 GR No. 184513, 9 March 2016.

The right to limit liability has been curtailed since the *Doña Paz* tragedy. Before that event, a shipowner could limit liability provided that it was not at fault or negligent. Based on the judgment in *Aboitiz v. New India*,³⁰ the new rule is that as long as there is a finding of any kind of unseaworthiness against the vessel, the owner loses the right to limit liability, regardless of whether the unseaworthiness arose through the owner's fault or negligence.

V REMEDIES

i Ship arrest

The procedure equivalent to a ship arrest in the Philippines is through an application for the issuance of a preliminary attachment under Rule 57 of the 1997 Rules of Civil Procedure. For the effective enforcement of the writ of preliminary attachment, the court sheriff should have, previously or simultaneously with the implementation of the writ of attachment, served a copy of the summons upon the person of the defendant in order for the court to acquire jurisdiction upon him or her.

The party applying for a writ of preliminary attachment must provide a bond in favour of the other party to answer for damages in the event of a wrongful attachment. The party against whom the attachment was issued may lodge a counter-security to obtain the release of the levied property.

The improper or irregular issuance of a writ of preliminary attachment does not automatically warrant the award of damages. Evidence must be submitted to prove the nature and extent of the injury suffered by reason of the wrongful attachment.

Under the Ship Mortgage Decree, the mortgagor may apply *ex parte* for an order for the arrest of the mortgaged vessel. The applicant must submit a sworn statement that a default in the mortgage has occurred and that the applicant files a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, conditioned that the latter will pay all the costs that may be adjudged to the adverse party and all damages that he or she may sustain by reason of the arrest, if the court shall finally adjudge that the applicant was not entitled thereto.

ii Court orders for sale of a vessel

During the pendency of the action, the vessel subject to a writ of attachment may be sold at public auction and the proceeds deposited in court to await the judgment in the action upon proof that 'the property attached is perishable, or that the interests of all the parties to the action will be served by the sale thereof'.³¹ In *Shuhei Yasuda v. Court of Appeals and Blue Cross Insurance Inc.*,³² the Supreme Court allowed the sale of the vessel as it had been left to rot at the pier without a crew to guard it, and was in grave danger of losing its value.

A court may order the sale of a mortgaged vessel in any suit *in rem* in admiralty for the enforcement of a maritime lien other than a preferred maritime lien.

After judgment, the property may be sold at public auction to satisfy the judgment.

30 GR No. 156978, 2 May 2006.

31 The Ship Mortgage Decree of 1978, Presidential Decree No. 1521 (1978), Section 11.

32 300 SCRA 385 (2000).

VI REGULATION

i Safety

Safety means two things to the Philippines: safety regulations, which are applied to the domestic fleet, and the qualification and certification of Filipino seafarers who work on ships throughout the world's fleet. The safety regulations of both domestic shipping and certificates for seafarers overseas-bound are regulated by two government entities – MARINA and the Philippine Coast Guard (PCG).

In domestic shipping, MARINA is mandated to set the safety standards of all domestic vessels in accordance with government regulations and conventions,³³ including the implementation and enforcement of SOLAS, and to promulgate rules and regulations to ensure compliance with these standards. To verify that the required safety standards are met, MARINA is empowered to inspect vessels and all equipment on board³⁴ and, accordingly, to impose penalties and fines, and suspend or revoke certificates of public convenience or other licences.³⁵ In June 2008, Sulpicio's *Princess of the Stars* capsized, and of the reported 851 passengers on board, only 32 survived. The relatives of the victims filed an administrative complaint with MARINA, and on 23 January 2015, Sulpicio, which also owned and operated the *Doña Paz*, was prohibited from carrying or transporting passengers.

MARINA was previously responsible only for keeping the register of Filipino seafarers and issuing their seaman books. Its role was expanded in view of the Philippine legislature's enactment of Act No. 10635,³⁶ which effectively designated MARINA as the single and central maritime administration tasked with ensuring effective implementation and compliance with the STCW Convention. In line with this, MARINA adopted rules for the administrative investigation of Filipino seafarers holding management and operational functions for acts or omissions involving violation of the Code of Ethics of Marine Deck/Engineer Officers and rules issued by MARINA.³⁷

The PCG, on the other hand, is responsible for the enforcement of regulations for both domestic and international shipping relating to all relevant maritime conventions, treaties and national laws to ensure safety of life at sea within the Philippine territory. The PCG also has authority to inspect merchant ships and vessels, including but not limited to inspections before departure to verify compliance with all the rules and safety standards.³⁸

33 Act No. 9295, Section 10(6). MARINA is also in charge of issuing, *inter alia*, certificates of public convenience for operation of all domestic vessels, special permits for international vessels operating in the Philippine territory and certificate of inspection. With MARINA's power to issue these permits or certificates also comes the power to revoke same.

