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# Panama

Arias, Fábrega & Fábrega

Jorge Loaiza III

## 1 Marine Casualty

**1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:**

**(i) Collision**

Panama has adopted the Convention on the International Regulations for Preventing Collisions at Sea, 1972 ("COLREGs"), by means of Law 7 of 1973, as well as the Amendment of 1974 by means of Law 15 of 1975.

Law 55 of 2008 on Maritime Trade ("Law 55") expressly provides chapter I, "Collision of Vessels".

**(ii) Pollution**

Panama has adopted a number of conventions, such as:

- MARPOL 73, Protocols of 1978 and 1997, adopted by Law 30 of 2003.
- 1969 Convention on Contamination of the Sea by Hydrocarbons, adopted by Law 96 of 1998.
- Protocol of 1992, providing for the Constitution of a Fund for Contamination of the Sea by Hydrocarbons, adopted by Law 91 of 1998.
- Protocol related to Contamination from Terrestrial Sources – within the Caribbean region, adopted in Aruba, and adopted by Law 26 of 2003.
- Convention for the Cooperation for the Sustainable Development of Marine Zones of the Northeastern Pacific, made in Guatemala (2002) and adopted by Law 28 of 2003.
- Convention on Contamination of the Sea by Bunkers (2001).

**(iii) Salvage / general average**

There are two chapters within Law 55 covering these, as follows:

"**Chapter II**

**Salvage**

**Article 209**. The provision of assistance and salvage for vessels in peril, the effects on board, the freight and passengers, together with services of the same nature provided between sea ocean vessels navigating inland waters, remain subject to the provisions of this chapter, without distinction between the two types of service and without regard to the waters where the service is provided.

**Article 210**. Every act of assistance or salvage leading to a useful result will give rise to equitable remuneration. If the help provided leads to no such result, no remuneration is due. In no case will the amount payable exceed the value of the objects salvaged.

**Article 211**. Persons who have taken part in assistance activities despite an express and reasoned prohibition by the vessel assisted will not be entitled to any remuneration.

**Article 212**. The tug will not be entitled to remuneration for helping or salvaging the vessel that she tows or her cargo, unless she has provided special services that cannot be considered as fulfilment of the towing contract.

**Article 213**. An indemnity will also be payable even when the assistance or salvage takes place between vessels having the same owner.

**Article 214**. The amount of the remuneration will be fixed by agreement between the parties and, in default of this, by the judge. The same procedure will apply as regards the proportion in which the remuneration is distributed among the salvors. The distribution between the owner, Master and other persons at the service of each one of the salvors' vessels is governed by the nationality of the vessel.

**Article 215**. Any agreement for help and salvage concluded at the time and under the conditions of the danger present may, at the instance of one of the parties, be annulled or modified by the judge, if the latter rules that the conditions agreed upon are inequitable. In all cases, if it appears that the agreement of one of the parties is vitiated by fraud or deception, or if the remuneration is excessive on one side or the other, and disproportionate to the service rendered, the agreement may be annulled or modified by the judge at the instance of the interested party.

**Article 216**. The remuneration will be fixed by the judge:

1. According to the circumstances, taking as a basis the success obtained, the efforts and expertise of those who have provided the assistance, the danger facing the vessel assisted, its passengers and crew, its cargo, salvors and the salvors' vessel, the time spent, the expenses and damage incurred, the responsibilities and risks assumed by the salvors, the value of the equipment utilised by the latter; taking into account, if arising, the degree to which the vessel rendering assistance is suitable for salvage operations.
2. The value of the items salvaged.

The same provisions apply to the distribution envisaged in the above Article. The judge may reduce or cancel the remuneration if it emerges that the salvage or assistance became necessary through the culpable actions of the salvors, or that the latter have engaged in thefts or other fraudulent acts.

**Article 217**. No remuneration shall be payable for the rescue of persons, subject to the legal provisions of the vessel's nationality for the case in question.
The salvors of human lives in the course of their intervention in the mishap giving rise to the salvage or assistance are entitled to an equitable share of the remuneration granted to the salvors of the vessel and of its cargo and accessories.
**Article 218**. Action to claim payment of the remuneration is time-barred at two years, running from the date on which the salvage or assistance operations took place. Reasons for suspending or interrupting this time bar will be determined by the laws of the jurisdiction of the Court dealing with the matter.
**Article 219**. Every vessel's Master has an obligation to render assistance to any person found in danger of being lost at sea, even though he may be an enemy, providing he can do so without seriously endangering his vessel, crew or passengers. The owner of the vessel is not responsible in respect of controversies of the above provision.
**Article 220**. The provisions of this chapter do not apply to war vessels or those belonging to the State and used exclusively for public service.
**Chapter III**
**General Average**
**Article 221**. General or common averages are governed by the laws of the country of registry of the vessel where they occurred.
Particular averages are governed by the laws applicable to the charter party of the goods suffering the same.
**Article 222**. In the absence of special conventions expressly contained in charter parties or Bills of Lading, averages will be paid according to the dispositions of this Law.
**Article 223**. Extraordinary expenses and sacrifices made voluntarily by the Master or by order thereof for the common good or salvation of the vessel and her cargo are construed to be general averages.
**Article 224**. General averages are the following:
1. Damages resulting from the sacrifice of goods, masts, engines, riggings and, in general, any object being part of the vessel or her cargo. These damages comprise not only the value of the things being sacrificed, but also any wear and tear suffered by the vessel and her cargo, provided that they are a direct and immediate consequence of sacrificing the things. They include damages caused to objects employed for use other than that which they were destined for, and likewise deriving from the excessive use thereof even when conforming to the use that they were destined for, such as forcing the sails or engines.
2. Damages caused by voluntary grounding to avoid the total loss or arrest of the vessel or cargo, and those resulting from setting the vessel afloat, as well as any expenses originating therefrom.
3. Damages caused to the vessel and her goods not subject to fire damage during fire-fighting operations on board.
4. Damages caused to the vessel and her cargo in preventing the same from capsizing.
5. Sacrifices made in order to avoid collision.
6. Expenses of extraordinary lightening and transshipping and, in case of voluntary grounding or stranding or forced arrival, any expenses involving the cargo, the storage and reinstallation on board of the cargo, as well as damages that are an immediate and direct consequence of these occurrences.
7. Expenses of forced arrival pertaining to the vessel, including crew salaries and food during the same. Arrival expenses are not to be included in the rule and account adjustment, regardless of how long the cause that determined the same shall last.
8. Extraordinary laytime expenses at a port of call, whenever the proximity of an enemy shall prevent the vessel from sailing from it.
9. Damages and expenses caused in defending the vessel and her cargo against enemies and pirates, including medical assistance, funeral expenses and the amount of indemnities payable whenever the crewmembers are injured or die defending the vessel.
10. Assistance indemnity.
11. Expenses resulting from the collection of moneys made during the voyage to pay for general averages, as well as those incurred in the liquidation thereof. These expenses include the loss of goods sold during the voyage, prize and interest on bottomry bond and the insurance premium for the amounts employed, as well as the cost of the expert witness required to prepare the bill for such averages.

**Article 225**. Goods placed on deck and those with respect to which no Bill of Lading is issued and which are not listed in the Cargo Manifesto or Record, as well as rigging or instruments not recorded in the inventory, will not be included as general averages, except when the law allows this form of carriage.
**Article 226**. General averages may be allocated according to contribution, whenever the vessel or her cargo is salvaged in whole or in part. It is not necessary for the successful result to be brought instead of proceeding directly from the sacrifice, or produced as a result of independent circumstances.
**Article 227**. The total of general average contributory values consists of:
1. The comprehensive net value at the time and place of unloading of the things sacrificed, including any freight paid in advance.
2. The comprehensive net value at the same place and time of the things salvaged, including those specified in Article 223, including any freight paid in advance, as well as the amount of the damages caused by general salvage.
3. Any freight or ship fare remaining unpaid, from which there will be deducted any expenses that would have been avoided if the vessel and her cargo had been totally lost at the time when the general average was brought about.

Personal effects of the crew, passengers' luggage, war ammunition and food and drink, to the extent that they are necessary for the voyage, do not contribute to general averages, without prejudice to which they will be reimbursed, as the case may be, by contribution.
**Article 228**. The total subject to general average contribution consists of:
1. The comprehensive net value at the time and place of unloading of the things sacrificed, without deducting the freight. If the thing sacrificed is part of the vessel, the value will be fixed in the amount of the repairs, deducting, if applicable, the difference from new to old, or the proceeds from the sale of any old objects being replaced.

2. The difference between the comprehensive net worth of the damaged things at the same time and place and the value that they would have, had no damage been suffered.
3. Extraordinary expenses made according to Article 223.

**Article 229**. Rules pertaining to general averages also apply whenever the danger, caused directly by sacrifice or expense, shall result from the fault committed by the Master, the crew or any person interested in the cargo or by an inherent flaw of the vessel or the goods. The remedy that may be exercised by reason of the fault or inherent flaw is separate from the regulation of general averages.

**Article 230**. Successive general averages will be regulated and liquidated at the end of the voyage, as if they should constitute a single one.

**Article 231**. Regulations governing averages will be enforced at the port of destination.

**Article 232**. Averages will only be allocated and liquidated if the vessel and her cargo or either one is salvaged in all or in part.

**Article 233**. To make the expenses and undertake the relevant damages corresponding to the general average, a resolution will be issued by the Master, following consultation with the pilot and other officers of the vessel, and a hearing will be held with the parties interested in the cargo in attendance.

If they oppose the same and the Master and officers that make up the majority or the Master, breaking away from the majority, considers it necessary to adopt certain measures, these may be executed under his responsibility, without prejudice to the shippers' right to exercise their own right against the Master before a competent judge, provided that they can prove that there was malice, inexperience or carelessness involved.

