

THE SHIPPING LAW  
REVIEW

TENTH EDITION

**Editors**

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# PREFACE

The aim of the tenth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry, including international trade sanctions, ocean logistics, offshore, piracy, shipbuilding, ports and terminals, marine insurance, environmental and regulatory issues, decommissioning and ship finance.

We have invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

Each of these jurisdictional chapters gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered, as are the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims.

In addition, the authors address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included. The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are also examined. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction in the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development estimating that the operation of merchant ships contributes about US\$380 billion in freight rates to the global economy, amounting to about 5 per cent of global trade overall. The significance of maritime logistics in facilitating trade and development has become increasingly apparent in the past year. Heightened and unstable freight rates, port closures, congestion and evolving shipping requirements as a result of covid-19 and the Ukraine conflict have all had far reaching effects beyond the shipping sector itself. As the international shipping industry is responsible for the carriage of over 80 per cent of world trade, with over 50,000 merchant ships trading internationally, the elevated shipping expenses and challenges to global logistics we have experienced this year have exacerbated inflation and supply chain disruptions, adding to the ongoing global crisis and hampering the maritime industry's covid-19 recovery. We have seen

global maritime trade, which plunged by approximately 4 per cent in 2020, recover at an estimated rate of 3.2 per cent. In 2021, shipments reached 11 billion tonnes, a value slightly below pre-pandemic levels.

The disruption caused by the pandemic and the war in Ukraine have brought to the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself, and the contributions to this book continue to reflect that.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

**Andrew Chamberlain, Holly Colaço and Richard Neylon**

HFW

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# ECUADOR

*Leonidas Villagran*<sup>1</sup>

## I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The shipping industry in Ecuador is relatively small. A United Nations Conference on Trade and Development report from 20 October 2022 mentions that the fleet flying the national flag consists of 145 ships (100 gross tonnage (GT) and above). This fleet has a capacity of 307,000 deadweight tonnage (DWT). Fleet ownership is 557,000 DWT (1,000 GT and above).<sup>2</sup>

Fishing is carried out using 546 considered industrial fishing vessels.<sup>3</sup> The main product is tuna fish. Fisheries exports in 2022 were US\$1,914.026 of which tuna fish was US\$1,270.943, which is more than 6 per cent of total exports.<sup>4</sup> Artisanal fishing is carried out using around 60,000 ships with 180,000 fishers.

## II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Ecuador is a civil law country that is traditionally based on statute. The exception is regarding the capacity of the Constitutional Court to issue jurisprudence that is generally binding, according to the Constitution and the duty of the National Court to generate binding rules of jurisprudence for repeated and similar judgments or for incomplete or unclear legislation in determined matters.

As a tradition, maritime commerce in Ecuador has been regulated according to provisions included in the Code of Commerce. Conversely, maritime law related to state control is based on the new Navigation Act 2021 that has replaced the Code of Maritime Police. Both of these are complemented by several international conventions to which Ecuador is a party.

The Code of Commerce of Ecuador was traditionally inspired by the Napoleonic Code of Commerce but is also derived from the first Spanish Code. The first Code of Ecuador was enacted in the 19th century followed by two more codes, but its text regarding maritime commerce was maintained almost intact until 2019 with the enactment of a new Code of Commerce.

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1 Leonidas Villagran is a senior partner at Villagran Lara. Special appreciation to Evelyn Garcia, who is an associate at Villagran Lara, for her assistance.

2 <https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/218/index.html>.

3 [https://srp.produccion.gob.ec/registro-nacional-de-embarcaciones/registro-de-embarcaciones-pesqueras-industriales/?tex\\_tipo\\_embarcacion=industrial&pageNumber=46](https://srp.produccion.gob.ec/registro-nacional-de-embarcaciones/registro-de-embarcaciones-pesqueras-industriales/?tex_tipo_embarcacion=industrial&pageNumber=46).

4 <https://camaradespesqueria.ec/wp-content/uploads/2023/02/EXPORTACIONES-PESQUERAS-DIC-2022.pdf>.

