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Croatia: Law & Practice

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CROATIA

Law and Practice

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Contents

Macesic & Partners provides assistance in multi-sectorial and complex cross-border matters. The firm handles court litigation proceedings in maritime and inland shipping and navigation disputes with the Commercial Courts of Rijeka, Split, Zagreb, Dubrovnik and Osijek. It assists in cargo claims, collisions and other marine matters, arrests of vessels, groundings, damage to ships, injunctions, ship-building, financing, personal injury and fatal accident claims, ship-owners' limitation-of-liability actions and C/P disputes. The firm has acted on behalf of all P&I Clubs that are members of the International Group of P&I Clubs (IGP&I), and for a number of hull and cargo underwriters, for more than 30 years. The firm's unrivalled experience in P&I provides it with an in-depth understanding of the industry.

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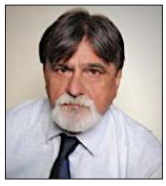

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Maritime and shipping courts are not established as separate specialised courts. The Courts Act and the Courts' Seats and Territories Act regulate jurisdiction generally in all maritime and shipping matters.

Substantial jurisdiction is provided in the Courts Act, which sets out that the Commercial Courts have jurisdiction in maritime and shipping matters.

Territorial jurisdiction of the Commercial Courts of Dubrovnik, Rijeka and Split is provided for in the Courts' Seats and Territories Act, as extended territorial jurisdiction in the matters of maritime law and matters that refer to ships and navigation. The Commercial Courts of Zagreb and Osijek have extended jurisdiction for matters that refer to inland shipping and navigation.

In practice, in these five courts (as well as in the High Commercial Court as the second-instance appellate court and the Supreme Court as the third-instance revision court), there are judges specialised in maritime and shipping law, and who handle and decide on all respective shipping and maritime matters.

The Maritime Code (Official Gazette No 181/04, 76/07, 146/08, 61/11, 56/13, 26/15, 17/19; hereinafter, MC) is the basic substantive law for maritime and shipping matters. The MC also contains a special procedural law provision stating that the Commercial Courts have jurisdiction for all disputes, on a contractual or tortious basis, of seafarers versus the employer, owner, operator, carrier and any other entity. It refers to all seafarers' labour disputes and seafarers' personal injury and fatal accident matters.

1.2 Port State Control

There are two applicable legislations with regard to the port state control system.

Ratified international conventions form an integral part of national legislation. Croatia is a member of the Paris Memorandum of Understanding on Port State Control of 26 January 1982 (hereinafter, the "Paris MoU") which directly applies in Croatia as national legislation.

The Regulations on Inspection of Safety of Maritime Navigation implement Directive 2009/16/EU of the European Parliament on Port State Control

(recast Directive 2013/38), as well as Directives 96/40, 199/35, 2000/59, 2001/96 and 2002/59, into national legislation. Along with the Paris MoU, these establish the system, standards and criteria for port state control.

Additionally, the following also form national legislation establishing the system, standards and criteria of port state control:

- the MC;
- the Harbour Masters Offices Act;
- the Maritime Domain and Maritime Harbours' Act;
- the Act of Safety of Ships and Ports; and
- numerous regulations passed in implementation of these acts.

Harbour Master Offices (hereinafter, HMOs) are authorities with the power to enforce port state control according to the Paris MoU and respective national regulations. HMOs maintain order and safety, and with this aim they supervise and perform control in ports and navigation routes according to territorial competency. In the case of a casualty, they order wreck removal, cleaning or other required measures for responsible entities, or organise respective actions at the liable entities' expense if their orders were not complied with.

The MC defines two categories of maritime casualties: "very severe" and "severe".

"Very severe" maritime casualties are those that involve total loss of the floating object, human fatalities, or pollution of great extent.

"Severe" casualties are defined with a negative definition as those that are not severe but that involve considerable damage.

Distinctive from maritime casualties, the MC further defines "maritime incidents" as those events at sea that have not caused but that might cause damages. Generally, casualties to any extent caused by fault give rise to misdemeanour or criminal liability, and to civil liability if damage occurred.

In the case of maritime casualties, safety investigations must take place. Investigation is initiated by the HMO or the Ministry of Maritime Affairs, depending on the category of casualty, to ascertain the cause of and responsibility for the casualties. Such investigation by the authority (called an administrative investigation) might trigger criminal or misdemeanour charges against responsible physical and legal entities. Accused entities defend against charges/liability in misdemeanour proceedings before the HMO or the criminal court. Civil liability for damages caused to injured parties is decided by the civil courts. The MC prescribes this investigation as mandatory by the interested administrative authority.