If the opinion of the parties in attendance on the vessel interested in the cargo is not heard, they will not contribute to the general average, imputable in this respect to the Master, unless the urgency of the case was such that there was no time for prior consultation.

**Article 234**. The agreement adopted to incur the damages that constituted the general average must necessarily be recorded in the log book, stating the motives and reasons supporting the same, the votes to the contrary, and the basis for such dissidence, if any, and what irresistible and urgent causes the Master was answering to, if acting by himself.

In the first case, the note must be signed by any literate persons present, if possible, prior to proceeding to its execution and, if not, at the first opportunity. In the second case, by the Master and officers of the vessel.

The minutes, and then the agreement, will circumstantially state all the objects cast overboard and will refer to the imperfections caused to those kept on board. The Master will be under the obligation to deliver a copy of the minutes to the judicial maritime authority at the first port of arrival, within 24 hours following arrival, and to ratify the same later, under oath.

**Article 235**. The Master will direct the jettison and have the effects cast overboard in the following order:

1. Those found on deck, beginning with those obstructing the manoeuvres or damaging the vessel, giving preference if possible to the heaviest and least useful and valuable ones.
2. Those found under the upper deck, beginning always with the heaviest and least valuable ones, keeping only such quantity or number thereof as shall be absolutely essential.

**Article 236**. In order to be computed as general average and for the owners of the effects to be entitled to indemnity, it is necessary in regards to the cargo for the relevant Bill of Lading to prove their existence on board, and as to effects belonging to the vessel, these must also be checked against the inventory taken prior to departure.

**Article 237**. To lighten the vessel during a storm or to facilitate her entry into port or a sheltered anchorage area, part of the cargo may be transshipped to launches or barges and, if lost, the owner of that part will be entitled to indemnity, as if the loss had originated by general average.

**Article 238**. As a general rule, simple or particular averages are any expenses or damages caused to the vessel or her cargo which have not inured to the benefit or common use of all parties interested in the vessel and her cargo and, especially, the following:

1. Damages suffered by the cargo from its loading to its unloading due to accidents at sea or *force majeure*, and any expenses incurred to avoid and repair the same.
2. Damages and expenses incurred by the vessel in her hull, rigging, arms and gear for the same causes and motives, since she set sail at the port of departure until she moored and anchored at the destination.
3. Damages suffered by the goods carried on deck.
4. Salaries and food for the crew, whenever the vessel is detained or attached by legitimate order, or *force majeure*, if the charter is contracted for a portion of the voyage.
5. Any necessary expenses of arriving at the port for repairs or provisioning.
6. The lowest value of the goods sold by the Master upon forced arrival to pay for food and salvage of the crew and incurred to cover any other necessity of the vessel.
7. Food and salaries of the crew while the vessel is in quarantine.
8. Any damage suffered by the vessel or her cargo for the collision or fouling being accidental and inevitable.
9. If the accident occurs due to fault or carelessness of the Master, the latter will be responsible for all the damage caused.
10. Any damage suffered due to fault, carelessness or fraud of the Master or the crew, without prejudice to the owner's right to the corresponding indemnity against the Master, vessel, and freight".

### (iv) Wreck removal

Panama has adopted the Nairobi International Convention on the Removal of Wrecks 2007, by means of Law 26 of 2015. Law 57 of 2008 on the Merchant Marine ("Law 57") entitles the Merchant Marine Administration ("MMA") to handle related matters and to formally evaluate and declare a vessel as a "shipwreck".

### (v) Limitation of liability

The limitations of liability are set out in Article 583 of Law 8 of 1982, which contains and constitutes the "Code of Maritime Procedure" in Panama ("Law 8"), the contents of which are set out under "Claims Subject to Limitation" below.

According to Article 576 of the Code of Maritime Procedure, the limitations are available to shipowners and salvors. Article 577 defines the "shipowner" as either a charterer, the manager, or the operator of a seagoing vessel. It is therefore necessary to determine whether the Slot Charterer qualifies as a charterer in order to have a right to ascertain the limitations.

All relevant provisions of Law 8 are translated as follows:

**"Title VIII**

**Complementary Provisions**

**Chapter I**

**Substantive Provisions Which Regulate Limitation of Liability of the Shipowner**

**1st Section**

**Persons Entitled to Limit Liability**

**Article 576**. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Title for claims set out in the 2nd Section of this chapter.

**Article 577**. The term owner shall mean the owner, charterer, manager and shipowner of an oceangoing vessel.

**Article 578**. Salvor shall mean any person rendering services in direct connection with aid or salvage operations. Salvage operations shall also include operations referred to in subsections 4 and 6 of Article 583.

**Article 579**. If any claims set out in chapter II are made against any person for whose act, neglect or default the shipowner or salvor are responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Title.

**Article 580**. In the present Law, the liability of a shipowner shall include liability in an action brought against the vessel herself.

**Article 581**. Any insurer of liability for claims subject to limitation in accordance with the rules of the present law shall be entitled to the benefits of this Law to the same extent as the assured himself.

**Article 582**. The act of invoking limitation of liability shall not constitute an admission of liability.

**2nd Section**

**Claims Subject to Limitation**

**Article 583**. Subject to that set out in the 3rd and 4th Sections of this chapter, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

1. claims in respect of loss of life or personal injury or loss of or damage to property (excluding damage to harbour works, docks, waterways, bridges, canals, aids to navigation and facilities of the Panama Canal), occurring on board or in direct connection with the operation of the vessel or with salvage operations, and consequential loss resulting therefrom;
2. claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
3. claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the vessel or salvage operations;
4. claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which has sunk, wrecked, stranded or been abandoned, including anything that is or has been on board such vessel;
5. claims in respect of the removal, destruction or the rendering harmless of said cargo of the vessel; and
6. claims of a person, other than the person liable, in respect of measures taken in order to avoid or minimise loss for which the person liable may limit his liability in accordance with the provisions of the present Law, and further loss caused by such measures.

**Article 584**. The claims set out in Article 583 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, the claims set out under paragraphs 4, 5 and 6 of Article 583 shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

**3rd Section**

**Claims Excepted from Limitation**

**Article 585**. The rules of the present Title shall not apply to:

1. claims for aid or salvage or contribution in general average;
2. claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated November 29, 1969, or of any amendment or Protocol thereto which is in force;
3. claims subject to any international convention or any national legislation governing or prohibiting limitation of liability for nuclear damage;
4. claims against the owner of a nuclear vessel for nuclear damage; and
5. claims by servants of the shipowner or salvor whose duties are connected to the vessel or the aid or salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants, the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided in 1st Section, chapter II of this Title.

**4th Section**

**Conduct Barring Limitation**

**Article 586**. The person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

**5th Section**

**Recommendations**

**Article 586**. When a person entitled to limitation of liability under the rules of the present Title has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of the present Title shall only apply to the balance, if any.

**Chapter II**

**Limitation of Liability**

**1st Section**

**General Limits**

**Article 588**. The limits of liability for claims, and those being different than those mentioned in the 2nd Section of this chapter, arising on any distinct occasion, shall be calculated as follows:

1. In respect of claims for loss of life or personal injury: a) 333,000 units of account for a vessel with a tonnage not exceeding 500; and b) for a vessel with a tonnage not exceeding said limit (*sic*). The following amounts in addition to those mentioned: for each ton from 501 to 3,000 tons, 500 units of account; for each ton from 3,001 to 30,000 tons, 333 units of account; for each ton from 30,001 to 70,000 tons, 250 units of account; and for each ton in excess of 70,000 tons, 167 units of account.

2. In respect of any other claims: a) 167,000 units of account for a vessel with a tonnage not exceeding 500 tons; and b) for a vessel with a tonnage in excess thereof. The following amount in addition to that mentioned in 1): for each ton from 501 to 30,000 tons, 167 units of account; for each ton from 30,001 to 70,000 tons, 125 units of account; and for each ton in excess of 70,000 tons, 83 units of account.

**Article 589**. Where the amount calculated in accordance with subsection 1) of Article 588 is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 2) of said Article shall be available for payment of the unpaid balance of claims under paragraph 1), and such unpaid balance shall have the same priority as claims mentioned under paragraph 2).

**Article 590**. Without prejudice to what has been set forth in Article 589 on the right to claim for loss of life or personal injury, claims for damage to port installations, coves, waterways and aids to navigation shall have the priority the Law sets for claims under paragraph 2) of Article 588.

**Article 591**. The limits of liability for any salvor not operating from any vessel, or for any salvor operating solely on the vessel to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

**Article 592**. For the purposes of the present chapter, the vessel's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969 approved by Law 6 of October 27, 1977.

**2nd Section**

**Limit for Passenger Claims**

**Article 593**. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a vessel, the limit of liability of the shipowner shall be an amount of 46,666 units of account multiplied by the number of passengers which the vessel is authorised to carry according to the vessel's certificate, but not exceeding 25 million units of account.

**Article 594**. For the purposes of this Section, "claims for loss of life or personal injury to passengers of a vessel" shall mean any such claims brought by or on behalf of any person carried in that vessel, travelling:

a) under a contract of passenger carriage; or
b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

**3rd Section**

**Unit of Account**

**Article 595**. The unit of account referred to in the 1st and 2nd Sections of this chapter is the "Special Drawing Right" as defined by the International Monetary Fund. The amounts mentioned in the 1st and 2nd Sections of this chapter shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, or payment is made, or security is given which under the law of that State is equivalent to such payment.

**4th Section**

**Claims Accrued**

**Article 596**. The limits of liability determined in accordance with the 1st Section of this chapter shall be applied to the aggregate of all claims which may arise on any distinct occasion:

1. against the person or persons mentioned in the 2nd Section of chapter I and any person for whose act or neglect he or they are responsible;
2. against the owner of a vessel who gives salvage service from such vessel and the salvor or salvors who operate the same, and any person for whose act or neglect he or they are responsible; or
3. against the salvor or salvors who are not operating only on the vessel to which or in respect of which salvage is being given, and any person for whose act, neglect or default he or they are responsible.