34 Ibid., Section 10(8).

35 Ibid., Section 10(16).

36 The Implementing Rules and Regulations of RA 10635 were published in the Philippines' Official Gazette on 13 March 2014 and were deemed effective 15 days after publication.

37 STCW Circular No. 2015-11 issued by MARINA on 22 July 2015.

38 An Act establishing the Philippines Coast Guard as an armed and uniformed service attaches to the Department of Transportation and Communications, thereby repealing Republic Act No. 5173, as amended, and for other purposes [Philippines Coast Guard Law of 2009], Act No. 9993, Section 3 (2010).

ii Port state control

The Philippines Coast Guard Law of 2009 vested the PCG with the authority, *inter alia*, to enforce regulations pertaining to maritime international convention, treaties, national laws, rules and regulations for the promotion of safety of life and property at sea within the maritime jurisdiction of the Philippines; to implement port state control; to conduct vessel inspections; and to detain ships that do not comply with safety standards.

Memorandum Circular No. 01-00³⁹ was promulgated to ensure the effective implementation of the PCG's port state control functions. This Memorandum Circular applies to all foreign-flagged vessels engaged in international trade calling at any Philippine port. It does not apply to ships of war, troop ships, government vessels not engaged in trade, fishing vessels, or pleasure yachts not engaged in trade.

iii Registration and classification

Only ships listed on the Register of Philippine Ships of MARINA may fly the Philippine flag or trade within Philippine waters.⁴⁰ The rules for registration apply regardless of the size of ship or use thereof, regardless of whether the ship is with or without power, and excluding only warships and naval ships, PCG ships, rubber craft, and ships of foreign registry temporarily used in Philippine waters under special permit. All ships wishing to ply Philippine waters must apply for and be granted a certificate of Philippine registration and a certificate of ownership by MARINA. Ships registered with MARINA may also be deleted from the Register by the owner, voluntarily or involuntarily, as in the case when MARINA, after due process, orders deletion of ships for having violated government rules and regulations, or in the case of dual-flagged vessels where approval of the charter or lease contract is revoked for cause.⁴¹

Currently, the International Association of Classification Society members recognised by MARINA include the American Bureau of Shipping, Bureau Veritas, China Classification Society, Det Norske Veritas, Germanischer Lloyd, Hellenic Register of Shipping, International Register of Shipping, Korean Register of Shipping, Lloyd's Register Asia, Nippon Kaiji Kyokai and Registro Italiano Navale. There are also domestic classification societies, namely Filipino Vessels Classification System Association, Inc, Ocean Register of Shipping, Inc, Orient Register of Shipping, Inc, Philippine Classification Register, Inc, Philippine Register of Shipping, Inc and Shipping Classification Standards of the Philippines, Inc, which are authorised to classify domestic ships for domestic trade.

iv Environmental regulation

The Philippines is a signatory to three major environmental protection conventions relating to shipping:

- a the CLC Convention;
- b MARPOL (73/78) (Annexes I to V); and
- c the 1992 Protocol to the Oil Pollution Fund Convention.

39 Port State Control, Philippine Coast Guard Memorandum Circular No.1, Series of 2000 (28 Sep 2000).

40 MARINA Circular No. 2013-02 (pursuant to Presidential Decree No. 474, Executive Order No. 125, Act No. 9295 and the Philippine Merchant Marine Rules and Regulations of 1997) (18 Jan 2013).