The other investigation provided in the MC should take place as the independent investigation of an independent authority. Since Croatia's having become a member of the EU, the Agency for Investigation of Accidents in Air, Sea and Rail Traffic (AIN) was established with the aim of investigating the cause of an accident and giving recommendations for corrective actions needed to prevent the same or similar accidents. The AIN has a separate department for investigation of maritime casualties.

1.3 Domestic Legislation Applicable to Ship Registration

From 2020, Croatia has a unified Ship Register for all floating objects (apart from military objects). It includes ships, yachts, boats, barges

and various technical objects, whether floating or under construction.

The Ship Register has been established and is maintained in electronic form by the Ministry of Maritime Affairs and by the HMO. It consists of a Main Book, a Collection of Documents and auxiliary listings.

The Main Book includes data regarding:

- identity particulars of the ship (page "A" of the Main Book Sheet);
- ownership (page "B" of the Main Book Sheet); and
- encumbrances (page "C" of the Main Book Sheet).

The Collection of Documents is an archive of supporting documents for entries in the Main Book. Auxiliary listings facilitate tracing of ships through different data such as the ships' owners, managers, names, marks (IMO number), etc.

The Ship Register is public; however, for insight into or obtainment of documents from the Collection of Documents, consent of the registered owner is required. If the registered owner denies consent, the court may grant permission.

Registration in the Ship Register involves administrative proceedings, which are very strict and formal.

1.4 Requirements for Ownership of Vessels

A ship may be registered in the Croatian Ship Register if she is under full or partial ownership of a domestic legal or natural entity, or if the manager, carrier or operator of the ship is a Croatian entity.

Foreign owners and co-owners must give consent to the domestic co-owners, managers, carriers or operators for the registration of the ship in the Croatian Ship Register if fully or partially owned by the foreign owner.

1.5 Temporary Registration of Vessels

Two temporary regimes for registration of ships under the Croatian flag are possible, according to the MC.

The first refers to the Ship's Temporal Registration Certificate, which is granted for a ship that is registered and may not be permanently registered in the Ship Register, such as:

- a ship acquired abroad;
- a ship that has lost the ships' documents; and
- a ship under construction which cannot be registered in the Ship Register (for sea trials after launching).

The Temporal Registration Certificate is valid for three months and enables the ship's operations and navigation.

The second temporal registration regime is so-called pre-registration in the Ship Register. Pre-registration is a temporal and conditional registration of changes of certain rights over the ship (for instance, ownership or mortgage). It is a conditional registration that must be justified within a certain period. If pre-registration is not justified, de-registration of the pre-registered right takes place. When justified, permanent registration of the pre-registered right is entered into the Ship Register.

Dual registration in the Ship Register is not allowed according to the MC.

1.6 Registration of Mortgages

Mortgages are registered on page "C" (encumbrances) of the Main Book of the Ship Register. Only Croatian law mortgages may be registered; foreign law mortgages may no longer be registered in the Croatian Ship Register.

A Croatian law mortgage may be registered as enforceable collateral, meaning that no final judgment or arbitration award is required. Very few formalities in the mortgage agreement and by the notary public are required for a court or private public sale in the case of the ship-owner's default.

Maritime liens are not registered, and they have priority over registered mortgages.

1.7 Ship Ownership and Mortgages Registry

The Ship Register is unique and complex, and all data and documents that refer to a ship are found in the Ship Register. It is public, but consent of the registered owner is required for insight into or obtainment of documents from the Collection of Documents. If the registered owner denies consent, the court may grant permission (please see **1.3 Domestic Legislation Applicable to Ship Registration**).

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

The applicable international conventions that affect the liability of owners and interested parties in events of pollution are:

- the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), with the 1978 and 1997 Protocols;
- the International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990 (the "IOPRC Convention");
- the CLC Convention, 1969, with the 1976 and 1992 Protocols;
- the Fund Convention, 1971, with the 1992 Fund Protocol and the 2003 Supplementary Fund Protocol;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972;
- the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; and
- the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

Croatia has not ratified the HNS Convention, 2010, but might reconsider ratification. In January 2021, Croatia's first LNG terminal became operational, and another terminal is planned in Zadar. Due to the energy crisis caused by the Russia-Ukraine war, LNG tonnage is reaching the terminal at a significant rate, which increases the risk of potential casualties covered by the HNS Convention. As such, it is in the interest of the State, the local populus, insurers, owners and charterers that the HNS Convention be ratified.

Regarding wreck removal, Croatia has ratified the Nairobi International Convention on the Removal of Wrecks, 2007.