**Article 597**. The limits of liability fixed in accordance with the provisions of the 2nd Section of this chapter shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in Article 577 in respect of the vessel referred to in the 2nd Section of this chapter and any person for whose act, neglect or default he or they are responsible".

**(vi) The limitation fund**

The "limitation fund" is likewise regulated in Law 8, as follows:

"**Fund for Indemnities.**

**1st Section**

**Constitution of the Fund**

**Article 598**. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State in which legal proceedings are instituted in respect of claims subject to limitation.

The fund shall be constituted in the sum of the amounts set out in the first and second Sections of chapter II of Title VIII of this Law that are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

**Article 599**. The fund may be constituted either by depositing the sum or by producing a guarantee which is acceptable and which the Court or other competent authority considers to be adequate.

**Article 600**. The fund constituted by one of the persons mentioned in paragraphs 1, 2 and 3 of Article 596 or in Article 597, or by its insurer, shall be deemed constituted by all persons mentioned in said paragraphs or Articles.

**2nd Section**

**Distribution of the Fund**

**Article 601**. Save for what is set forth in Articles 588, 589, 590, 593 and 594, the fund shall be distributed among the claimants in proportion to the amount of the claims which have been respectively admitted as being chargeable to the fund.

**Article 602**. If, before the fund is distributed, the person who is liable or his insurer has settled a claim which is chargeable to the fund, such person shall subrogate, to the totality of the amount he paid out, all the benefits the person to be compensated would enjoy according to the present title.

**Article 603**. The right of replacement stipulated in Article 606 may be exercised also by persons other than those mentioned therein in respect of any amounts paid by them as indemnity, but only insofar as the applicable national legislation allows such a subrogation.

**Article 604**. When the liable person or any other person proves they may be obligated to pay at a later date, the total or a part of the indemnity in respect of which said person could have exercised its subrogation right as conferred in Articles 606 and 607 if the indemnity would have been paid before the fund was distributed, the Court may order to provisionally reserve an amount sufficient so that said person may, at the relevant later date, enforce its claim to the fund".

### 1.2 Which authority investigates maritime casualties in your jurisdiction?

The Panama Maritime Authority ("PMA"), through the MMA, investigates maritime casualties in Panama.

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

General provisions of Law 57 allow officials from the MMA to intervene and attend to all matters pertaining to these types of events:

"**General Provisions**
**Article 114**. The General Directorate of the Merchant Marine may execute and implement any measures and controls deemed necessary to ensure that vessels registered in Panama, regardless of their location, or vessels of any nationality, navigating in waters subject to the jurisdiction of Panama, comply with all maritime safety regulations. In the exercise of this power, it shall be obligatory to provide any information required to comply with any maritime regulations and international conventions ratified by the Republic of Panama.

Any vessel carrying passengers in waters subject to the jurisdiction of Panama or abroad, and carrying more than 12 passengers, shall secure an insurance policy for liability against accidents which shall cover loss of life and loss to property, as well as the risk of marine pollution. The minimum coverage and the decision as to whether the policy shall be submitted at the time that the vessel is registered shall be determined by the General Directorate of the Merchant Marine.

This Directorate may require similar financial cover for other types of ships operating in waters subject to the jurisdiction of Panama, or operating abroad, with the purpose of covering any damage provided for in international conventions, particularly in connection with pollution, damage suffered, and loss of life at sea.

In case of national vessels, and depending on the seriousness of the event, the MMA may delete the vessel *ex officio*".

## 2 Cargo Claims

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

Panama has not adopted the usual conventions on this subject matter; relevant provisions are contained in Law 55.

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

Law 55 provides as follows:

"**Carrier's Responsibility**
**Article 53**. The carrier will be responsible for the goods carried in containers while remaining under his custody, as from the time of receipt to the time of delivery. The carrier will be responsible for non-containerised goods while under his custody, from the time of loading to the time of unloading. Unless otherwise provided in this Section, the carrier will be responsible for loss or damage to the cargo while under his custody.

The dispositions of the above Article will not prevent the carrier from entering into a contract pertaining to his responsibility in connection with non-containerised goods, prior to their loading on and following their unloading from the vessel.

**Article 54**. The carrier shall be under the obligation, prior to and at the start of the voyage, to take reasonable action to:
1. Make the vessel seaworthy.
2. Adequately man, equip and supply the vessel.
3. Prepare and maintain in good condition any holds, cold and refrigerated chambers, as well as any other areas of the vessel where goods are carried in order to make their reception, transportation and conservation safe and satisfactory.

**Article 55**. Neither the carrier nor the vessel will be responsible for any losses or damages deriving or resulting from the vessel being unseaworthy, unless imputable to lack of due diligence on the part of the carrier to make the vessel seaworthy or to provide the vessel with the necessary crew, equipment and supplies, or to make the holds, cold and refrigerated chambers and other areas of the vessel where goods are carried adequate and safe for their reception, transportation and conservation. In the event of a loss or damage occurring due to an unseaworthy condition, the burden of proof in regards to such due diligence will be on the carrier or any other person claiming exoneration under this Article.

**Article 56**. The carrier will proceed properly and carefully to the loading, handling, stowing, carriage, custody, care and unloading of the goods carried.

**Article 57**. The carrier will carry the goods to the unloading port in the agreed manner and by the usual or most geographically direct route. Deviations for the purpose of saving lives or property in waterways or other reasonable detours will not be construed to be a deviation in accordance with the dispositions of the above Article.

**Article 58**. Delays in delivery will occur whenever the goods are not delivered at the designated unloading port and within a reasonable period, unless the parties agree to a specific term.

The carrier will be responsible for any loss or damage to the goods caused by delays in delivery due to the fault or negligence of the carrier, except for those resulting from causes for which the carrier shall not be responsible under the relevant provisions of this chapter.

**Article 59**. The carrier shall not be responsible for loss or damage suffered by the goods while under the responsibility of the carrier, due to any of the following causes:
1. Fault of the Master or members of the crew or pilot or employee of the carrier in the navigation or administration of the vessel, not pertaining to the obligations referred to in Article 54.
2. Fire, unless caused by fault or negligence of the carrier.
3. War or armed conflicts.
4. Acts of government or competent authorities, quarantine restrictions or detention on account of judicial process.
5. Strikes, labour detentions or restrictions.
6. To save or attempt to save lives or property at sea.
7. Acts of the shipper, owner of the goods or his agents.
8. Defects involving or inherent to the goods.

9. Inadequate packaging or insufficient or illegible markings.
10. Latent defects of the vessel not revealed by due diligence.
11. Any other cause arising without fault or negligence of the carrier, his agent or employee.
12. Acts of God or *force majeure*, dangers, accidents at sea or in navigable waterways.
13. In being released from responsibility pursuant to the dispositions of the above points, except for the causes of point 2 of this Article, the carrier will have the burden of proof.

**Article 60**. The carrier will not be responsible for loss or damage to live animals resulting from special risks inherent to their carriage. However, the carrier will be under the obligation to prove his compliance with any special shipper requirements with respect to the transportation of live animals and, under the circumstances of carriage by waterways, any loss or damage occurring due to special risks inherent to such carriage.

**Article 61**. If the carrier attempts to carry goods on deck, the carrier's consent must be obtained and the customs of trade or applicable statutes or regulations must be complied with.

Without prejudice to the obligations of the carrier contained in this chapter, whenever the goods are shipped on deck according to the dispositions of the above paragraph, the carrier will not be responsible for any loss or damage caused by special risks inherent to such carriage.

If, in violation of the dispositions of the first paragraph of this Article, the carrier ships the goods on deck and the goods suffer loss or damage as a result of this, the carrier will be responsible.

**Article 62**. Whenever any loss, damage or delay in delivery occurs due to causes for which the carrier, employee or agent is entitled to exoneration, together with any other causes that do not contemplate such exoneration, the carrier shall only be responsible to the extent that such loss, damage or delay in delivery is attributed to causes for which the carrier is not entitled to exoneration from responsibility; however, the carrier will have the burden of proof with respect to loss, damage, or delay in delivery resulting from such other cause.

**Article 63**. The amount of indemnity for loss of goods will be calculated based on the value of the goods, while those due to damage to the goods will be calculated on the basis of the difference between the value of the goods before and after the damage or based on repair expenses.

The aggregate amount due shall be calculated based on the value of the goods at the place and time where they were unloaded according to the contract, or at the place and time where they should have been unloaded.

The value of the goods is determined by stock exchange quote or, if not listed, according to regular market price or, in the absence of a stock exchange quote or regular market price, according to the regular value of goods of the same nature and quantity.

The carrier's responsibility for loss or damage to the goods shall be limited to an amount equal to 666.67 units of account per package or other shipping unit or 2.0 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher, except whenever the nature and value of the goods is declared by the shipper prior to loading and stated in the Bill of Lading, or whenever an amount larger than the liability limit stated in this statute is agreed to between the carrier and shipper.

Whenever a container, pallet or similar transportation device is used to consolidate the goods, the number of packages or other shipping units listed in the Bill of Lading as packaged in said transportation device shall be construed to be the number of packages or shipping units.

Whenever the transportation device does not belong to or has been provided by the carrier, the transportation device will be construed to be a package or shipping unit.

**Article 64**. Whenever the execution of the carriage or part thereof is entrusted upon an actual carrier, the carrier shall continue to be liable for the entire carriage according to the dispositions of this chapter. In connection with the carriage executed by an actual carrier, the carrier will be liable for any act or omission by the actual carrier and his employee or agent acting under the scope of his employment or agency.

Notwithstanding the dispositions of the above paragraph, whenever a contract for the carriage of goods by sea expressly states that a specific part of the carriage covered by the contract is to be executed by an actual carrier other than the carrier, the contract may provide that the carrier will not be liable for any loss, damage or delay in delivery arising from an occurrence taking place while the goods remain under the custody of the actual carrier during said part of the carriage.

