The Legal 500 Country Comparative Guides

Colombia: Shipping

This country-specific Q&A provides an overview of shipping laws and regulations applicable in Colombia.

For a full list of jurisdictional Q&As visit here
1. **What system of port state control applies in your jurisdiction? What are their powers?**

   Port State control is exercised in the country as per regular IMO parameters and having regard to the so-called “Latin American Agreement on Control of Ships by Port State”, also known as the “1992 Viña del Mar Agreement”. As per this agreement Colombian authorities exercise an effective inspection system (through supervisor officers in each port) in order to guarantee that foreign vessels visiting national terminals fully comply with basic pre-established conditions.

2. **Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?**

   There are no Conventions ratified in the country regarding wreck removal. On the other hand, regarding pollution it should be said that Colombia has in force both the CLC and Fund Conventions (1992 protocols). It should be noted that the Draft Colombian Maritime Code has included provisions dealing with both removal of wrecks and marine pollution. In particular regarding pollution, the document has aimed as to make operational at the domestic level basic aspects of the ratified Conventions in force on the subject (ie. Regarding determination of damages, exclusions and limitation of liability, etc).

3. **Are there any applicable international conventions covering collision and salvage? If not what laws apply?**

   Colombia has not yet ratified the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (Brussels Convention 1910). However, the Country did ratify the COLREG Convention 1972 (implemented locally by means of Law 13 of 1981). On the other hand, the country has not ratified the International Convention On Salvage (1989) but we do have some provisions - to a certain extent - inspired in the international instrument in the Commercial Code (Arts. 1545 – 1554). It is also worth mentioning that the Draft Maritime Code has also incorporated some provisions regarding salvage.

4. **Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?**

   The country has not ratified the 1976 Limitation Convention. In fact, there is no provision in place at a local level that somehow emulates the parameters set forth in the Convention. Only article 1481 of the Commercial Code currently provides that the shipowner could limit his liability in certain events up to the value of the vessel, her accessories and the respective freight.

   The Draft Maritime Code (which discussion is currently being promoted by the National Maritime Authority) aims to incorporate in its current version the basic provisions (i.e. limits)
of the 1976 Convention (as amended by the 1996 protocol).

5. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Colombia has not ratified neither the 1952 Arrest Convention nor the 1999 instrument on the subject. However, there is in force a regional instrument (which in many aspects mirrors the 1999 Convention), known as Decision 487 of 1999. For an arrest to be effected under the Decision a “maritime claim” should be involved (art. 1 of Decision 487). Decision 487 clearly establishes that an arrest could be effected in a given member country regardless of whether the merits of the claim are pursued in a different jurisdiction/the arbitration tribunal has its seat in a different country (Arts. 51, 52 and 53).

6. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

Since the arrest is to be carried out in our jurisdiction by a Civil Court, usual Court formalities should be observed. That in practice would imply that an original power of attorney is usually needed to submit the arrest petition before any local Court.

7. What maritime liens are recognised?

Art. 21 of Decision 487 incorporates the concept of maritime liens to this regional regulation (Decision 487) and it points out that – in a similar manner that in other jurisdictions – such privileges follow the vessel even if she changes owner, register or flag, except for the case of a judicial (forced) sale of the ship.

As per Art. 22 of Decision 487 some claims are guaranteed with a maritime lien including crew wages, death compensation or bodily injury (when such event is directly related to the exploitation of the vessel), salvage rewards, port / channel and/or other navigational water charges/duties, tort claims arising out of the exploitation of the ship (different from damage to or loss of cargo and/or luggage onboard the vessel).

8. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?
The general rule under Art. 41 of Decision 487 is that an arrest could proceed: i) against a ship in respect of what a claim is alleged if the person who was the owner of the vessel at the time the credit arises is obliged as a consequence of said credit, and whenever he is the owner of the ship in the moment in which the arrest is effected (Art. 41.a); or ii) if the bareboat charterer at the moment in which the credit arises is obliged in virtue of such credit and it is the bareboat charterer or owner of the ship when the arrest is effected (Art. 41.b). Apart from these situations the arrest would proceed in any case if the credit is based in a mortgage or other liens of such nature (Art. 41.c), or if the credit refers to the property or possession of the ship (Art. 41.d). Lastly the arrest could proceed if the credit is against the owner, bareboat charterer, manager or carrier and it is guaranteed with a maritime lien in accordance with Art. 22.