While the MC is the relevant domestic law affecting the liability of owners and interested parties

in events of pollution and wreck removal, the above international conventions prevail.

2.2 International Conventions: Collision and Salvage

The applicable international conventions that affect the liability of owners and interested parties in events of collision are:

- the Convention for the Unification of Certain Rules of Law with respect to Collisions between vessels, 1910;
- the International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in matters of Collision or other Incidents of Navigation, 1952;
- the International Convention on Certain Rules concerning Civil Jurisdiction in matters of Collision, 1952; and
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs).

Regarding salvage, Croatia has also ratified the International Convention on Salvage, 1989.

The MC is the relevant domestic law affecting the liability of owners and interested parties in events of collision and salvage, but the above international conventions prevail.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims (the "LLMC 1976") is applicable in Croatia, as is the 1996 Protocol. It is debateable whether the 2012 amendments to the 1996 Protocol, increasing the limits of liability, would be applicable in Croatia. This is because according to the Croatian Constitution all amendments to international conventions must be ratified and transposed into national legislation, which is not the case with the 2012 amendment.

The MC prescribes a mechanism of limitation of liability which is similar to that set out in the LLMC 1976; however, the provisions of the LLMC 1976 prevail. The limitation of liability under the MC also applies to boats up to 15 metres in length, which are, for the purposes of limitation of liability, considered as ships that do not exceed 500 GT.

2.4 Procedure and Requirements for Establishing a Limitation Fund

The procedure for establishing a limitation fund is provided in the LLMC 1976 (with the 1996 Protocol) and the domestic MC (Articles 401–427).

"Ship-owners" (owners, charterers, managers and operators) and salvors may limit their liability for claims resulting from:

- loss of life;
- personal injury;
- loss of or damage to property;
- other loss caused by infringement of rights (other than contractual rights) occurring on board the ship or in direct connection with the operation of the ship or with salvage operations; and
- loss resulting from the delay, raising, removal, destruction or rendering harmless of a ship or cargo, and claims in relation to measures taken to avert or minimise loss.

The limitation fund is set by one of the three commercial courts competent for admiralty matters (Rijeka, Split or Dubrovnik), depending on local jurisdiction, in non-contentious court proceedings. The ship-owner or salvor must file the motion for constitution of the limitation fund and provide all required information, including

the manner of constituting the fund (payment of cash deposit or placing of security) and insuring the "real value" of the fund (term deposit with a trustworthy bank, etc) (Article 402 of the MC).

The limitation fund is calculated according to Chapter II of the LLMC and Articles 391–394 of the MC, based on the ship's tonnage – except for passenger claims, where the limitation is calculated by multiplying the set amount of limitation per passenger with the number of passengers.

It is not required that the ship-owner or salvor provides a cash deposit. The court may decide that the fund be constituted by placing security.

2.5 Seafarers' Safety and Owners' Liability

The Maritime Labour Convention has been applicable in Croatia since its ratification in 2010. Croatia has also ratified the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and a number of ILO conventions, including:

- the Unemployment Indemnity (Shipwreck) Convention, 1920 (No 8);
- the Placing of Seamen Convention, 1920 (No 9);
- the Seamen's Articles of Agreement Convention, 1926 (No 22);
- the Repatriation of Seamen Convention, 1926 (No 23);
- the Officers' Competency Certificates Convention, 1936 (No 53);
- the Sickness Insurance (Sea) Convention, 1936 (No 56);
- the Certification of Ships' Cooks Convention, 1946 (No 69);
- the Medical Examination (Seafarers) Convention, 1946 (No 73);
- the Certification of Able Seamen Convention, 1946 (No 74);
- the Medical Examination (Fishermen) Convention, 1959 (No 113); and
- the Merchant Shipping (Minimum Standards) Convention, 1976 (No 147).

Regarding domestic legislation, the MC applies to seafarers' rights and safety. However, the above international conventions prevail.

3. Cargo Claims

3.1 Bills of Lading

International conventions concerning bills of lading applicable in Croatia are the Hague-Visby Rules and the SDR Protocol. Neither the Hamburg Rules nor the Rotterdam Rules have been ratified by Croatia.

The MC is the domestic law covering carriage by sea and bills of lading, but the Hague-Visby Rules and SDR Protocol prevail.

3.2 Title to Sue on a Bill of Lading

In Croatia, only the legitimate holder has the title to sue on a bill of lading.

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Generally, the ship-owner as carrier is liable for any damage to and shortage or loss of cargo from receipt for carriage until delivery, as well as for any damage owing to delay, with exceptions as provided by the Hague-Visby Rules and the MC.