**Article 65**. Dispositions contained in this chapter regarding the carrier's responsibility are applicable to the actual carrier. If a claim is filed against an employee or agent of the actual carrier, the dispositions contained in the 2nd Section of this chapter will apply.

**Article 66**. A special agreement whereby the carrier assumes obligations or waives rights conferred in this chapter will be binding upon the actual carrier, provided that they are accepted by the latter in writing.

Dispositions of such special agreement are binding upon the carrier, whether or not the actual carrier gives his consent.

**Article 67**. Whenever the carrier and actual carrier are responsible, they will be jointly responsible.

**Article 68**. If claims for loss or damage are duly filed against the carrier, the actual carrier and his employees or agents, separately, the aggregate compensation amount shall not be greater than the limit established by law.

**Article 69**. The dispositions contained in Articles 64, 65, 66, 67 and 68 of this Law will not affect the rights between the carrier and the actual carrier".

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

Article 70 of Law 55 provides for the obligation of the shipper to properly describe the damage arising from reliance on such description that could revert on the liability of the carrier, and which could be claimed back by the carrier against the shipper.

**"Shipper's Responsibilities**

**Article 70**. The shipper will have the goods properly packaged and ensure the accuracy of their description, brand, number of packages or pieces, weight or quantity of goods at the time of loading, and indemnify the carrier against any loss resulting from poor packaging or inaccuracies in the above-mentioned information.

The carrier's right to indemnity set forth in the above paragraph will not affect the carrier's obligation under the contract for the carriage of goods *vis-à-vis* any person other than the shipper".

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

Generally, the applicable time bar would start to count after the date when the cargo is deemed delivered.

For example, Articles 88 and 89 of Law 55 provide as follows:

"**Article 88**. Except if, upon delivering the goods by the carrier to the consignee, the latter gives notice of loss or damage in writing to the carrier, the delivery will be *prima facie* evidence that the goods were delivered to the consignee in accordance with the carriage documents and of the apparent good state and condition of the goods. Whenever the loss or damage to the goods is not apparent, the dispositions of the above paragraph will be applicable if the consignee has not given such notice in writing within seven days, counted as of the day following the delivery date of the goods or in the case of goods carried in containers, within 15 days, counted as of the day following the delivery date. No notice is required to be given in writing in connection with loss or damage if the state of the goods on the delivery date has been the subject of a joint inspection or assessment by the carrier and the consignee.

**Article 89**. The carrier will not be responsible if no notice is given by the consignee on the economic losses resulting from the delay in the delivery of the goods within 60 days, counted as of the day following the delivery date of the goods by the carrier to the consignee".

The general time bar is provided for in numeral 3 Article of the Code of Commerce as follows:

"**Article 1651**. The time bar shall be of one year:

1. ...
2. ...
3. for claims arising from contracts for transportation by land or sea, and from charter-parties. If the carriage is done within the territory of the Republic, the time bar shall be six months".

## 3 Passenger Claims

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

Carriage of Passengers is regulated under Articles 141 *et seq*. of Law 55, as follows:

"**Chapter IV**
**Contract for the Carriage of Passengers by Waterways**

**Article 141**. The contract for the carriage of passengers by sea shall conform to what is agreed upon by the parties, and, in the absence of such an agreement, the dispositions of this chapter.

**Article 142**. The passenger shall be deemed a shipper in regards to the luggage and other effects carried on board and the Master will not answer for anything that the passenger keeps under his immediate and personal custody, unless the damage shall in fact be caused by the Master or the crew.

**Article 143**. If no ship fare is agreed upon and if either of the parties requests that a fare be fixed, the fare will be fixed summarily by the judge of the place where the contract is executed, with the advice of experts.

**Article 144**. A vessel chartered solely for the carriage of passengers shall carry them directly, regardless of the number involved, to their port of destination, making the stops announced in the charter contract or those of common usage.

**Article 145**. If the passenger is not on board at the scheduled hour or abandons the vessel without the Master's permission, when she is ready to leave the port, the Master may undertake the voyage and demand the ship fare in full.

**Article 146**. Tickets issued in the name of the passenger may not be transferred without consent by the Master or consignee.

**Article 147**. If the passenger dies before undertaking the voyage, his heirs will only be liable for half of the agreed fare and the Master will reimburse them for the relevant portion.

If food and lodging expenses were included in the agreed price, the judge, at his/her discretion and with the advice of experts, will determine the amount due in favour of the vessel on such account.

If another passenger takes the place of the deceased, there will be no amount due.

**Article 148**. If the voyage is suspended before it starts for the Master's or shipping company's own fault, the passenger will be entitled to full reimbursement of the fare and to the payment of damages; however, if the suspension is due to an Act of God or *force majeure* or any other cause not related to the Master or shipping company, the passenger will only be entitled to reimbursement of the fare.

**Article 149**. If a trip is suspended after it has begun, passengers will only be liable to pay the fare *pro rata* to the distance covered and will not be entitled to the payment for damages if the interruption is due to an Act of God or *force majeure*, but will be entitled to an indemnity if the interruption is due exclusively to the Master. If the interruption is due to breakdown of the vessel and the passenger is willing to wait for repairs to be made, there will be no increase in the ship fare, but the passenger will be required to pay for his own food and lodging during the stay.

If the vessel's departure is delayed, the passengers may remain on board and will be fed at the expense of the vessel, unless such delay is due to an Act of God or *force majeure*.

If the delay is in excess of 10 days, the passengers who file a claim will be reimbursed for the fare and, if the delay is due solely to the fault of the Master or shipping company, will be able to claim for payment of damages.

**Article 150**. If the contract is revoked, before or after the trip starts, the Master may claim whatever was provided to the passengers, if such revocation was not his fault.

**Article 151**. In all matters pertaining to the preservation of order and policing on board, passengers will submit themselves without distinction to the dispositions of the Master.

**Article 152**. For the convenience of or to please the passengers on board, the Master may put in at a port or enter an area deviating the vessel from its course, or stop where it was scheduled or required to stop for more time than is required for navigation purposes.

**Article 153**. Unless otherwise agreed, the passengers' sustenance during the trip is included in the ship fare, but if passengers pay for their own food, the Master shall be under the obligation to provide the sustenance required at a reasonable price and at the regular rate, in case of need.

**Article 154**. To collect ship fare and sustenance expenses, the Master may withhold any personal effects belonging to the passenger and, if these are sold, will have preference over other creditors, as in the case of collection of freights.

**Article 155**. If a passenger dies during the trip, the Master is authorised to take, with respect to the corpse, any measures required by the circumstances, carefully storing any documents and effects found on board and belonging to the passenger.

The Master will also take care with the safekeeping of the documents and belongings of the crewmember who died on board, taking a detailed inventory thereof with the assistance of two witnesses".

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

To our knowledge, Panama has not adopted any international conventions related to passenger claims, including the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

Articles 141 through 155 of Law 55 regulate the transportation of passengers within jurisdictional waters.

**"Chapter IV**
**Contract for the Carriage of Passengers by Waterways**
**Article 141**. The contract for the carriage of passengers by sea shall conform to what is agreed upon by the parties, in the absence of such an agreement, the dispositions of this chapter.

**Article 142**. The passenger shall be deemed a shipper in regards to the luggage and other effects carried on board and the Master will not answer for anything that the passenger keeps under his immediate and personal custody, unless the damage shall in fact be caused by the Master or the crew.

**Article 143**. If no ship fare is agreed upon and if either of the parties requests that a fare be fixed, the fare will be fixed summarily by the judge of the place where the contract is executed, with the advice of experts.

**Article 144**. A vessel chartered solely for the carriage of passengers shall carry them directly, regardless of the number involved, to their port of destination, making the stops announced in the charter contract or those of common usage.

**Article 145**. If the passenger is not on board at the scheduled hour or abandons the vessel without the Master's permission, when she is ready to leave port, the Master may undertake the voyage and demand the ship fare in full.

**Article 146**. Tickets issued in the name of the passenger may not be transferred without consent by the Master or consignee.

**Article 147**. If the passenger dies before undertaking the voyage, his heirs will only be liable for half of the agreed fare and the Master will reimburse them for the relevant portion.

If food and lodging expenses were included in the agreed price, the judge, at his/her discretion and with the advice of experts, will determine the amount due in favour of the vessel on such account. If another passenger takes the place of the deceased, there will be no amount due.

**Article 148**. If the voyage is suspended before it starts for the Master's or shipping company's own fault, the passenger will be entitled to full reimbursement of the fare and to the payment of damages; however, if the suspension is due to an Act of God or *force majeure* or any other cause not related to the Master or shipping company, the passenger will only be entitled to reimbursement of the fare.

**Article 149**. If a trip is suspended after it has begun, passengers will only be liable to pay the fare *pro rata* to the distance covered and will not be entitled to the payment for damages if the interruption is due to an Act of God or *force majeure*, but will be entitled to an indemnity if the interruption is due exclusively to the Master. If the interruption is due to breakdown of the vessel and the passenger is willing to wait for repairs to be made, there will be no increase in the ship fare, but the passenger will be required to pay for his own food and lodging during the stay. If the vessel's departure is delayed, the passengers may remain on board and will be fed at the expense of the vessel, unless such delay is due to an Act of God or *force majeure*. If the delay is in excess of 10 days, the passengers who file claim will be reimbursed for the fare, and if the delay is due solely to the fault of the Master or shipping company, they will be able to claim for payment of damages.

**Article 150**. If the contract is revoked, before or after the trip starts, the Master may claim whatever was provided to the passengers, if such revocation was not his fault.

**Article 151**. In all matters pertaining to the preservation of order and policing on board, passengers will submit themselves without distinction to the dispositions of the Master.

