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Belgium: Law & Practice

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BELGIUM

Law and Practice

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1. Maritime and Shipping Legislation and Regulation

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

Main Legislation

The main legislation establishing the authorities of the maritime and shipping courts in Belgium is as follows:

- the Judicial Code;
- the New Belgian Maritime Code (NBMC) (as of 1 September 2020); and
- the Act on Carriage over the Interior Waterways of 1936, which is in the process of being changed and incorporated into an additional chapter of the NBMC.

Common Maritime and Shipping Claims

The following claims are commonly filed in Belgium:

- cargo and charterparty claims;
- ship arrests;
- salvage claims;
- collisions;
- stevedoring-related claims;
- ships' agency claims;
- customs and excise claims;
- port state control retention;
- marine insurance claims; and
- claims for defended marine investigations by way of court-appointed and marine-dedicated surveyors or assessors.

1.2 Port State Control

Belgium is a party to the Paris MoU on port state control, which is an agreement between 27 Maritime Authorities. This system of port state control applies in Belgium.

For more information, see www.parismou.org.

The authority in Belgium is a specialised service of the Federal Public Service of Mobility and Transport: Port State Control in Antwerp (the PSC).

The PSC's authorities and powers of inspection and control include:

- examination of the documents (see Annex 10 of the Paris MOU Memorandum);
- verification of the overall condition of the ship, in order to determine whether it complies with various Conventions; and
- controls on compliance with onboard operational requirements.

The PSC can:

- stop the ship;
- detain the ship;
- restrict operations of the ship;
- order the ship to move; and
- indicate measures to be taken by the ship in order to be released from PSC sanctions.

Decisions by the PSC are regularly appealed, especially when the vessel is detained. Records show that the courts do not often consider the PSC's decisions to be erroneous.

Administrative sanctions can also be imposed when infringements are found by the PSC. Many fines were imposed on ship-owners for not respecting seafarers' rights during the pandemic. These fines can be appealed against.

The PSC does not have specific powers in relation to marine casualties such as grounding, pollution or wreck removal. However, a marine incident of any nature will result in a PSC inspection, which may then result in the aforementioned sanctions.

Other authorities can also investigate such incidents – for instance, the investigative authorities of the Federal Bureau for the Investigation of Maritime Accidents (FEBIMA) or the Flemish OSB (investigation body for shipping accidents and incidents on inland waterways in Flanders), as per EU Directive 2009/18, O.J, of 28 May 2009 (as adapted), for the purposes of collecting evidence in order to advise on how to avoid similar incidents in the future. It is prohibited by statute law to use the reports of the FEBIMA as evidence in court proceedings.

The FEBIMA has authority for marine casualties and incidents whenever at least one of the following criteria is met:

- a Belgian-flagged vessel was involved;
- the casualty occurred within the Belgian territorial sea or Belgian internal waters; or
- a substantial Belgian interest was involved.

FEBIMA investigations include the hearing of witnesses. Those investigations may not be hampered. The FEBIMA can detain ships, and can arrest any objects involved in an incident. It may also destroy objects for public health and safety reasons. Removing any object involved in an incident without the permission of the FEBIMA is prohibited.

The Public Prosecutor may also investigate these incidents, in order to determine if a criminal offence has been committed.

A court-appointed surveyor (sometimes referred to as an "assessor") may also conduct an investigation for the purpose of determining the facts, causes and circumstances of an incident for use in court proceedings. Court surveying proceedings are defended actions. All parties to the proceedings will be invited and may be present and represented at every investigative step the court surveyor undertakes. A Belgian court will instruct a Belgian court surveyor if the facts to be determined can usefully be determined in Belgium. This is the rule even if the case on the merits is to be held in another jurisdiction.

1.3 Domestic Legislation Applicable to Ship Registration

The governmental authority handling the domestic registration of vessels is the Belgian Ship Registry department, in Antwerp. This is a department of the Federal Public Service Mobility and Transport.

The key piece of domestic legislation applicable to ship registration in Belgium is the NBMC, which has been applicable since 1 September 2020. It is of the utmost importance to realise the fundamental changes in statute law since this date.

1.4 Requirements for Ownership of Vessels

Registration is mandatory for sea-going ships under construction in Belgium, but optional for the following sea-going ships:

- those operated from Belgium; or
- those of which the owner or operator is either:
  - (a) a natural person who is a national of a member state of the European Economic Area;
  - (b) a natural person who has their domicile or principal residence in Belgium; or
  - (c) a legal person that has its actual seat (ie, place of registered office, central administration or principal place of business) in

one of the member states of the European Economic Area.

1.5 Temporary Registration of Vessels

Temporary Registration

A temporary registration is no more than a registration and a de-registration, which it is possible to do in Belgium.