Under both the Hague-Visby Rules and the MC, the carrier is not liable for any loss or damage arising or resulting from the following.

- Unseaworthiness, unless caused by want of the carrier's due diligence to:
  (a) make the ship seaworthy;
  (b) ensure that the ship is properly manned, equipped and supplied; and
  (c) make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation (Article IV, paragraph 1 of the Hague-Visby Rules, and Article 552 of the MC).
- Excepted perils (Article IV, paragraph 2 of the Hague-Visby Rules, and Article 553 paragraph 1 of the MC).
- Any deviation made in saving or attempting to save life or property at sea, or any reasonable deviation (Article IV paragraph 4 of the Hague-Visby Rules, and Article 553 paragraph 1 of the MC).
- The shipper knowingly misstating the nature or value of the goods in the bill of lading (Article IV paragraph 5(h) of the Hague-Visby Rules, and Article 556 of the MC).

Additionally, under the MC, the carrier is not liable for any damage to and shortage or loss of cargo, or for any damage, owing to delay:

- if the carrier proves that the damage, shortage, loss or delay resulted from a cause which could not have been prevented or eliminated by exercising due diligence (Article 549 of the MC);
- if these were caused by actions or omissions of the ship's Master, crew and employees during navigation or "handling" of the ship (Article 550 of the MC); and
- if caused by fire, unless it is proven that the fire was caused by a "personal" act or omission of the carrier (Article 551 of the MC).

The carrier's limitation of liability for cargo damages under both the Hague-Visby Rules and the MC is 666.67 SDR per package or unit, or two units of account per kilogramme of gross weight of the goods lost or damaged (whichever is higher), unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading (Article IV, paragraph 5(a) of the Hague-Visby Rules, and Articles 563 and 564 of the MC).

The carrier is not entitled to limit liability if it is proven that the damage resulted from an act or omission of the carrier done with intent to cause damage, or done recklessly and with knowledge that damage would probably result (Article IV, paragraph 5(e) of the Hague-Visby Rules, and Article 566 of the MC).

It makes no difference whether the ship-owner is the "actual" or the "contractual" carrier. Neither the Hague-Visby Rules nor the MC make a distinction between the "actual" and "contractual" carrier. The Hamburg Rules make this distinction, but they have neither been ratified by Croatia nor transposed into the MC.

3.4 Misdeclaration of Cargo

The carrier can establish a claim against the shipper for misdeclaration of cargo (Article III, paragraph 5 of the Hague-Visby Rules, and Article 557 of the MC). However, there are no published judgments issued by the Croatian Supreme Court approving or denying such claims.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar for filing a claim for damaged or lost cargo in Croatia is one year counting from the date of delivery of the cargo, or from the date when the cargo should have been delivered (Arti-

cle III, paragraph 6 of the Hague-Visby Rules, and Article 673 of the MC).

The time limit can be extended if the parties so agree after the cause of action has arisen (Article III, paragraph 6 of the Hague-Visby Rules, and Article 673 of the MC). The MC additionally prescribes that the extension of the time limit must be agreed in writing; otherwise, the extension is null and void (Article 673, paragraphs 3 and 4 of the MC).

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

Croatia is a member state of the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, 10 May 1952) (hereinafter, the "Arrest Convention"). The MC and the Enforcement Act (Official Gazette No 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22), as subsidiary legislation, regulate security proceedings for the arrest of ships.

There is significant court practice that deals with various relevant issues regarding the arrest of ships. The MC applies if there is no direct applicability of the Arrest Convention. Only a few provisions differ between the MC and the Arrest Convention.

4.2 Maritime Liens

According to the MC, claims may be secured with a mortgage, pledge or other similar registered encumbrances on the ship according to the legislation of the ship's flag.

Statutory maritime liens as maritime privileges on the vessel are provided by the MC (Article 241, paragraph 1), which secures the claim against the owner, charterer or disponent of the ship; and even against the ship's employer (Article 241, paragraph 1, points 1 and 2) and against the ship's manager (Article 241, paragraph 1, point 2).

This includes the following:

- claims for wages and other amounts owed to the ship's captain, officers and other crew members in connection with their employment on the ship, including the costs of return travel and social insurance contributions paid on their behalf;
- claims for death or bodily injuries that occurred ashore or at sea in direct connection with the use of the ship;
- claims arising from salvage rewards for the rescue of the ship;
- claims for port charges, costs of navigating through canals and other waterways, and pilotage expenses; and
- claims based on tortious liability for pecuniary losses or damages caused by the use of the ship, excluding the loss or damage of cargo, containers and passenger belongings transported by the ship.