**Article 152**. For the convenience of or to please the passengers on board, the Master may put in at a port or enter an area deviating the vessel from its course, or stop where it was scheduled or required to stop for more time than is required for navigation purposes.

**Article 153**. Unless otherwise agreed, the passengers' sustenance during the trip is included in the ship fare, but if passengers pay for their own food, the Master shall be under the obligation to provide the sustenance required at a reasonable price and at the regular rate, in case of need.

**Article 154**. To collect ship fare and sustenance expenses, the Master may withhold any personal effects belonging to the passenger and, if these are sold, will have preference over other creditors, as in the case of collection of freights.

**Article 155**. If a passenger dies during the trip, the Master is authorised to take, with respect to the corpse, any dispositions required by circumstances, carefully storing any documents and effects found on board and belonging to the passenger. The Master will also take care with the safekeeping of the documents and belongings of the crewmember who died on board, taking a detailed inventory thereof with the assistance of two witnesses".

**Article 14 of Law 57**, in its relevant part, provides that:

*"All vessels carrying passengers in waters subject to the jurisdiction of Panama or abroad, and carrying more than 12 passengers, shall secure an insurance policy for liability against accidents which shall cover loss of life and loss to property, as well as the risk of marine pollution. The minimum coverage and the decision as to whether the policy shall be submitted at the time that the vessel is registered shall be determined by the General Directorate of the Merchant Marine.*

*This Directorate may require similar financial cover for other types of ships operating in waters subject to the jurisdiction of Panama, or operating abroad, with the purpose of covering any damage provided for in international conventions, particularly in connection with pollution, damage suffered, and loss of life at sea"*.

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

Any indemnities under a transportation contract would be subject to the general one-year/six-month time bar provision of Article 1651 of the Code of Commerce.

For extra-contractual liability, the time bar would be one year as provided for in Article 1706 of the Civil Code.

In each case, we consider that the time bar starts to count from the time that the damages were caused.

## 4 Arrest and Security

### 4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Law 8 provides for the arrest of vessels for the following purposes:

"**Article 166**. The arrest decreed by the Maritime Courts shall have as its purpose:

1. To prevent the proceedings from having illusory effects and keep the defendant from disposing, transferring, diminishing, encumbering or dissipating assets susceptible to said measure.
2. To bring to the competence of Panamanian Maritime Courts to try causes of action arising outside the national territory, as a result of facts or acts related to navigation when the defendant is outside of the jurisdiction, and in causes of action arising within the national territory when the plaintiff opts to arrest an asset of the defendant for purposes of serving the same with notice of the complaint. In both cases, an arrest constituted in accordance with what is established in this subsection shall have the effect of giving personal notice of the complaint; however, the plaintiff would have to comply with the process provided for in the last paragraph of Article 403.
   A defendant is considered outside Panamanian jurisdiction when its effective domicile for business is outside the Republic of Panama, even if the corporation is Panamanian or, if it is foreign, is registered in Panama, or has branch offices or affiliates in Panama, or the ship is registered in Panama.
3. To physically attach property susceptible to arrest in order to assert privileged maritime liens, maritime encumbrances or any other claim which, according to the Law applicable to the proceedings, allows addressing the complaint directly against these. Arrest shall have the effect of giving personal notice on the sued property.

The petition for arrest may be included in the complaint, or otherwise be sought after the proceedings have begun, including the rules on how to proceed, which are as follows:

**Article 167**. The petition for arrest may be formalised in the complaint or may be filed in a writ during the process, and it shall clearly state the information that the petitioner has with regard to the place, date and time the arrest may be carried out if same is directed against a vessel, its cargo, freight or bunker.

In the event of arrests ordered subsequently to the commencement of the proceedings or after the defendant has appeared in Court, the practice and purpose of the arrest shall be analysed and dealt with as if it were filed with the lawsuit. In this case, and as long as the arrest is not executed, it shall be dealt with in a separate book, which will be added to the main file once the said formality concludes.

In no case shall the defects of form in the complaint impede the execution of the arrest, nor shall they constitute a cause for lifting the same, as long as it clearly and precisely states the nature of the plaintiff's motion and the corresponding warranty, if it may be determined by the interested party.

**Article 168**. The petition for arrest must be presented by the plaintiff with guarantee security of 1000 balboas (B/.1,000.00) in order to respond to the damages that the arrest may cause. However, in cases of arrest as per point 1 of Article 166, the guarantee security shall be fixed by the judge, at his discretion, and shall not be less than 20% or more than 30% of the amount in the complaint.

Notwithstanding the guarantee security provided as per the above paragraph, the party requesting an arrest shall consign to the order of the Marshal a sum not exceeding 2500 balboas (B/.2,500.00), as an advance for the expenses brought about in the conservation and custody of the arrested property, as well as the required expenses for its execution and release.

In the event that the property arrested is a vessel, this advance shall always be 2500 balboas (B/.2,500.00). In the cases provided in subsections 2 and 3 of Article 166, and notwithstanding the provision in the first paragraph of this Article, the judge shall request the arrester, as a condition to order the arrest, to furnish circumstantial or *prima facie* evidence to prove the legitimacy of its right.

**Article 169**. The Marshal may request from the sequestrating party, at any time, additional sums of money in order to cover the expenses incurred in the conservation, maintenance and custody of the arrested property if he deems it necessary.

**Article 170**. The arrest shall proceed without hearing the defendant, once the Secretary of the Court acknowledges the sufficiency of the security, the security offered has been constituted, and the expenses requested by the Marshal have been received, as follows:

1. The Marshal of the Court shall travel to the place where the property is found and immediately give notice to the person in charge and having custody of the same about the order for arrest. In the event of arrest of cargo located in a port and not found on board a vessel, it shall be understood that the person in charge of its custody is the corresponding customs or port authority.
2. The Marshal shall affix the arrest order on the navigation bridge of the vessel for as long as it is effective when the vessel, its cargo or its bunker are subject to the arrest.
3. When the arrested property is cargo not found on board a vessel, the arrest order shall be affixed on that cargo insomuch as possible.
4. In the event that vessels or other assets registered in the Public Registry are arrested, the Secretary of the Court shall notify the registry's official of the order to insert the corresponding marginal notation and to abstain from recording any transaction that had been verified or that is verified by the defendant after the arrest has been constituted. Such transaction or the registration made after such moment, notwithstanding the prohibition, shall be null. The order of arrest must be signed by the judge or, in his absence, by the Secretary of the Court, witnessing the authenticity of said order issued by the judge.

The order of arrest shall be communicated by electronic means to transmit documents to the Administrator of the Port where the vessel has arrived or will arrive, when the arrest is not made in the domicile of the Court, and the Administrator shall act as Marshal for this purpose until the Marshal takes custody of the arrested property.

**Article 171**. The Marshal of the Court may request the participation of the National Police or the air or maritime service in order to ensure its performance in an orderly manner and effect the arrest, and shall be able to utilise all the means necessary in order to comply with and enforce his orders, including the assistance of administrative authorities and holders of concessions of public services. In no case may the latter deny access to the Marshal and those accompanying him to the State premises that are operating under concessions by administrators or private companies, public or joint enterprises.

The judge may, in the arrest, order the physical ruling on persons that impede the Marshal from executing the duties provided in this Law, according to Article 617.

**Article 172**. In case of vessels, even those of Panamanian registry, and of other chattel property, the arrest shall be deemed accomplished when the order from the Court has been received by the person in charge of the custody of the asset or responsible for its possession or delivery of the same.

When the arrest is to attach vessels of Panamanian registry, the marginal notation contemplated in point 4 of Article 170 shall proceed only when the arrest has been accomplished with prior physical attachment of such vessels.

Notwithstanding the above, at the request of an interested party, the Court may issue a request to the Director of the Public Registry to insert a marginal notation made against the ownership title of the vessel as evidence that a complaint has been filed against it before the Maritime Court.

The notation referred to in the paragraph above shall be included in every certification that the Registry issues in respect of the vessel.

**Article 173**. In cases where the property being arrested is real estate property, the arrest shall be considered to have been accomplished when the court order is written in the Log of the Public Registry.

**Article 174**. The existence of previous arrests, of any nature, shall not impede the order of new arrests over the same property as long as the new arrests are grounded on maritime liens".

Another option is to pursue an injunction against the vessel, commonly known as "flag arrest" and which is based on Article 206 of Law 8, to wit.

"**Conservatory Measures or of General Protection**

**Article 206**. In addition to regulated cases, a person with reason to believe that during the time prior to a judicial recognition of his right he shall suffer immediate or irreparable peril, may request from the judge the most appropriate conservatory or protective measure as to provisionally secure, depending on the circumstances, the results of a judgment on the merits. The petitioner shall file his motion accompanying the preliminary evidence and, furthermore, the corresponding security for damages, which in no case shall be less than 1000 balboas (B/.1,000.00) or more than 50,000 balboas (B/.50,000.00). In [order to be considered] necessaries and qualify as a maritime lien over the vessel as per Article 24 of Law 55, ranking ninth in case of prohibitions to transfer or encumber vessels or other assets, the bond shall not be less than 10,000 balboas (B/.10,000.00).

The motion shall be processed and decided pursuant to the rules of this chapter on arrest".

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

From a Panamanian substantive law perspective, the bunkers supplied to a vessel would be considered necessaries and qualify as a maritime lien over the vessel, as per Article 24 of Law 55, ranking ninth in order of priority.

It is also relevant to say that a Panamanian Court would also permit the arrest based on the substantive laws that may be deemed applicable to the bunker supply contract, if under such laws the claim for bunker supply constitutes a maritime lien against the vessel, regardless of what the law of the registry of the vessel, albeit that it is expressly stated in Law 8 (Article 566 on conflict of law rules) that the laws that apply to determine the maritime liens against the vessel are those of the country where the vessel is registered.