The Commercial Code 2019 makes fundamental changes to maritime law and updates the regulations according to current universal doctrines; for example, incorporating the international doctrine on collision contained in the Brussels Collision Convention 1910. Ecuador is not a party to this Convention but has introduced its rules into its domestic legislation

As regards state control, the Navigation Act was approved in 2021 and replaces the Code of Maritime Police (originating from 1945). The main changes are the recognition of the Ecuador Navy as the maritime authority and an increase in the amount of fines for maritime infractions. The Navigation Act submits several of its provisions to a regulation that has to be enacted by the President. This is still pending and under internal discussion.

### **International sources of law**

From 2012, Ecuador has been a party to the United Nations Convention on the Laws of the Sea (UNCLOS 1982). As regards the four pillars of maritime law regulatory regime, Ecuador is party to the International Convention for the Safety of Life at Sea (SOLAS 1974, as amended), and also to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978).

Furthermore, it is involved in the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) to the following:

- a* Annex I (oil and oily waters);
- b* Annex II (noxious liquid substances carried in bulk by tankers);
- c* Annex III (harmful substances carried by sea in packaged form);
- d* Annex IV (sewage from ships); and
- e* Annex V (garbage from ships).

Ecuador is not party to Annex VI (air pollution by ships).

Maritime Labour Convention (MLC 96) was approved in 2022 by the legislature. The Convention is pending the approval of the President.

As regards maritime commerce, Ecuador is party to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading and the Brussels amendments (the Hague-Visby Rules). Multimodal transportation (including transportation by sea) related to transportation to or from the Andean Countries is regulated under Decisions 331 and 393 of the Andean Community.

In respect of the law of collision, Ecuador adhered to the International Regulations for Preventing Collisions at Sea 1972, but not to the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (the Brussels Collision Convention 1910). Nevertheless, the Code of Commerce 2019 is in line with the principles of the Brussels Collision Convention 1910.

Regarding the arrest of ships and maritime liens, Ecuador is party to the International Convention on Arrest of Ships 1999, the International Convention on Maritime Liens and Mortgages 1993 and the Maritime Liens and Arrest of Ships Regulations 487 and 532 by the Andean Community.

Additionally, Ecuador is party to the International Convention on Salvage 1989. The Code of Commerce 2019 is in line with the principles of this Convention.



### III FORUM AND JURISDICTION

#### i Courts

Currently, Ecuador does not have maritime courts. Transportation of goods via sea is considered a commercial activity. Therefore, any lawsuits that involve claims regarding maritime transportation are to be heard by a civil and commercial judge. This is the same for claims in delict.

Moreover, claims regarding labour relations are to be heard by labour judges. In a marine incident involving death, injury to crew or third parties, or pollution, a prosecutor may intervene to determine potential felonies.

In relation to civil and labour claims, the procedure in court is to be followed according to the General Organic Procedure Code 2016. This Code stipulates that, as a general rule, the plaintiff needs to present his or her evidence to the court. This rule provides exceptions to allow the plaintiff to present either evidence that has been contested by the defendant or new evidence, the existence of which he or she was not aware.

According to the Code of Commerce 2019, if a lawsuit is filed against a shipowner whose domicile is outside Ecuador, it is possible to execute the service through his or her agent.

Prescription terms may apply in the following circumstances:

- a* environmental damages: there is no prescription term. There is a rule in the Ecuador Constitution that states that there is no time bar – no prescription – for actions regarding pollution;
- b* payment of freight or demurrage: the prescription term is one year;
- c* declaration of general average: the term is six months;
- d* recovery of general average contribution: the term is one year;
- e* cargo claims under a bill of lading (BL): the prescription term is one year, which is in line with the Hague Visby Rules;
- f* collision: the prescription time is two years. However, if the ship could not be detained or sued while in national waters, the term is three years. This is in line with the Brussels Collision Convention 1910;
- g* claims for damages in delict by non-passengers (injury, death and damage to property), the term is four years, according to the general rules of prescription in the Civil Code; and
- h* cargo claims in international multimodal transportation to or from a port member of the Andean Community: the prescription term is nine months.

According to procedural law, the general rule is that the interruption of prescription is when the complaint has been served. There is an exception to this rule meaning that if the lawsuit is effectively served at least six months from the date of its filing, the prescription term is interrupted from the moment the complaint was filed.