A maritime lien in favour of the principal also exists for interest, and extends to the ship's appurtenance.

Maritime Claims as Provided by Article 1 of the Arrest Convention

A ship can be arrested for maritime claims as provided by Article 1 of the Arrest Convention. Additionally, the ship can be arrested for maritime claims as provided by Article 953 of the domestic Maritime Act:

The temporary detention of a ship may be ordered only for claims arising from:

- damage caused by the collision of the ship for which the detention is sought, or damage caused by that ship in another way;
- death or bodily injury caused by the ship for which detention is sought, or arising in connection with the use of that ship;
- salvage;
- contracts for the use of the ship for which detention is sought;
- general average;
- towage;
- pilotage;
- supplies for the ship for which detention is sought, including goods, materials, provisions, fuel, equipment (eg, containers) or services, made for its maintenance, custody, utilisation or mooring;
- construction, modification, repair, equipment, renewal or docking of the ship for which detention is sought;
- crew rights based on employment;
- expenditures made by the captain, charterer, shipper or agent on behalf of the ship or its owner or ship-owner, in connection with the ship;
- brokerage commissions or agency fees owed in connection with the ship; and
- charges and fees for the use of ports, canals, docks and other navigable routes.

In addition to the cases specified in paragraph 1 of this article, the temporary detention of a ship may also be ordered to enforce maritime privileges or mortgages on the ship or similar means of security.

A ship can be arrested for maritime liens as maritime privileges (separately provided in the Maritime Act) and claims secured with a mortgage, pledge or other similar registered encumbrance on the ship. A ship can be arrested for the above claims if there is reciprocity between Croatia and the state of the flag (Article 953, paragraph 3 of the MC).

4.3 Liability in Personam for Owners or Demise Charterers

The general principle is that maritime liens do not cease with a change of ownership, registration or flag of the ship. Therefore, for maritime liens and registered encumbrances the ship can be arrested regardless of the owners' personal liability.

Maritime claims depend on the applicable law for the merits of the matter. The main principle of the MC with regards to the debtor and the arrested ship is that the arrested ship as an asset is the property of the debtor. In Croatia, there are no in rem proceedings – only ad personam proceedings. If foreign law that applies to the merits of the matter provides in rem liability, and the debt arose regarding the ship, the owners or demise charterers may be liable in persona. In this case, the opposing party in the application for arrest should be the debtor who is not the owner of the ship.

4.4 Unpaid Bunkers

A bunker supplier may arrest a vessel for unpaid bunkers, since the claim for unpaid bunkers is recognised as a maritime claim (Article 1 of the Ship Arrest Convention, and Article 953, paragraph 1, point 8 of the MC), notwithstanding the contractual or actual supplier.

The main principle of the MC regarding the debtor and the arrested ship is that the arrested ship as an asset is the property of the debtor (ad personam proceeding). However, if foreign law that applies to the merits of the matter provides in rem liability, and the debt arises regarding that particular ship, the Croatian courts might accept

arresting the ship for unpaid bunkers supplied to the chartered vessel.

According to the MC (Article 241, paragraph 1), claims for unpaid bunkers are not secured with a maritime lien. If the bunker supply is secured with a maritime lien by the law applicable to the merits of the matter, enforcement of that lien can be sought through arrest of the vessel for unpaid bunkers supplied to the chartered vessel.

The charterer is not considered to have the authority to bind the vessel by ordering necessaries or by any other means or acts, unless explicitly authorised by the owner.

4.5 Arresting a Vessel

The procedure for arrest is not complicated, and involves:

- the motion for arrest of the ship (with supporting evidence); and
- the judge ruling on the arrest order.

The parties may appeal against the arrest order. Power of attorney is required, but originals of documentation are not required (copies suffice). Documentation should be translated into Croatian, and a security deposit is not required. Court taxes should be paid, and depend on the value of the claim.

4.6 Arresting Bunkers and Freight

Arrest of bunkers is theoretically possible but in practice is very rare, as the applicant has to show as probable that the respondent is the owner of the bunkers (which is difficult). Arrest of freight is possible on the ship of the respondent (Article 946, paragraph 1, point 3 of the MC).

4.7 Sister-Ship Arrest

Arrest of a sister ship and ship in associated ownership is possible according to the MC (Article 954), although in such cases the MC slightly differs from the Arrest Convention.

4.8 Other Ways of Obtaining Attachment Orders

Pursuant to Article 963 of the MC, the security might be obtained as injunctions that prohibit the sale or otherwise disposal of the ship based on the EA, which is subsidiary to the MC.