41 Ibid., Section VI.

On 2 June 2007, Republic Act No. 9483, known as the Oil Compensation Act of 2007, was signed into law. This new legislation aims to give more teeth to the implementation of the provisions of the CLC Convention and the 1992 Protocol to the Oil Pollution Fund Convention. Under this law, an action for compensation because of pollution damage as a result of an incident may be filed with the regional trial courts against the owner of the polluting ship, or the insurer or person providing financial security for the owner's liability for pollution. Contributions to the Oil Pollution Compensation Fund are supposedly to be made by oil tanker operators in the country's waters, but at the time of writing, no mechanism has been propagated to establish such a fund.⁴²

In August 2006, the MT *Solar I* sank off the coast of the Province of Guimaras in the central Philippines. The MT *Solar I* spilled more than 200,000 litres of bunker fuel, damaging marine sanctuaries, the tourism industry and the livelihoods of the people of Guimaras.⁴³ The affected communities and individuals filed damage claims with the International Oil Pollution Compensation Fund (the IOPC Fund) and by October 2012, the IOPC Fund had released 987 million Philippine pesos in compensatory damages to 26,870 claimants.⁴⁴

In efforts to monitor and address environmental violations, the Province of Zambales adopted an ordinance in June 2015, approving the installation of a provincial coast watch surveillance and environment monitoring system for the purposes of keeping its waters safe, clean and secure. Apart from aiding in sea navigation, this sophisticated system also aims to monitor vessel exhaust emissions. This province, strategically situated at the entrance to Manila bay, will collect fees as charges for the use of this coastal watch system from ships approaching from the north of Manila.

Since its promulgation, the validity of the ordinance had been questioned by various sectors. Eventually, this was brought before the Department of Justice (DOJ), which, in turn, issued its Opinion No. 8, stating that the subject ordinance is invalid. It violates the 1987 Constitution, the Local Government Code, the Philippines Coast Guard Law, the laws providing for the creation and reorganisation of the Philippine Ports Authority (PPA), and the Executive Order establishing the National Coast Watch System. Among other reasons, it stated that the ordinance usurps the powers and functions already vested in the PCG, the PPA and National Coast Watch Council. Considering the opinion of the DOJ, the Maritime Industry Authority issued Advisory No. 2017-09⁴⁵ to notify the public of the invalidity of the ordinance.

Despite the ordinance being declared invalid, it is hoped that the Province of Zambales and others continue to bring about worthwhile efforts to protect the environment and waters around their areas.

42 Cabacungan, 'House to summon Marina execs over oil pollution fund', *Philippine Daily Inquirer*, 21 December 2013, <http://newsinfo.inquirer.net/550205/house-to-summon-marina-execs-over-oil-pollution-fund>.

43 NCSB Factsheet, September 2006 published by the National Statistical Coordination Board.

44 'Oil Spill Victims Seek Compensation', *Manila Bulletin*, 15 August 2013, <https://ph.news.yahoo.com/oil-spill-victims-seek-compensation-215341344.html>.

45 Maritime Industry Authority policies, available at: <http://marina.gov.ph/policies/FSAA/MA%202017-09.pdf>.

v Collisions, salvage and wrecks

The Philippines collision regime is unique and is part of the Code of Commerce. Whereas most of the world apportions collision liability based on the proportion of blame attributed to each vessel, this is not the case in the Philippines: it is all or nothing. If both vessels are to blame, then each vessel suffers its own loss, and both vessels are jointly and severally liable for the damage to cargo and passengers of both vessels. If one vessel is wholly to blame, then the guilty vessel will bear both its own damage and loss, and that of the innocent vessel, including the cargo damaged or lost on both vessels, and passengers' claims for injury and death, if any.

The Philippine Salvage Law is set out in Act No. 2616.⁴⁶ In the Philippines, salvage is no different from the concept as it exists in the United Kingdom. The party that performs the salvage must be a volunteer, there must be danger and there must be resulting success. There is no specialised salvage arbitration forum like that in the United Kingdom, so most commercial salvors use the LOF salvage agreement or, for a less complicated service, the salvage is negotiated for a fixed fee. The Philippines is not a signatory to the 1989 Salvage Convention.