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

Regarding the obligations of the owner of the vessel, the vessel would be considered an asset against which can be subject to arrest, as such, as security for the results of the proceedings; or, if the cause of action arises outside of Panama, to give the Court jurisdiction over the subject matter. This can occur in a situation where the owner of the vessel is selling the same vessel, or another vessel, or its property, or purchasing another vessel.

On the other hand, if the owner sells the vessel to a buyer, including the transfer of ownership title, but pending payment of the purchase price, pursuant to number 13 of Article 244 of Law 55, the seller will have a maritime claim against the vessel for the unpaid purchase price and, if applicable, interest thereof.

### 4.4 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

The arrest of cargo is also possible. Additionally, the bunkers can be arrested to give the Court jurisdiction over its owner; for instance, a bareboat or time charter.

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

The party whose property is arrested may put up security by way of: cash (and purchase of a certificate of judicial deposit); insurance bond; bank guarantee; or certain negotiable instruments from the State.

It is also possible for the parties to negotiate other types of security, including P&I letters of undertaking.

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

Yes; in fact, the posting of the necessary counter security is required in order for the judge to order the arrest. See Article 168 of Law 8, *supra*.

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

Law 8 provides that, generally, the Marshal must take custody of the arrested assets and, in practice, the same is entrusted to coordinate any costs related to the deposit of the assets, port charges and related costs in coordination with the accounts department of the Court and with the supervision of the Secretary and the judge.

"**Article 176**. The Marshal of the Court shall be in all cases the bailee of the property under arrest and, in addition to the general obligations of bailee, shall have the following special obligations:

1. Care for the conservation of the property arrested.
2. Inform when the balance of the custody and maintenance of an arrest are less than 1000 balboas (B/.1,000.00) as stated in Article 168.
3. Attend to the repatriation of the officers and crewmembers who request for repatriation by a writ addressed to the judge presiding the trial, when the arrested property is a vessel.
4. Take the necessary measures to protect and preserve the arrested property.
5. Keep a punctual and daily accounting of all amounts he receives and of the expenditures incurred.

6. Render to the Court a report of the measures he has undertaken once a week and whenever the Court officially requests it or when requested by a party.

The above shall not impede that the judge, upon request from the Marshal, orders the hiring of a third party as special receiver when they need special facilities for the custody/maintenance of the arrested property, in which case the fees and expenses of said third party shall be on the seizer, and this special receiver shall not relieve the Marshal from its legal duties as receiver.

The expenses to preserve and take custody of the arrested property correspond exclusively to the expenditures that are strictly necessary to the adequate preservation of the property. In no case [do] said expenditures imply the substitution of the defendant in his obligations as shipowner or proprietor, and the judge and the parties shall supervise with detail that no unnecessary or superfluous expenses are made".

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

The situations whereby a wrongful arrest can be found by the Court, as well as the procedure to rule on a motion for wrongful arrest, are provided for in Articles 187 through 190 of Law 8. This includes the right to claim damages arising from the arrest as part of the same motion, for which it would be necessary to provide to the Court evidence of such damages.

"**Article 187**. Whoever, in fault, error, negligence or in bad faith arrests a property or properties not belonging to the defendant or in contravention of a prior and express agreement between the parties of not arrest, or whoever files for arrest for the execution of an extinguished or inexistent privileged or *in rem* maritime lien, shall be liable for the damages caused, as well as for the payment of the costs and expenses arising out of said action. The determination of the liability of the plaintiff as well as the damages caused to the offended party shall fall under the jurisdiction of the Court that decreed the arrest which will render a decision pursuant to what is proven in the corresponding proceeding.

**Article 188**. When a property or properties are arrested in the circumstances referred to in the preceding article, the owner of the property or properties arrested or whoever has their administration or custody may request the Maritime Court to order the arrester to appear, in the course of time, to justify that the arrest was appropriate when it was ordered.

**Article 189**. The party requesting the judicial recourse referred to in the preceding article must accompany his pleading with clear proof (*prueba fehaciente*) that the arrest is wrongful. For purposes of this disposition, clear proof means evidence which establishes that the arrest has been performed over property which is different from the one against which the suit was brought, or which are not property of the defendant, or on which the maritime lien or *in rem* right for which the arrest was requested is extinguished or inexistent, or that the arrest was requested in contravention of a prior agreement between the parties not to arrest, as the case may be.

The motion shall be notified to the arrester, according to Article 406, after filing it before the Court. In any event, the motion to challenge the arrest (*apremio*) must be filed before or simultaneously with the release of the arrest, upon depositing the respective surety. The judge shall try on the merits of the challenge to the arrest even after the arrest is released.

**Article 190**. The motion shall be admitted if accompanied by the evidence referred to in the preceding article, and shall be subject to the proceedings corresponding to motions and to the following special rules:

1. Once the motion is admitted, notice thereof shall be personally given to the arrester or his attorney requesting his appearance in Court within a stated term.
2. At the hearing, the judge shall assess the evidence filed by the parties at the beginning of the hearing according to Articles 207 to 226, and in case that he determines that the arrest was inappropriate the Court shall order the Marshal to lift the same. In case that there is a cautionary measure standing on a guarantee that substitutes the arrested property or to that which was originally to be arrested, the Court shall immediately return it to the arrested party.
3. The party defeated in his cause of action shall be ordered to pay, at the discretion of the Court, the expenses which shall include the damages that his action has brought about".

### 4.9 When is it possible to apply for judicial sale of a ship and what is the procedure for judicial sale?

Generally speaking, the judicial sale of an asset, including a ship, which has been arrested within maritime proceedings, which is not released by substitute security, would be sold to cover a judgment rendered in respect to the merits of the case.

However, in certain circumstances, the judge must order the sale of the ship, *pendente lite*, as provided for under Article 179 of Law 8.

"**Article 179.** If the arrested property is perishable or may be damaged and suffer decrease or deterioration, or if it has been arrested for more than thirty days, or whenever the expenses for its custody and maintenance are so high that the sale or the value of the property would not be enough to cover the same, the Marshal, with prior authorisation from the Court and a hearing of the parties, shall proceed to sell it at a public auction and to deposit the proceeds of the sale in *Banco Nacional de Panama*, in an special account to this purpose, which shall produce interests as established in said institution for fixed time deposits with maturity at thirty days, renewable term.

In any case, if the owner of the arrested property does not answer the complaint after notice has been served to him, the judicial sale shall be made upon request of the relevant party and without further involvement, without prejudice to the defendant's right to appear subsequently during the proceedings".

As concerns the judicial sale itself, the same is regulated under Articles 553 *et seq*. of Law 8, as follows:

"**Chapter VII**

**Auction and Judicial Sale**

**Article 553.** Before ordering the judicial sale of a vessel, the court shall determine the following:

1. By means of an accounting report, the amount of the expenses of arrest incurred to the date and additionally a forecast of the possible expenses until the completion of the procedure of auction and judicial sale of the vessel.
2. The market value of the vessel in the international market by means of appointing an expert appraiser, unless the parties, that are dealing processes involving liens against the vessel or its owner, have appointed said expert by mutual agreement.

The court ordering the auction shall issue one sole order setting three dates for the auction, with no less than five days nor more than 10 days between one and another. Said order shall be published at least twice a week, until the auction and judicial sale proceeding is concluded, in a newspaper of national circulation and on journals and specialised publications that the parties consider as convenient.

The auction shall be carried out by the Marshal on the date fixed by the Court. If it may not be carried out on the date set, it shall be made on the first business day following.

**Article 554.** The notices shall state the day, hour and place where the auction is to take place, the minimum amount of the bids, and the sum that must be deposited with the Court in order to qualify as a bidder, and must contain a precise description of the vessel (name, type of service, country of registry, registration number, gross tonnage, net tonnage, means of propulsion, place, date and name of the shipyard where it was built, etc.), and shall be published for three consecutive times in a newspaper of national circulation.

Said notices must state that, if on the day set for the auction it is not possible to conduct it as a result of the closing of the public offices decreed by the Executive Body, the auction shall take place on the following business day at the same time without the need of a new notice.

The Secretary shall make an entry on the file as to the place where the notices have been posted, as well as the name, number and date of the newspaper in which the publication has been made.

**Article 555.** In all the auctions, the sale may be affected at three-quarters of the appraisal value.

If no one bids three-quarters of the appraisal value, the auction shall be made on the second date already set by the court. In this case, a bid of half the appraisal value shall be a valid bid.

If in spite of what has been set forth, there is no bidder of half of the appraisal value, the auction shall be made on the third date already set by the court, and at such an auction bids for any amount shall be allowed.

For auctions of assets other than vessels, the court shall also apply this same procedure.

**Article 556.** Except in lawsuits for *in rem* actions or privileged creditors' meetings, if the proceeds of the auction do not cover the debt and costs, the execution shall be increased by attaching other property of the debtor, as long as the creditor reports such property and it is announced and auctioned in conformity with the law.

**Article 557.** The auctions shall take place between eight in the morning and the time when no more bids and counterbids are received. Appearances are allowed until eleven o'clock. The bid and counterbids shall begin on the same day at twelve noon and notice thereof shall be contained in the auction notice. Once the hour for the auction has arrived, the same shall be announced, as will the bids that have been made and each of the successive counterbids, and the successful bidder shall be announced as well.

Once the bidding and counterbids have ended, the Marshal shall make a provisional announcement that he is going to adjudicate the property.

**Article 558.** The debtor may obtain a release of the property by paying the principal obligation plus costs before the adjudication of the auction, notwithstanding that the auction has started.

**Article 559.** In order for a bid to be admitted, the bidder must deposit 5% of the appraisal value of the property, except for the enforcers whom, in their nature, are not required to put up said deposit.

The bidder who is provisionally adjudicated, and fails to comply with his obligations, shall forfeit the sum deposited which shall then accrue to the assets of the respondent for payment.