4.9 Releasing an Arrested Vessel

Options available to release an arrested vessel include where:

- the applicant withdraws the motion for arrest;
- the applicant agrees to replacement security;
- the court accepts the replacement security deposited by the respondent; and
- the respondent's remedy is accepted and the arrest order is set aside.

In the first two cases, the court will issue the release order. In the latter two cases, the release order will be included in the court's decision on acceptance of replacement security or acceptance of the legal remedy.

P&I Club's Letters of Undertaking (LOUs) issued by IGP&I Clubs and/or foreign bank guarantees should be accepted as first-class security by case law. LOUs issued by other P&I Clubs are considered on a case-by-case basis. However, this is at the judge's discretion, and there have been cases where the court did not accept P&I Club LOUs as sufficient replacement security.

4.10 Procedure for the Judicial Sale of Arrested Ships

The procedure for the judicial sale of arrested ships is through enforcement proceedings. A motion should be filed with the court, ruling on the enforcement order by selling the ship. The next steps are:

- registration of the enforcement in the Ship Register;
- determining the value of the ship;
- selling the ship by public auction; and
- settlement of the creditors' claims from the proceeds of the sale (Article 853 of the MC).

The costs of the enforcement proceedings and maintenance of the ship and crew are borne in advance by the creditor. The court may order the creditor to advance the costs within the ordered time period; and if the creditor does not pay the advance, the court will discontinue the enforcement proceeding (Article 865 of the MC).

The priority of the claims is provided in Article 912 of the Maritime Act as follows:

- creditors with claims secured by statutory maritime lien (Article 171 and 840 of the MC);
- creditors whose claims are secured by maritime lien;
- creditors with the rights of retention;
- creditors whose claims are secured by mortgage on the ship; and
- other creditors.

Mortgage has priority position in relation to maritime claims.

4.11 Insolvency Laws Applied by Maritime Courts

The court may order arrest and judicial sale of a vessel against the company under restructuring or bankruptcy proceedings only in order to settle secured claims of secured creditors (Article 38 of the Bankruptcy Act).

4.12 Damages in the Event of Wrongful Arrest of a Vessel

In the case of a wrongful arrest, the ship's interests are entitled to claim indemnity from the applicant who wrongfully arrested the ship. The claim for indemnity should be placed in the same arrest proceeding if it is still in course. If the arrest proceedings have been discontinued, the claim should be placed in separate litigation proceedings.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

International conventions and domestic law applicable to the resolution of maritime passenger claims are as follows:

- Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents;
- Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterways; and
- the Convention on Limitation of Liability for Maritime Claims (London, November 1976) and Protocol 1996 (the LLMC 1976 and 1996 Protocol).

The MC applies only for carriage of passengers in national navigation by vessels that do not belong to Class A and B (defined by Regulation (EC) No 392/2009) based on the Athens Convention of 1974 (with the 2002 Protocol) and application of the doctrine of presumed liability (Article 612 of the MC).

Filing of the passenger claim is time-barred after a period of two years (Article 16 of Regulation (EC) No 392/2009).

For claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limitation of liability of the owners thereof shall be 175,000 units of account, multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate (Article 4, LLMC Protocol 1996).

Claims for indemnities for personal injury of passengers would be secured by a maritime lien (Article 241, paragraph 1 of the MC).

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

According to Croatian law, a bill of lading is not the contract, but rather the evidence of existence of the transportation contract. Consequently, bill-of-lading clauses regarding applicable law and jurisdiction are not recognised and are not enforceable.

6.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

Croatian courts recognise and enforce law and arbitration clauses from the charterparty incorporated into the bill of lading. It is not required for the bill of lading to refer to a particular charterparty that must be identified; it is sufficient for the reference to be very general. However, from the bill of lading information on the contracting parties, the ship, the voyage and/or cargo, and the respective clauses of the charterparty, it must be recognisable that they refer to one another.

Law and arbitration clauses may be agreed as separate agreements in any written form, including electronically (ie, not only as charterparty clauses). If a bill of lading refers to such law and arbitration clauses in a recognisable way, these clauses will be enforceable.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Croatia is a state party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The Arbitration Act (Official Gazette No 88/01) is the national legislation for recognition and enforcement of foreign arbitral awards.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Croatian courts will grant an arrest of the vessel or attachment notwithstanding the applicability of foreign law, arbitration or foreign court jurisdiction, based on the merits of the claim.