Any person who wishes to engage in the business or operation of salvaging vessels, wrecks, derelicts and other hazards to navigation, or of salvaging cargoes carried by sunken vessels, is required to secure a salvage permit from the PCG. Under Presidential Decree No. 890,⁴⁷ a salvage operation performed without a permit is a criminal offence.

vi Passengers' rights

The Philippine government recently passed the rules and regulations concerning the Air Passengers' Bill of Rights,⁴⁸ but it has yet to pass the corresponding rules for sea passengers. Notwithstanding the absence of a comprehensive Sea Passengers' Bill of Rights, MARINA rules require all ships engaged in domestic trade to secure adequate P&I insurance to cover the shipowners' or operators' liability for marine accidents, including liabilities for wreck removal, pollution, loss of life or injury to passengers, third parties or seafarers, collisions, damage to fixed or floating structures, and loss or damage to cargo.⁴⁹

vii Seafarers' rights

Seafarers' rights is an important topic when discussing Philippine shipping law because of the sheer number of Filipinos employed worldwide, who, to date, account for 30 per cent of the world's seafarers.⁵⁰ The Philippine government has attempted to export Philippine law to protect its seafarers by imposing a standard seafarers' contract called the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC).

⁴⁶ Enacted 4 February 1916.

⁴⁷ Penalising the unauthorised salvage of vessels, wrecks, derelicts and other hazards to navigation as well as cargoes carried by sunken vessels, Presidential Decree No. 890 (1976).

⁴⁸ DOTC-DTI Joint Administrative Order No. 1, series of 2012.

⁴⁹ MARINA Circular No. 2009-01, as amended (4 Feb 2009).

⁵⁰ See footnote 3.

Included in the POEA SEC is a feature to ensure seafarers' rights to procedural due process. Based on this right, a seafarer who commits a wrongful act must be (1) notified of his or her offence in writing, (2) given the right to explain him or herself, or to have a hearing, and (3) informed in writing of his or her penalty. Failure to observe procedural due process in termination cases, despite the existence of just and authorised causes under the Philippine Labour Code⁵¹ or the POEA SEC, will result in an award of nominal damages to the seafarer. The Labour Code provisions, meanwhile, provide seafarers with the right to terminate employment with their employers on specified grounds⁵² as well as the implied right to file an illegal dismissal case should they be dismissed for causes not based on any of the valid and authorised grounds⁵³ stated therein. On the other hand, the POEA SEC not only provides procedural due process and grievance mechanisms to seafarers, but also enumerates seafarers' entitlements and benefits,⁵⁴ both monetary and non-monetary, the most important and controversial being the compensation and benefits for injury, illness and death.

Jurisdiction for claims filed by seafarers under the Labour Code and the POEA SEC lies with the National Labour Relations Commission. However, should there be a collective bargaining agreement (CBA) in place and the issue involves matters relating to the interpretation of the implementation of the CBA, the original and exclusive jurisdiction lies with the National Conciliation and Mediation Board (NCMB).^{55,56} Prescription of actions for claims based on the POEA SEC is three years from the date the cause of action accrues.⁵⁷

For seafarers working overseas, the most notable benefit provided by Philippine law is compulsory insurance coverage, which should be secured by the manning companies for the seafarers at no cost to them.⁵⁸

The Philippine Senate ratified the Maritime Labour Convention 2006 on 13 August 2012.

To further protect seafarers, and their employers, Republic Act No. 10706⁵⁹ was enacted into law on 26 November 2015. This law aims to protect seafarers from individuals who charge excessive fees and exhort the filing of unfounded labour cases, and their employers with respect to excessive claims. Subsequently, the Department of Labour and Employment issued the Implementing Rules and Regulations for the above-mentioned law.⁶⁰

51 A Decree instituting a Labour Code thereby revising and consolidating labour and social laws to afford protection to labour, promote employment and human resources development and ensure industrial peace based on social justice [Labour Code of the Philippines], Presidential Decree No. 442 (1974).

52 Ibid., Article 285.

53 Ibid., Articles 282 to 284.

54 Includes seafarers' wages, leave pay, shore leave, benefits for illness, injury and death.

55 The NCMB was created under Executive Order No. 126, issued on 31 January 1987.

56 *Estate of Nelson R Dulay represented by his wife Merridy Jane P Dulay v. Aboitiz Jebsen Maritime Inc and General Charterers Inc*, GR No. 172642, 13 June 2012.

57 The POEA SEC, Section 30.

58 Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, Republic Act 10022 (2010), Rule XVI.

59 An Act Protecting Seafarers Against Ambulance Chasing and Imposition of Excessive Fees, and Providing Penalties Therefor [Seafarers Protection Act], approved on 26 November 2015.