Bareboat Registration

Bareboat registration is possible in Belgium. If the bareboat charter provides for the vessel to enter another registry, the Belgian flag cannot be used for the duration of the bareboat charter. Also, a prior authorisation must be obtained from the authorities.

For a Belgian vessel in a foreign register, conditions precedent for receiving an authorisation include:

- contractual provisions in the bareboat charter agreement;
- the authorisation of the holder of certain in rem rights; and
- compatibility of the legislation of the receiving registry.

For a foreign vessel in the Belgian registry, conditions precedent for receiving an authorisation include the authorisation of the owner and of the receiving flag (which will check on the condition of the vessel).

1.6 Registration of Mortgages

The Belgian Ship Registry, in Antwerp, maintains the registration of mortgages in Belgium.

Ships, ships under construction and ships undergoing conversion can be encumbered with a ship mortgage.

Prior to a ship being registered in the Ship Register, taxes must have been paid.

The formalities are minimal. A ship mortgage can be established by an authentic or a private deed. The Belgian Ship Register requires the following information at the time of registration:

- the date of the deed;
- the form of the instrument and, if it is an authentic instrument, the indication of the public official from whom or the court from which it emanates;
- the surname and first names of the parties, in addition to:
  - (a) for natural persons of Belgian nationality, their national register number;
  - (b) for natural persons of foreign nationality, their domicile;
  - (c) for legal persons under Belgian law, their company registration number; and
  - (d) for legal entities under foreign law, the address of their registered office; and
- the nature and main elements of the transaction.

The following is also required, where appropriate:

- the amount and the due date of the interest, in addition to the deadline for repayment of the principal;
- the conditions to which the claim is subject;
- the stipulation of possession of the vessel; and
- the choice of domicile.

1.7 Ship Ownership and Mortgages Registry

The Ship Register is held in the Belgian shipping register and is open to public inspection.

Certificates certifying the inscribed in rem and other rights can be obtained at minimal cost.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

Pollution

The applicable international conventions and relevant laws that will impact upon the liability of owners and interested parties in events of pollution and wreck removal are as follows:

- the NBMC, which also implements various international treaties and EU directives, and contains criminal liability provisions, reverses the burden of proof and authorises authorities to arrest vessels that are not in compliance. Substantial fines and possible incarceration are also provided for;
- to some extent, the Flemish Shipping Decree of 21 January 2022;
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 29 November 1969, and Protocol to the Convention, 2 November 1973 (the Intervention Convention);
- the International Convention for the Prevention of Pollution of the Sea by Oil, 12 May 1954 as amended (OILPOL);
- the International Convention for the Prevention of Pollution from Ships, 2 November 1973, and the Protocol to the Convention, 17 February 1978 (MARPOL 73/78);
- the 1982 United Nations Convention on the Law of the Sea, 10 December 1982 (the Montego Bay Convention, or UNCLAS);
- the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 27 November 1992, as amended in 2000 (the CLC 1992);
- the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 27 November 1992, as amended in 2000 (the 1992 Fund Convention);
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, London, 3 March 2001 (the 2001 Bunker Oil Convention);
- the 2003 Protocol Establishing a Supplementary Fund (the 2003 Supplementary Fund);
- EU Directive 2005/35, O.J. L255/11, 30 September 2005 as amended, which has been implemented into Belgian law by various acts;
- the Belgian Statute of 20 January 1999 on the Protection of the Marine Environment in the sea areas under Belgian Jurisdiction, as amended (the Marine Protection Act) – this Statute implements various international treaties and EU directives, and contains criminal liability provisions, reverses the burden of proof and authorises authorities to intervene in the case of incidents threatening the (marine or any other) environment. Substantial fines and possible incarceration are provided for;
- various legal instruments, by the Federal State and the Regions, each within their authority in the implementation of Directive 2009/98 EC on Waste (the Waste Directive); and
- the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (the Ballast Water Management Convention), which entered into force in Belgium on 8 September 2017.

This list is not exhaustive. Moreover, international legislation from the International Maritime Organization (IMO) or the European Union requires Belgium to enact new provisions, usually by amending the aforementioned provisions.

Wreck Removal

The law on wreck removal is extraordinarily complicated. The legislation applicable to an incident requiring wreck removal is dependent on:

- its location – Exclusive Economic Zone (EEZ), territorial waters, internal waters;
- the type of craft – sea-going vessel, barge, estuary vessel; and
- the date of the incident.

At present, this difference in applicable rules determines the following:

- if the authorities may impose a demand for wreck removal;
- if the liability of the authorities is a defence;
- if the ship-owner may refuse to execute the order to remove the wreck;
- if the ship-owner may limit their responsibility for wreck removal; and
- which thresholds apply if responsibility can be limited.