Arrest and attachments are measures for securing the claim. If measures for securing the claim are granted, litigation or arbitration on the merits of the claim must be initiated within 15 days to justify and maintain the measure for securing the claim. Otherwise, the measure for securing the claim will be lifted. Croatia is a state party to the 1952 Arrest Convention.

6.5 Domestic Arbitration Institutes

There is no domestic arbitration institute that specialises in maritime claims.

6.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

There is no special legal remedy available to the defendant when the litigation is initiated in breach of a foreign jurisdiction or arbitration clause. The defendant must object to non-jurisdiction of the domestic courts. The objection must be placed in the first defence in the preparatory stage of the trial, before the main hearing held in litigation. Breach of foreign jurisdiction or arbitration is a significant procedural omission and an appellate reason in remedy against the judgment.

7. Ship-Owner's Income Tax Relief

7.1 Ship-Owner's Income Tax Relief

The income of owners' companies incorporated in Croatia has enjoyed exemptions and relief in profit taxes for the profit earned by their vessels in international navigation since 2004.

From 2004 up to 2011, the MC prescribed a tax exemption for profits earned by owners' companies' vessels in international navigation. However, since the exemption was not in line with the EU Community Guidelines on State Aid to Maritime Transport, the 2011 amendments to the MC replaced the profit tax exemption with "tonnage tax".

"Tonnage tax" is regulated in Articles 429–429(i) of the MC. The taxpayer of the "tonnage tax" is a legal entity with its registered seat in Croatia or whose place of actual management and control of operations is in Croatia, provided that it meets the conditions prescribed by the MC and declares that it will pay tonnage tax instead of profit tax.

For the purposes of applying the "tonnage tax" to the tonnage used in international navigation, the "ship" is defined as:

- a ship registered in the Croatian Ship Registry, authorised to navigate outside Croatian internal waters and territorial sea for the purpose of conducting "marine navigation activities" (carriage of goods and passengers, and auxiliary activities), as well as for research and performing other services related to activities at sea; or
- a ship registered in a foreign ship registry.

Yachts, fishing vessels, and technical floating vessels are not considered "ships". Dredgers and tugs are considered "ships" if at least 50% of their activities are "marine navigation activities", and if they are registered in the Croatian Ship Registry or the ship registry of another EU or EEA member state.

All "ships" must meet the minimum statutory safety standards set forth in the MC. Also, a minimum number of Croatian or other EU or EEA member state cadets, determined by the yearly national plan, must be employed on the "ships" that are registered for "tonnage tax".

At all times, at least 60% of the tax obligor's fleet registered for "tonnage tax" must be registered in the Croatian Ship Registry, or in the ship registry of another EU or EEA member state.

The "tonnage tax" paid by the owner's company is directly related to the net tonnage the company utilises in international navigation, regardless of its actual income and expenses. The tax is calculated by applying the national profit tax rate to the assumed, virtual profit, determined based on a speculative profit rate considering the tonnage. In most cases, tax calculations are

based on brackets according to a sliding scale prescribed in Article 429(e) of the MC.

8. Implications of Non-performance, the IMO 2020, Trade Sanctions and the War in Ukraine

8.1 Non-performance of a Shipping Contract

Generally, non-performance of a shipping contract due to the implications of the COVID-19 pandemic may be considered as force majeure in Croatia, depending on the circumstances of each case.

Under Croatian law, force majeure is defined as an external, extraordinary and unforeseeable circumstance that occurred after the conclusion of the contract, which the parties could not prevent, eliminate or avoid (Article 343 of the Civil Obligations Act, Official Gazette No 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23; hereinafter, COA).

Thus, depending on the circumstances, if the pandemic in general or the states' restrictive measures – which caused late delivery, non-arrival of a chartered vessel, slow ratio of loading or discharging, etc – occurred after the conclusion of the contract, were extraordinary and unforeseeable, and the parties could not prevent, eliminate or avoid them, they may be considered as force majeure and the parties could seek relief.

Regarding relief, the MC prescribes that when the performance of the contract is permanently prevented by force majeure, the contract ceases to be valid (Article 454, paragraph 1 of the MC). However, if force majeure only prevents the performance of the contract for an extended period, or if it is uncertain how long such force majeure will last, each party has the right to terminate the contract, provided that the hindrance has persisted for too long or is expected to persist for too long (Article 455, paragraphs 2 and 3 of the MC).

Also, notwithstanding the above, each party has the right to terminate the contract when the safety of the ship, crew or cargo could be jeopardised due to force majeure (Article 453, paragraph 4 of the MC).