If the auction is invalidated because of lack of compliance with legal obligations by the successful bidder, all subsequent bidders shall be required to deposit 20% of the appraisal value given to the property being auctioned in order for their bids to be admitted, except when the petitioner party makes a bid, whom, by their nature, are not required to make said deposit.

The successful bidder shall forfeit the sum deposited if he does not pay, in cash and within three business days following the provisional adjudication, the value of the property he had bid for.

**Article 560.** The unsuccessful bidder shall be released from the obligations that he undertook in order to bid. The amount he had deposited shall be returned to him.

The sum deposited by the successful bidder shall be credited to him as part payment of the purchase price.

**Article 561.** During auction, only in the event that the sole claimant against the vessel is the creditor who motivated the auction, by means of a final judgment, due to the absence of other complaints against the same asset before the maritime jurisdiction, said petitioner may bid on account of its credit and, in case there are no others biddings for a higher amount, the court shall adjudicate to the same petitioner the property of the vessel or the asset, as payment of the totality of its claim, including principal, interests, costs and expenses, and thus releasing the respondent from said lien.

**Article 562.** The sums collected from the judicial sale of the vessel or other assets shall be consigned with the Court by the Marshal and shall be deposited in a special account maintained by the Court at the *Banco Nacional de Panama*, which shall produce interests as established in said institution for fixed time deposits with maturity at 30 days, renewable term, until the court orders its distribution. The interests produced shall increase in the capital for being distributed.

At conclusion of the process and prior to the distribution of the funds of said amounts, the expenses incurred by the Marshal in the maintenance of the vessel or other assets shall be deducted from said sums and shall return to the seizer or the seizers, after approval by the Court at a hearing with the presence of all parties to the action and other consolidated actions, within five business days from the presentation of the accounting report by the Marshal. The Marshal shall present said report no later than 30 days after the approval of the judicial sale.

**Article 563.** The sums collected from the judicial sale shall be applied by the Court to the payment of the final judgment rendered pursuant to the order of priority of the different creditors.

**Article 564.** Upon execution of the judgment and adjudication of the attached property by the court where the action was filed, the Maritime Court shall forward to said court the net proceeds of the sale after deducting its costs and those of the Marshal.

**Article 565.** From the proceeds of the judicial sale of said property, the plaintiff shall be reimbursed those sums that he delivered to the Marshal for the conservation, maintenance and custody of the auction property, before payment is made to the respective creditors of the sums derived from the execution of the judgment and after payment of the expenses of the proceeding".

On the other hand, the Court must ascertain if there are other claims pending and, if that is the case, order the concursus of maritime creditors in order to be able to make the payments in the corresponding order of priority, as provided for in Articles 533, *et seq.*, of Law 8:

**"Chapter IV**

**Special Proceedings for Concursus of Privileged Creditors**

**Article 533.** Before ordering the interlocutory or judgment sale of a vessel under Panamanian flag, the Court must request a report from the Public Registry on the existence of mortgages, liens or attachments, and the prohibitions decreed against its owner. This requirement shall be obviated for vessels of a foreign flag registry.

**Article 534.** When the report mentioned in the above article indicates that the total amount of the privileged lien on the vessel, freight or cargo exceeds the value of the same or the funds resulting from a judicial sale, or whenever said situation constitutes a notorious fact for the court derived from the claims brought within the maritime jurisdiction, the Court must:

1. Decree the opening of the privileged creditors meeting and cause notice to be posted in the Court informing the parties about the sale.
2. Cause the publication of a notice for five days in a newspaper of national circulation. It shall also be posted for ten days in the office of the Public Registry, in the case of vessels of the Panamanian registry, in a visible place on the vessel and on the cargo, if that is the case and it is feasible, placing everyone on notice of the special meeting decreed over these and summoning the privileged lienholders, the proprietor or, if applicable, the shipowner to the corresponding proceedings.

If the vessel is less than ten tons, the notice shall be published for one day.

Once 15 days have elapsed from the last publication of the notice, without opposition being filed or the opposition filed has been denied or results in a summary proceeding, the sale may take place and the proceeds thereof shall be deposited in *Banco Nacional de Panama*, in an account specially created to said purpose, which shall produce interests as established in said institution for fixed time deposits with maturity at 30 days, renewable term.

**Article 535.** If in the proceeding outlined in this Chapter, the lienholders do not reach an agreement with respect to the distribution of the amount deposited, the Court shall issue a ruling within the three following days, providing:

1. The designation of an administrator in charge of the verification and determination of the order of the privileged liens on the vessel.
2. The setting of a time period of 20 days within which the lienholders shall file with the Court the titles which justify their liens and respective privileges. Likewise, a term of five days in order that the lienholders duly constituted file their objections to the privilege and priority of the other liens.
3. The setting of a date in which the administrator must present his proposed verification and order of priority of the privileged liens, which shall be placed in the orders for examination by the interested parties. Once the time period set in the ruling has expired, the administrator shall file his report with the Court.

**Article 536.** For being eligible as administrator, one must have exercised law during at least 10 years, possess postgraduate education in Maritime Law or have experience before maritime jurisdiction during at least five years, continuously, and speak fluent English. The aforementioned professional experience may be evidenced by means of certifications from Secretaries of the Maritime Courts related to the proceedings in which the nominee has acted as attorney at law.

**Article 537.** Any privileged lienholder may challenge the verification or the order of priority of the liens within the five days following the date on which notice is given to the parties on the filing of the administrator's report.

**Article 538.** The judge shall have 30 days following the contests to pronounce a resolution and to decide on the verification and order of priority of the privileges as filed by the administrator, subject to the same fines as on Article 510 regarding the noncompliance of time periods.

**Article 539.** The privileged lienholders whose liens have been approved by the judge, and those declared by him admissible and not challenged, may receive immediately the respective amount from the funds deposited in Court provided that the priority of said liens is higher than those in dispute.

**Article 540.** The declaration of the special privileged creditors meeting on the vessel produces the following effects:

1. To make enforceable all privileged liens on the vessel, even those which have not matured, with a discount of interest corresponding to the period of time before maturity.
2. To suspend the earning of interest on all liens".

## 5 Evidence

### 5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Law 8 provides for a number of options, including pre-trial inspections, as well as discovery motions such as requests for the production of documents, disclosure of information, written interrogatories and on-site inspections. These were adapted from certain United States Federal Rules on Discovery.

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

Law 8 provides the general principles by way of evidence that can be produced or requested, of which we would refer to the following basic ones, to wit:

**"Chapter VII**
**Evidence**
**1st Section**
**General Principles**

**Article 207**. Documents, confessions, sworn statements, depositions of a party and of witnesses, judicial inspections, expert opinions, reports, indications, scientific means and any other rational means which aid the judge in rendering a judgment may be utilised as evidence, provided that they are not expressly prohibited by law, nor contrary to moral or public order.

Replicas, reproductions, photographs of objects, documents and places and drawings, as well as other methods of reproduction of sounds, images, etc., may be utilised as evidence.

In order to ascertain whether an act can or cannot be performed in a given manner, the reconstruction of the same may be allowed. If the judge deems it necessary, the act may be recorded in photographic or electromagnetic form.

In cases where the evidence is to be submitted in this manner, the obtaining of x-rays, radioscopies and haematological and bacteriological analysis and the performance of any other scientific experiment may be requested or ordered.

Testimony taken down or given out of Court shall not be admissible except if it has been so agreed by the interested parties or if the party against whom the testimony is being presented does not object, unless the said party has had the opportunity to perform a cross-examination.

The foregoing shall not be applicable to the procedure established in chapter V of Title V.

**Article 208**. The evidence must be assessed as a whole, in conformity with the rules of constructive criticism, without prejudice to the formalities prescribed in the substantive law for the existence or validity of certain acts.

The judge shall reasonably disclose the elements establishing the evidence and the merits corresponding to them.

The judge may dismiss outright those methods of adducing evidence, which are prohibited by law, notoriously dilatory or brought with the purpose of obstructing the progress of the proceeding, and may also dismiss the submission of irrelevant or ineffective evidence".

Parties would be obligated to disclose information through the various discovery motion options provided in Law 8, which include on-site inspections, request for documents, written questionnaires, and request for admission of facts or documents.

General rules are provided for in Articles 227, *et seq.*, of Law 8, as follows:

**2nd Section**
**Discovery**
**General Dispositions**

**Article 227**. Any of the parties may request the other to reveal information and produce documents by any of the following: sworn declarations through oral or written questions; written interrogatories addressed to the parties; inspection of documents or other objects; permission to enter on land or other properties for the purpose of making visual inspections and for other purposes; physical and mental exams; or request for the admission of facts, things or documents.

**Article 228**. Unless the judge has set limitations, any party may request of the others to provide or show information, things or documents with respect to any business not subject to a professional secret; which is relevant as to the object of a lawsuit and is related to the claim or the defence of any party including the existence, description, nature, custody, condition and location of any books, documents or any other objects and the identification and location of persons that have knowledge of any matter subject to discovery. The term to furnish documents shall be of 45 days following receipt of the petition, and not requiring intervention of the Court or of any edict.

The judge is entitled to impose fines up to 1000 balboas (B/.1,000.00) to the party that fails to answer.

**Article 229**. The parties may obtain information with respect to the existence and the contents of any insurance contract under which any person dedicated to the insurance business may end up being liable, in whole or in part, in respect to the judgment to be rendered within the proceedings, or to indemnify or reimburse payments made in order to comply with the judgment.

For the purposes of this Article, an application for insurance shall not be considered as part of the insurance contract.

If more ample information or additional documentation is requested, the Court may order that it be produced through other means subject to restrictions with respect to the scope of the discovery and the dispositions relating to fees and disbursements which the Court considers appropriate under Article 237.