60 Department Order No. 153-16 Implementing Rules and Regulations of Republic Act No. 10706, otherwise known as the Seafarers Protection Act, approved on 19 April 2016.

VII OUTLOOK

The outlook for the Philippine shipping industry is bright and will depend largely on how the Philippines takes advantage of its leading position as a provider of seafarers to the world fleet. There is a core of management-level officers who can be the backbone for the creation of a substantial ship-management industry in the Philippines, which could easily rival that of Hong Kong and Singapore. Unlike other business activities in the Philippines, in which foreign equity is restricted, a ship-management business can be wholly owned by a foreign investor – this is one of the best-kept secrets in the shipping industry. Apart from the core of potential port captains, port engineers and designated persons ashore who are available now from the officers currently sailing, the Philippines has improved the infrastructure for conducting business. In the next few years, the Philippines will be able to see whether the shipping world will take advantage of its large pool of talent.

ABOUT THE AUTHORS

VALERIANO R DEL ROSARIO

VeraLaw (Del Rosario Raboca Gonzales Grasparil)

Valeriano R Del Rosario, managing partner of VeraLaw, has extensive education and business experience in the United States and Europe. He was admitted to the Philippine Bar in 1982. He obtained a master's degree in maritime law from the University of Wales, followed by three years' work experience at a prestigious shipping law firm in the City of London.

He is a shipping law specialist and has acted for the 4,000 victims of the *Doña Paz*, a case that has successfully been concluded. Lately, he has been active in ship pollution claims on behalf of owners.

He was president of the Maritime Law Association of the Philippines in 2000.

MARIA THERESA C GONZALES

VeraLaw (Del Rosario Raboca Gonzales Grasparil)

Maria Theresa C Gonzales is a partner in the law firm of VeraLaw. She has almost 17 years of legal experience in four practice areas: intellectual property law, commercial and maritime litigation, recognition and enforcement of foreign arbitral awards and foreign judgment, and construction arbitration. She obtained her law degree from San Beda College of Law and her master's in international commercial law at the University of Nottingham.

Ms Gonzales was chair of the board of trustees of the Maritime Law Association of the Philippines in 2011 and president in 2010. She was a member of the Technical Working Group of the House Transportation Committee of the Philippine Congress in drafting the Proposed Maritime Code. She is regularly invited as a speaker on ship arrest, most recently at the Lloyd's Maritime Academy in London. As a maritime litigator, she handles cargo claims, ship arrest and foreclosure of ship mortgages. She regularly advises foreign clients on a variety of wet and dry maritime matters.

DAPHNE RUBY B GRASPARIL

VeraLaw (Del Rosario Raboca Gonzales Grasparil)

Daphne Ruby B Grasparil has 16 years' experience in various area of law, including corporate law, focusing on the establishment of shipping enterprises and obtaining government licences and regulatory approval, and crew claims, in which she acts for shipowners, P&I clubs and crewing companies for disability claims and termination cases before the National Labour Relations Commission.

She has occupied various positions at the Maritime Law Association of the Philippines (MARLAW), such as the internal vice president for resource development in 2016, vice president for internal relations in 2011 and vice president for legal education and training in 2010.

Ms Grasparil obtained her BA in economics and *juris* doctor degrees both from Ateneo de Manila University. She was admitted to the Philippine Bar in 1996.

JENNIFER E CERRADA

VeraLaw (Del Rosario Raboca Gonzales Grasparil)

Jennifer E Cerrada specialises in corporate law and taxation. She has almost 14 years of experience working on special projects to create appropriate corporate structures to maximise tax benefits for foreign corporations and individuals wishing to do business in the Philippines. In addition, she is active in ship deliveries, registration and de-registration of ship mortgages.

She completed her BSc in management majoring in legal management and a minor in French studies at Ateneo de Manila University, and obtained her bachelor of laws at Arellano School of Law.

VERALAW (DEL ROSARIO RABOCA GONZALES GRASPARIL)

2nd floor, A&V Crystal Tower
105 Esteban Street
Legazpi Village
Makati City 1229
Philippines
Tel: +63 2 550 1888
Fax: +63 2 550 2888
vrdelrosario@veralaw.com.ph
tcgonzales@veralaw.com.ph
dbgrasparil@veralaw.com.ph
jecerrada@veralaw.com.ph
www.veralaw.com



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