In the case of cessation or termination of the contract, the carrier only has the right to claim the costs associated with the discharge of the cargo. If, however, the ship has already sailed from the port of loading, the carrier also has the right to claim partial freight proportionate to the "useful distance travelled". Neither party has the right to place any other claim (Article 454 of the MC).

There are still no published judgments of the Croatian Supreme Court dealing with matters relating to the non-performance of contractual obligations from shipping contracts owing to the pandemic.

8.2 Enforcement of the IMO 2020 Rule Relating to Limitation on the Sulphur Content of Fuel Oil

Croatia, as a state party of MARPOL, has implemented the "IMO 2020", limiting the sulphur content of fuel oil used on board ships.

The authorities responsible for the enforcement of the sulphur content limitation are the Harbour Master's Offices (HMOs), each in the port under their jurisdiction.

The sulphur content of fuel oil used by vessels when calling at ports in Croatia and when navigating Croatian territorial waters is generally within the prescribed limits, though infringements have occurred.

The HMO regularly conducts enforcement actions to enforce the sulphur content limitation, since sulphur content checks are a standard part of ship inspections performed by the HMO. If the HMO finds that the sulphur content is not within limits, it will rule on a misdemeanour order imposing a monetary fine, and will usually detain the vessel. The misdemeanour order may be appealed before the competent administrative court, but the appeal does not delay the enforcement of the misdemeanour order.

8.3 Trade Sanctions

Croatia recognises UN, US and EU international trade sanctions as part of its domestic law. These sanctions are enforced in Croatia through the operation of the new Restrictive Measures Act (Official Gazette No 133/23), which entered into force on 15 November 2023. The Restrictive Measures Act replaced the earlier International Restrictive Measures Act (Official Gazette No 139/08, 41/14, 63/19), which required amendments because of the increasing number and complexity of applicable international trade sanctions.

Croatia has and will continue to co-operate with the enforcement of all trade sanctions, and there are no mechanisms within the Croatian legal system which would authorise trade activities otherwise outlawed by sanctions.

In Croatia, the trade sanctions-related impacts of the Russia-Ukraine war have been most noticeable in the energy sector. Owing to the energy crisis, and with its FLNG terminal in Omisalj on the island of krk, Croatia has become geopolitically and strategically significant (especially to Central and South-Eastern European countries) for the supply of both LNG and gas. As a result, in 2022 the Croatian government made strategic decisions to increase the capacities of both the terminal and the Omisalj-Zlobin pipeline.

As far as the authors are aware, no entities have been sanctioned in Croatia by any trade sanctions, and no legal proceedings have been conducted in this regard.

8.4 The War in Ukraine

Legal and commercial implications of the war in Ukraine on maritime law and trade (such as frustration of shipping and carriage contracts, late or non-delivery of goods, deterioration of goods, constructive total loss, etc) have not been a particular issue in Croatia. Consequently, there is no published jurisprudence of the Croatian courts dealing with the non-performance of obligations owing to the war in Ukraine.

The most widely reported and noticeable legal implication of the war in Ukraine on maritime law in Croatia has been the issue of detention of yachts allegedly owned by sanctioned individuals. The yachts were detained as part of a sweeping action that involved freezing the assets of sanctioned individuals in the EU and the USA. Five yachts in total were detained by the HMO and the events were covered extensively in the media, since some of the yachts were allegedly owned by well-known Russian oligarchs.

So far, the first instance-courts have upheld the detention orders issued by the HMO, and it will likely be years before the higher courts rule on the appeals – which is significantly slower than in other EU countries where similar assets have been frozen (eg, France, Spain and Italy, where

the courts issued their final decisions in a matter of months).

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

In recent years, the Croatian Adriatic Sea became one of the most famous yachting destinations in Europe. Croatia has the world's largest yacht charter fleet with almost 5,000 yachts registered for chartering.

The recent amendments of the MC introduced two new chapters on contracts that apply only to yachts. The first concerns the yacht chartering agreement, and the other concerns the nautical mooring agreement. Regulations of these two specific agreements refer to contractual and in-tort liability between the contractual parties, and to the liability of the injuring party to the injured third parties.

Further regulations were passed to make a distinction between commercial yacht chartering and non-commercial owners' yachting. The first is a rather touristic commercial activity, while the latter is non-commercial, for the owners' own pleasure.

The mooring agreement regulates the activities of marinas as specific ports for a specific purpose. Standard port legislation is improper and unsuitable for marinas as specific ports.

An increased number of casualties caused by or to chartered and moored yachts shows that existing maritime and shipping legislation is not applicable in the case of such casualties, and that different specific regulation for yachts is needed.

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