The Code of Commerce states that prescription terms for merchants must be counted from the date on which those actions or rights are able to be enforced. This appears to be related to the *dies a quo* principle.

A prescription term can be suspended if the person who is to benefit from that term provides his or her consent. Courts are not allowed to extend prescription limits.

Terms of extinctive prescription are suspended in favour of minors (under 18), as stated in Articles 2420 and 2409 of the Civil Code, according to the doctrine of *contra non valentem*. This may not be usual in cargo claims but is very common for death-related claims.

Finally, according to a regulation related to the Mediation and Arbitration Act, the filing of a mediation request interrupts prescription. Terms are to be counted again when the mediation process ends.

## **ii Arbitration and ADR**

There are several arbitration and mediation centres primarily under the auspices of the Commercial Chambers. Nevertheless, maritime cases in local arbitration are rare.

Parties are allowed to agree arbitration instead of ordinary courts. A clause containing the agreement can be inserted into the original contract or arbitration can be agreed upon when the dispute is raised. Normally, the parties agree which arbitration centre will hear the case.

Government entities are allowed to submit their differences to international arbitration but with the previous authorisation of the Attorney General's Office.

## **iii Enforcement of foreign judgments and arbitral awards**

The procedure of recognition of foreign judgments is stated in the General Code of Procedure. The process of recognition or homologation is carried out by a panel of judges. This panel has to verify compliance with external formalities, so as to confirm that the decision is final and that the serving of process has been fulfilled.

The process includes the notification to the defendant who is able to file an opposition in five days. After all considerations have been made, the judges issue their final decision.

Regarding foreign arbitral awards, the Mediation and Arbitration Act states that the execution of international awards is to be the same as local arbitral awards, meaning that authority rests on a civil judge of the domicile of the defendants or where the goods are located.

A decree by the President regarding a regulation of the Mediation and Arbitration Act confirms that the enforcement of an international arbitration award does not require homologation. A certified copy of the award is the only requirement. Nevertheless, according to Ecuadorian law, the decision may be required to be duly legalised or apostilled.

The defendants are able to oppose the petition if it provides evidence of compliance of claimed obligation, the suspension of the award or any declaration that the award is void.

Additionally, Ecuador is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

# **IV SHIPPING CONTRACTS**

## **i Shipbuilding**

Shipbuilding contracts can be considered to be service agreements or sale agreements depending on which party has to provide the main documents. If those documents are provided by the party that orders the work, then the title of the vessel in construction belongs to the shipowner.

In contrast, if the documents are provided by the shipbuilder, then the legal relation is to be considered as a contract of sale. Moreover, in a contract of sale, title passes to the buyer when the public deed is executed, normally before a notary public and registered before the harbour master. Notably, registration is mandatory and is evidence of the transfer of property of vessels.

It is possible for parties in a shipbuilding contract to decide when the title will be transferred but the transfer always needs to be executed by public deed. The exception to this rule is related to vessels with no more than 10 gross registered tonnes (GRT); in this case, it is only necessary to have the signatures legalised.

The entity that pays in advance for shipbuilding purposes may request a guarantee issued by a financial institution to assure a refund of payments. Therefore, the financial institution will issue a guarantee in the form of a letter of credit or guarantee of contractual compliance. Notably, the wording of the guarantee takes supreme importance.

In that sense, it is recommended that the guarantee to be provided is unconditional, contemplates automatic renovation at the sole request of the beneficiary and with the commitment of immediate payment upon declaration by the beneficiary of non-compliance by the shipbuilder.

If the shipbuilder has not delivered the vessel according to the terms of the contract, the buyer is able to file a claim requesting termination of the contract or compliance with the agreement, with compensation of damages.

Additionally, the builder holds a lien against the subject vessel for non-compliance of payments by the buyer in relation to the contract.

## **ii Contracts of carriage**

The Code of Commerce 2019 is the key legislation regarding contracts of carriage. Furthermore, Ecuador is party to the Hague-Visby Rules but not party to the SDR Protocol. Owing to Ecuador membership in the Andean Community, multimodal transportation is under the Community rules. This rule is valid for all transportation from or to member countries.