Art. 43 of Decision 487 further pointed out that, despite what is mentioned in Art. 41 and 42, an arrest of a ship that is not owned by the person presumably obliged in virtue of such credit would only be admissible if in accordance with local law of the member country in which the arrest is requested, it is possible to execute against said ship a judicial decision in relation to such credit through its judicial or forced sale.

9. Are sister ship or associated ship arrests possible?

As per Art. 22 of Decision 487 an arrest could proceed against any other ship (or ships) that, when the arrest is effected, are owned by the person that is personally obliged in virtue of such credit and that, at the moment the credit arises, was: i) the owner of the vessel in respect of which the credit arose; ii) bareboat charterer, time charterer or voyage charterer of said ship. Said provision is not to be applicable to credits regarding the property or possession of the ship.

10. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

As per Art. 50 of Decision 487 the Tribunal could request a guarantee to be provided as a condition to provide the arrest order. The type, amount and conditions of such warranty are to be determined by the Tribunal on a case-by-case basis to secure any damages/losses that could be suffered by the respondent as a consequence of the arrest being, among others, a) illegal or not justified; b) as a consequence of the situation in which an excessive guarantee is being requested.

11. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

Parties could agreed in the type and nature of the guarantee that should be put forward in order to lift the arrest. As per Art. 45, if there is not such an agreement between the parties, the Tribunal will determine the nature and amount of the warranty, which in any case should
not exceed the value of the arrested ship.

12. **Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

There is no specific procedure for the purpose at the domestic level. However, Decision 487 establishes that before a forced execution of a ship is to be effected the judge will order to notify: i) the competent authority of the flag state; ii) the person appearing as the registered owner of the ship; iii) all the beneficiaries of mortgages and other registered liens; iii) all other persons having maritime privileges described in Art. 22 of Decision 487. Art. 30 of the Decision further establishes what the notification should contain. Additionally, Art. 31 clarifies that as a consequence of the forced execution of a ship all mortgages and other registered liens, as well as any maritime privileges (and any other charges of any type on the ship) will have no effect provided that i) in the moment of the execution the ship is within the jurisdiction of the respective member country; and ii) the forced execution has been made in accordance with the parameters set forth in the Decision.

13. **Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

Under a bill of lading (as the document evidencing the person who undertakes to carry the goods as a consequence of a contract of carriage entered into by him with the shipper) the carrier identified in the document (ie. Contractual carrier) is usually the person that would be considered eventually liable under the contract of carriage. Thus, the “carrier” is usually identified as the person on whose authority the master signs the bill of lading.

14. **Is the proper law of the bill of lading relevant? If so, how is it determined?**

There is an ongoing debate about validity of paramount/choice of law clauses. Although there is academic literature supporting the view that such clauses are to be deemed valid in Colombia, there is no case law yet supporting said position at the local level. In that regard it should also be noted that although some domestic laws expressly open up the possibility to the recognition of the validity of such clauses in the country (ie. Art. 101 of Law 1563 of 2012, regarding national and international arbitral proceedings, which clarifies that the Tribunal is to decide in accordance with the law selected by the parties) according to Art. 869 of the Commercial Code the execution of contracts entered into abroad that should be fulfilled in the country will be subject to Colombian law.

15. **Are jurisdiction clauses recognised and enforced?**

It is debatable whether said clauses are valid in Colombia. Local judges have in certain cases disregarded such clauses using arguments of local procedural law in order to recognise their competence to provide a decision on the case at hand.
16. **What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

   There is no case law at the moment in this specific regard. The likely is that an arbitration clause in a bill of lading could be recognised as valid under local law parameters. In our view, this would be decided in a case-by-case basis.

17. **Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

   Colombia has not properly ratified any of the existing conventions regarding carriage of goods by sea. The Commercial Code however has - to a certain extend - tried to incorporate some of the parameters brought by the Hague / Hague - Visby scheme. However, certain key features (such as limitation of liability of the carrier) do not work in the same way (ie. lower limits could be allowed) as they do under the Conventions.

18. **Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

   Colombia is a party to the New York Convention. Local procedural law has been changed and the relatively recent General Procedural Code has clarified now that grounds to resist enforcement are - at the domestic level - exactly the same as provided in the Convention.

19. **Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

   More relevant time limits for commencing suit in Colombia are as follows: as per Art. 8 of Law 791 of 2002, executive actions will be time barred in 5 years and ordinary actions in 10 years. Claims related to contracts for the carriage of goods by land and/or sea (2 years).