**Article 230**. Upon request by the party from whom the discovery is requested and for just cause, the Court may order the resolutions necessary to protect a party against grievances, humiliation or unjustified expenditures, or any other abuse including the following:

1. That the disclosure not be permitted.
2. That the disclosure is permitted only on specified terms and conditions, including time, date and place.
3. That the disclosure is made only by means of disclosure other than the one requested.
4. That certain matters not be investigated or that the scope of the discovery be limited to certain matters.
5. That the disclosure is made only to the persons designated by the Court.
6. That once a sworn statement taken down out of Court is sealed, in conformity with what is established in subsection B of 2nd Section of chapter VI, Title III of this Law, it may only be opened by a ruling of the Court.
7. That commercial secrets and other investigations, disclosures, or commercial information of a confidential nature are not to be revealed.
8. That the parties simultaneously present to the Court certain documents or information in sealed envelopes to be opened only when the Court so orders. If the request is denied, in whole or in part, the Court may order any of the parties to provide or allow the disclosure under the terms and conditions it considers fair. What is established in Article 237 is applicable to the payment of the costs related to the request.

**Article 231**. Unless the Court, on motion of a party, establishes otherwise, for the convenience of the parties or the witnesses and in the interest of justice, the means of disclosure may be requested in any order; and the fact that the disclosure motion of a party is being processed, whether in the form of a sworn statement or another form, should not delay the disclosure requested by the other party.

**Article 232**. The party which has answered the request for disclosure in an exhaustive manner is not obligated to add to his answer information subsequently obtained except:

1. In connection with any question directed towards establishing the identity or whereabouts of persons that have knowledge of facts on which they are obligated to testify.
2. If he obtains information tending to show that:
   a. His answer was not correct when made.
   b. Even though his answer was correct when it was made, it is no longer correct.
   c. If the obligation is imposed by the Court or by agreement of the parties; or at any time prior to the hearing through new requests calling for additions to the previous answers.

**Article 233**. Any party may request the Court, after duly giving notice to the other parties and all persons which may be affected, to order a specific disclosure.

**Article 234**. If the deponent party omits answering a question formulated or presented pursuant to Article 265 and 273, or a corporation or other entity fails to designate the natural person which will represent it or if one of the parties fails to answer the request for investigation pursuant to Article 227, or fails to allow the inspection requested, the petitioner may request the Court to compel an answer, or a designation, the requested inspection to be made. In the event that the request is refused, in whole or in part, the Court may order the precautionary measures established in Article 230.

**Article 235**. An evasive or incomplete answer shall be considered, for the purposes of this Law, as a refusal to answer.

**Article 236**. A refusal to comply with what has been ordered by the Court shall constitute contempt of court.

**Article 237**. If a party fails to admit the authenticity of a document or the veracity of any affirmation as required by Article 279 and if the party requesting the admissions shows thereafter that the document was authentic or the veracity of the affirmation, said party may request from the Court to order the other party to satisfy the expenditures incurred to demonstrate this, including attorneys' fees. The Court shall decree said resolution unless it establishes that:

1. the request was objectionable pursuant to Articles 279, 280 or 281;
2. the requested admission lacked importance in connection with the proceeding; or
3. there existed justifiable [reasons] not to make the admission.

**Article 238**. The Court before which the lawsuit is pending on motion by a party may issue whatever orders it deems fair in connection with the omissions established hereunder and request the party that failed to proceed to satisfy the expenses, including attorneys' fees, resulting from the omission, unless the Court deems that said omission was justifiable or that other circumstances would not justify imposing costs:

1. Failure to appear before the officer that will take his declaration after notice has been duly given.
2. Failure to answer or object to the interrogatory submitted pursuant to Article 273.
3. Failure to respond to the request for inspection formulated pursuant to Article 284.

**Article 239**. The non-appearance of the summoned party, his failure to respond or his evasive response shall establish a presumption of truth with respect to the facts susceptible of being admitted which involve admissible assertive questions contained in the written interrogatories, and the judge shall make a notation to that effect during the hearing.

The same presumption shall be deduced with respect to the facts in the complaint or its answer when, there being no written interrogatory, the summoned party does not appear. If the questions are not assertive or the fact does not allow evidence of admission, the non-appearance, the evasive response or the failure to respond shall be construed as a presumption against the summoned party".

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

Based on the general principles of discovery previously mentioned and also based on certain rules regarding the judicial inspection contained in the Judicial Code, as supplementary to Law 8, the maritime judges have ordered, together with an official of the Court, access to computers with the presence of a person in charge in the premises where the inspection is to be carried out, including on board vessels so as to extract and obtain printouts of information that may be electronically stored. The judicial officer would render a report containing an inventory of the items obtained and that would provide value as to the veracity of the items so obtained.

## 6 Procedure

### 6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution (ADR).

**6.1.1 Which national courts deal with maritime claims?**

Pursuant to Law 8, maritime claims that, in the context of Article 19 thereof, are to be tried before the Maritime Courts of Panama and appeals would be taken to the Maritime Court of Appeals.

In case of recourses for protection of constitutional rights (*amparo de garantías constitucionales*), the Supreme Court of Panama would rule on the matter.

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

The Centre for Maritime Conciliation, Mediation and Arbitration (*Centro de Conciliación Mediación y Arbitraje Marítimo de Panamá* – "CECOMAP") was created in February of 2007. Its regulations were adopted in August of 2011 and updated in August of 2013.

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

Apart from CECOMAP, there are no other bodies that have such a role in Panama.

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

Advantages include that the filing of evidence in English is permitted, even if translation into Spanish would be required at later stages, which in practice may not be of major relevance, and that maritime judges are required by law to have knowledge of the English language.

Many practitioners and arbitrators also commonly speak English. The availability of Maritime Courts 24/7 for certain urgent actions, including arrests and their release, is another advantage, as well as the fact that Panama has been traditionally a country of services, which provides a cultural element in procuring flexible and more efficient means to accomplish results.

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

Some rules – in particular, conflict of law provisions contained in Law 8 – have been subject to the interpretation of the Courts and practising laws, further confirmed by the Supreme Court, which in some instances end up contradicting the law as to the substantive law applicable to determining maritime liens and other issues.

## 7 Foreign Judgments and Awards

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

In general, and pursuant to Article 1419 of the Judicial Code, any final judgment obtained in the Courts of a foreign jurisdiction should be recognised and enforced without retrial or re-examination of the merits of the original action, provided that (i) in the jurisdiction of said Courts, the same treatment is given to judgments by the Courts of the Republic of Panama, and (ii) the following requirements have been duly satisfied:

a. the judgment is based on a personal cause of action;
b. personal service of process is made on the defendant or on its agent appointed for such purpose within the jurisdiction of the Court rendering judgment;
c. the judgment is not rendered in default;
d. the performance of the obligation sought to be enforced is lawful in the Republic of Panama; and
e. the judgment is authenticated in the country of origin.

This is a validation process carried out through the Fourth Chamber of General Affairs of the Supreme Court of Panama and it is known as "*exequatur*".

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

The aforesaid Article 1419 of the Judicial Code also applies to arbitral awards; however, we would add that Article 1421 imposes certain limitations to the enforcement thereof, in the sense that, subject to the granting of an *exequatur* by the Supreme Court of Panama, the Courts of Panama would recognise and enforce a foreign, definitive and final arbitral award, provided that:

a. the parties subject to the arbitration proceedings were not subject to some incapacity under the laws governing the applicable arbitration clause or under the laws of the place where the arbitration was held, and that such accord is not illegal under the laws of Panama or under the laws of the place where the arbitral award was granted;
b. the condemned party was duly notified of the appointment of arbiters or of the arbitration proceedings and had the opportunity to defend itself in the arbitration proceedings;
c. the foreign arbitral award referred to a matter that was within the scope of the arbitration clause and did not include decisions that exceeded the scope of the arbitration clause; and
d. the constitution of the foreign arbitration tribunal and the procedure followed comply with what the parties agreed upon in the arbitration clause or, in the absence of any provision to that effect in an arbitration clause, with the laws of the place where the arbitration was held.

Furthermore, Panama has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

## 8 Offshore Wind and Renewable Energy

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

There are no specific regulations on the subject; however, those who relate to energy and concessions should allow for these types of projects.

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

No; there are some limitations in our cabotage law, which apply to other types of activities.

## 9 Updates and Developments

### 9.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

Other than the issues described above, there are no particular trends to highlight at the moment.

**Jorge Loaiza III** joined ARIFA in 1990 and became a partner in 2014.
From 2000 to 2005, he was the London office's resident lawyer. He is the co-head of the firm's Transportation Group and an ARIFA Compliance Committee member.
Jorge stands as one of the leading shipping lawyers in the country. He has handled, and is currently attending, numerous standard administrative tasks in the areas of registration and mortgage filing procedures. He has also assisted and represented clients in complex sale and purchase deals, inventive ship security models, drafting of maritime contracts, under-construction ship finance structuring, technical aspects and compliance under international maritime conventions, and innovative maritime litigation strategies. Jorge was one of the main contributors to a recently adopted Law for Promotion of Maritime Project Financing. He has been involved in maritime litigation and has promoted the creation of judicial precedents on asset arrests and flag arrests of ships, administrative filings, and other unconventional procedures.
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Established in 1914, Arias, Fábrega & Fábrega (ARIFA) has been at the forefront of the legal profession, advising leading international financial institutions and multinational corporations, as well as some of the largest companies in Panama, for over 110 years.
Its Shipping practice group has been regarded for decades as a premier team for ship financing in Panama, and regularly assists shipowners, ship operators, banks, and port operators around the world in the financing of vessels as well as platforms registered in Panama.
ARIFA is a registered agent in Panama for hundreds of vessels registered under the Panamanian flag. Through its own network of offices in London, Hong Kong and Panama, and a highly specialised staff and automated system, the firm facilitates the registration and mortgaging of vessels for clients around the world.
ARIFA also has an important maritime litigation practice, and its lawyers have been instrumental in the drafting of major pieces of legislation on ship registration and maritime court procedures.

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