The Code of Commerce 2019 states that all contracts of carriage related to cargo are to be subject to its provisions, regardless of the nationality of the ship, the carriers and the shipper or consignee, if:

- a* the port for loading or unloading is situated in Ecuador;
- b* the BL or any other document that provides evidence of the contract of carriage states that it is subject to Ecuadorian law; and
- c* one of the unloading ports stated in the contract of carriage is the effective unloading port and is situated inside Ecuador.

Notably, charter parties are not under this regulation. However, when a BL is issued in compliance of a charter party then the regulations will be applied to that BL if it regulates the relationship between the carrier and the holder of the BL who is not the charterer.

Cabotage is reserved only for vessels that fly the Ecuadorian flag. Nevertheless, foreign vessels are allowed to be considered as Ecuadorians if they are brought under a bareboat charter. Ecuadorian law allows for bareboat charter registration. This provides special benefits for the charterer that includes the possibility of operating with the Ecuadorian flag, cabotage and tax exemptions. The general rule is that the vessel must comply by having at least 70 per cent of the crew as locals, and other obligations of a national vessel. According to a regulation on safe manning, the master is allowed to be a foreign national.

Regarding the transportation of hydrocarbons, there is a provision in the law that states that this is only reserved to Ecuadorian-owned corporations or to those conjoined by the state with a participation of at least 51 per cent. Currently, the transportation of hydrocarbons is conducted through the state-owned corporation FLOPEC.

### **iii Cargo claims**

The general rule is that the lawful holder of the BL has title to sue. However, other cargo interests are able to file lawsuits in delict for any alleged damages. Notably, insurers are able to exercise subrogation actions.

Regarding demise clauses, the Code of Commerce 2019 includes a provision in Article 1019 stating that the carrier executing the BL is liable. It is possible to agree that a performing carrier will take care of the transport and that the liability is imposed on the performing carrier. Nevertheless, such a provision is ambiguous.

Generally, liability can be determined by way of statute or the contract. For example, if cargo damage is a result of defective stowage in the vessel then the Code of Commerce 2019 would be invoked owing to the provision that assigns the master as responsible for supervising proper stowage.

Additionally, regarding contracts of carriage by sea, the Code of Commerce 2019 recognises that parties are able to opt for arbitration by means of a previous agreement. If this is not the case, the Code provides specific rules of jurisdiction, which state that the tribunals that have the authority to decide are as follows:

- a* those that have the main business or residency as the defendant;
- b* those that are in the place of execution of the contract if this is the place where the defendant has an office, branch or agency;
- c* those that are in the same the place of loading or unloading of the subject cargo; and
- d* those that are designated in any other place as stated in the contract of carriage by sea.

Moreover, the action is able to be initiated before the judges of the Ecuadorian port in which the ship or a sister ship was arrested.

### **iv Limitation of liability**

Ecuador is not party to the Convention on Limitation of Liability for Maritime Claims 1976. The Code of Commerce 2019 includes provisions regarding the limitation of liability for carriers; however, these provisions only rely on Andean Community law and international conventions to which Ecuador is party. Currently, there is no community regulation, with the exception of specific limitations determined for multimodal transportation.

Regarding international conventions that include specific regimes for limitation of liabilities, Ecuador is party to the Hague-Visby Rules and the International Convention on Civil Liability for Oil Pollution Damage 1992.

Regarding death or permanent incapacity to passengers, the Code of Commerce 2019 states a compensation of US\$45,000. Furthermore, for injuries, the value of compensation is to be determined but with the same maximum amount; however, affected passengers are still able to initiate legal actions to be compensated according to what they consider appropriate.

Moreover, there is a general rule that limitation of liability is not to be invoked when the loss is as a result of malice or with knowledge that such damage would probably result.

## **V REMEDIES**

### **i Ship arrest**

Ecuador is party to the Arrest Convention 1999. Furthermore, Decision No. 487 of the Andean Community regulates arrest in line with this Convention.

A request to arrest a ship must be based on a maritime claim. For a definition of what a maritime claim is the Code of Commerce submits to community law and international conventions to which Ecuador is party. Therefore, the International Convention on Arrest of Ships 1999 and the Andean Community Decision No. 487 are to be applied. Both are similar in terms of provisions regarding the arrest of ships.

Sister ships can be arrested in Ecuador. In contrast, Ecuadorian law does not provide this possibility for associated ships.

Filing of an arrest petition requires evidence of representation of the party asking for the arrest. This means original or certified copy of a power of attorney duly translated when applicable and legalised or apostilled if it is issued in a foreign country.

## **ii Court orders for sale of a vessel**

The judicial sale of a vessel can be requested upon a final judgment and also as an execution of a mortgage due to non-payment. Once the petition is filed, the vessel has to be officially seized and the seizure needs to be registered in the harbour master's office.

Therefore, the judge will require the vessel to be appraised by a judicial expert. Parties are able to challenge the appraisal report in a hearing. After this, the judge decides the date for the auction, which is to be conducted via the official website of the judiciary.

Once offers have been submitted, the judge will call for a hearing to determine the best offer to be awarded. The judge will provide his decision which will be considered as a title to be registered in the harbour master's office.

A judicial sale of a vessel in a foreign jurisdiction would be recognised by maritime authorities but a previous homologation will be needed before the Ecuador judiciary.

## **VI REGULATION**

### **i Safety**

Regarding the safety regime, Ecuador is party to the SOLAS Convention. Currently, the control of compliance with the Convention is under DIRNEA, an agency of the Ecuador army, as maritime authority.

The Navigation Act 2021 has the objective of guaranteeing safety in navigation. The Act includes the creation of the National Maritime Organisation, composed of several ministries presided over by the Minister of Defence. One of its main duties concerns safety. Therefore, it is expected that further regulations will set up a clear safety regime for the maritime sector.

### **ii Port state control**

The Ecuador Navigation Act 2021 provides full authority regarding coastal, flag and port state control to the Navy and its agency – DIRNEA.

Ecuador is party to the Latin American Agreement on Port State Control of Vessels, also known as the Viña del Mar Agreement.

A vessel can be detained as a result of a port state control inspection. Inspections are usually based on documents and certifications to verify the normal condition of the ship, her equipment and crew. The maritime authority is able to execute specific inspections on site.

### **iii Registration and classification**

Any person or entity is able to own and register a vessel as long as they have full capacity to act or to be represented. Furthermore, shipbuilding contracts can be registered. Registration is to be done before the harbour master's office.

For the registration of vessels built outside Ecuador, the interested party needs to file a petition, providing evidence of ownership, classification documents and proof that the previous vessel registration was cancelled. In addition, documents that accredit that the ship was cleared in customs are required.

If the vessel is built in Ecuador and this is the first registration, then the interested party needs to provide evidence that the construction plans were approved by the DIRNEA along with classification documents and ownership evidence.

According to several regulations, certifications by classification societies that are members of the International Association of Classification Societies (IACS) are accepted in Ecuador. Moreover, any other IACS non-member classification society needs to be registered before the National Maritime Authority.

Under general principles of Ecuador's civil law, a classification society can be held liable; for example, if a certification has been issued by negligent actions or omissions.

### **iv Environmental regulation**

The Constitution of Ecuador states the following basic pillars regarding pollution liability:

- a* strict liability; and
- b* no time bar for claims and enforcement related to pollution damages.

Moreover, Ecuador is party to the CLC Convention, and therefore there is direct action against liability insurers regarding sea pollution-related claims but also to the limitation of liability as stated in the CLC Convention.

The Environmental Code 2017 and several related regulations state the procedure in cases of marine pollution. Therefore, if pollution comes from a ship or a maritime terminal, the environmental authority has to be immediately notified and an urgent response plan needs to be implemented or produced with verification of the damages. Lack of notification or compliance entitles the environmental authority to impose huge fines. Remediation and compensation for damages are mandatory.

Pollution incidents in the sea are monitored by the maritime authority through DIRNEA. In a pollution incident, the Ministry of Environment may file a denouncement before the prosecutor to determine potential felonies. Moreover, the prosecutor is able to open an investigation even without a denouncement.

Therefore, the prosecutor may investigate potential felonies. Related felonies appear in the Penal Integral Code and include:

- a* pollution in the seas, with a penalty of imprisonment from three to five years (Article 251);
- b* air pollution, with a penalty of one to three years (Article 253); and
- c* criminal liability of entities, with these penalties according to the infringement: fines from US\$45,000 to US\$225,000, temporal closure and remediation of environmental damages (Article 258).

## **v Collisions, salvage and wrecks**

### ***Collisions***

Ecuador is not party to the Brussels Collision Convention 1910 but most of its principles have been introduced in the new Code of Commerce 2019 regarding apportionment of liabilities according to the degree of fault, time bar (prescription) and the non-existence of legal presumptions of fault, valid also for internal waters.

### ***Salvage***

There is no mandatory local form of salvage agreement, but the Lloyd's standard form is normally used for international vessels. For some incidents involving towage services, confusion may arise if the service is merely a towage service or a salvage operation, thus involving discussions on the amount of fees. Certain towage services have specific rates determined by port authorities.

Salvage operations are regulated under the Navigation Act 2021 and the Code of Commerce 2019.

The Navigation Act states that no salvage operation has to be exercised without the consent of the master or shipowner according to the principles of international maritime law. Furthermore, operation that is related to salvage needs to be authorised by the harbour master and failure to comply is a breach of the law that would result in a fine.

The Code of Commerce 2019 regulations are basically under the principles and rules of the International Convention on Salvage 1989.

### ***Wreck removal***

Wreck removal orders are primarily based on environmental law. The Ecuador Constitution has included the strict liability principle for pollution incidents. Therefore, the shipowner is obliged to minimise or prevent pollution that may come from wrecks. Ecuador is not party to the Nairobi International Convention on the Removal of Wrecks 2007.

### ***Recycling***

Ship recycling is regulated under a resolution of 9 January 2014, issued by the Undersecretariat of Maritime Transportation of the Ministry of Transportation.

## **vi Passengers' rights**

The Code of Commerce provides the main rules regarding passengers' rights. Some of these rules are outlined below:

- a* in events of *force majeure* regarding injuries to passengers or damage to luggage, the carrier is free from liability. However, the carrier is obliged to have insurance for these potential incidents;
- b* claims for loss or damage to the luggage will include the loss resulting from non-delivery of the luggage in a reasonable time unless the delay was caused by *force majeure*;
- c* if a trip is cancelled, the passenger has the right to be reimbursed and to claim damages unless the cancellation is a result of *force majeure*;
- d* in the event of delay in sailing or arriving to the port of destination, the passenger is able to terminate the contract and request reimbursement and damages unless the carrier proves that it is not responsible for the delay;

- e* when the trip is interrupted temporarily, the passenger will have the right to accommodation and food with no supplementary payment, without prejudice to request termination of the contract and reimbursement. If the trip is interrupted permanently, the carrier will indemnify the passenger; and
- f* in the event of death or injuries to the passenger or loss of or damage to the luggage, the carrier will be liable if death, injury, loss or damage are a result of guilt or negligence by the carrier or its servants or agents.

Passengers's rights stated in the Code of Commerce 2019 cannot be waived. Any stipulation in breach of this principle is considered not valid.

### **vii Seafarers' rights**

The MLC2006 ratification is in process. The legislature on January 2022 approved its terms and has passed it to the President. Once accepted, the MLC will be part of Ecuadorian law.

Certain fundamental rights related to the MLC are already recognised by the Constitution of Ecuador, such as freedom of association and unions, the equal pay principle, the right to an adequate work place, non-discrimination, non-forced labour and the eradication of child labour.

## **VII OUTLOOK**

There have been important developments in the shipping industry, both commercial and regulatory, in past years. The Navigation Act 2021 resolves an old discussion on which institution must lead. Former decrees divided the authority between the Ministry of Transportation and the Army, thus generating confusion in the public. Presently, the Navigation Act states that the Army, through DIRNEA, is the entity that will lead the maritime regulatory regime, also known as the maritime authority. Therefore, this new Act also provides more certainty. Nevertheless, there are certain provisions that still need to be amended or regulated.

According to the Navigation Act, the President has to issue a regulation, which is still being discussed by the government but is expected to be enacted shortly. This regulation is very important because the Navigation Act relegates to the regulation the application of several provisions, such as the nomination and procedure of the Jury of Captains, a body that decides cases on marine incidents.

Additionally, once the President has issued the regulation, it is expected that the DIRNEA will set up several rules according to Ecuadorian law and regulations.