Wreck removal of sea-going vessels in Belgian national waters

In Belgian national waters (territorial sea and other sea waters), wreck removal is covered by federal legislation.

The 2007 Nairobi Convention on wreck removal and the NBMC apply.

The owner of the wreck (a definition that includes the owner, charterer or operator) must remove the wreck and its contents. This is a fundamental change in statute law since the NBMC came into force on 1 September 2020. Prior to the NBMC, the Belgian Supreme Court ruled that, once a wreck removal fund has been set up for a sea-going vessel, the authorities are no longer entitled to demand that the owner, charterer or operator remove the wreck at the owner's expense. That principle is now abandoned under the NBMC, as far as sea-going vessels are concerned.

The authorities have a direct right of action against the Hull or Liability (P&I) insurers, which shall not be released from their obligations under the insurance contracts until the claims of the competent authority are satisfied.

Wreck removal of sea-going vessels in Belgian interior waters – regional legalisation

In 2022, the regional authorities adapted their legislation, to bring it in line with the federal legislation. There are some relevant differences, but such nuances are beyond the scope of this guide.

Wreck removal of interior barges (and limitation of liability)

Interior barges can limit liability, either by application of the Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI) or by application of Belgian regional Law.

If limitation under the CLNI is not possible, the law provides a similar possibility of limitation.

Some reservations were made by some Belgian regions when adhering to the CLNI, in terms ofpollution and wreck removal, for example. This seems to imply that two separate limitation funds may be required in some circumstances: one for pollution or wreck removal, and one for other liabilities.

2.2 International Conventions: Collision and Salvage

Collisions

It should be noted that the location of the incident, the type of vessels and the persons involved have an influence on the legislation that will apply. Sea-going vessels colliding on the high seas will be subject to different rules from those colliding on internal waterways. More complex still, there is different legislation for interior barges. Moreover, on rivers and canals, specific rules derogate from the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs).

The following conventions and regulations apply in Belgium:

- the International Convention for the Unification of Certain Rules of Law with respect to Collisions between vessels, Brussels, 23 September 1910 (the 1910 Collision Convention);
- the International Convention on certain rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 11 May 1952 (the 1952 Brussels Civil Jurisdiction Convention);
- the International Convention for the unification of certain rules relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, Brussels, 10 May 1952 (the 1952 Brussels Penal Jurisdiction Convention);
- the COLREGs;
- the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS) and its annexes;
- EU Regulation 864/2007, 11 July 2007 (Rome II); and
- various local navigation regulations regarding the territorial sea, the ports, the rivers and canals (the Local Navigation Regulations).

Other provisions may also be relevant, such as:

- the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978;
- the International Safety Management Code (the ISM Code); and
- the International Ship and Port Facility Security Code (the ISPS Code).

If refuge is needed as per EU Directive 2002/59 (as amended), the Maritime Salvage and Coordination Centre (MRCC) manages the incident for all authorities concerned.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

Sea-going Vessels

Limitation of liability in Belgium is determined by the London Convention regime. For sea-going vessels, the following legislation applies:

- the Convention on Limitation of Liability for Maritime Claims, dated 19 November 1976 (the LLMC Convention);
- the Protocol of 1996, dated 2 May 1996 (the 1996 Protocol); and
- the 2015 LEG.5(99) IMO Resolution raising the amounts (the IMO Resolution).

Domestic legislation (the NBMC) essentially incorporates the 1976 LLMC Regime into Belgian law.

Non-sea-going Vessels

Different provisions apply for the limitation of liability for maritime claims against non-sea-going vessels, such as interior barges, including the CLNI and specific provisions for wreck removal and pollution in regional shipping law.

2.4 Procedure and Requirements for Establishing a Limitation Fund

A limitation fund requires two court decisions. Both can be obtained within a few days.

First, a potentially liable person requests authorisation from the court to set up a fund. The request indicates the amount of security to be issued. The security proposed is to be either a cash payment or a guarantee to the court.

The court then orders the amounts to be paid or secured within a deadline. A fund administrator is also appointed.

Once the amount of the fund has been paid or secured, the fund administrator drafts a report, which is presented to the court. The court issues a second decision, confirming that a limitation fund was constituted.

A potentially liable person can set up the fund. The amount of limitation is calculated in accordance with the provisions of the 1976 LLMC regime, the CLNI and or the regional law, as noted in **2.3 1976 Convention on Limitation of Liability for Maritime Claims**. The security proposed is to be either a cash payment or a guarantee to the court. The guarantee is to be found acceptable by the court.

3. Cargo Claims

3.1 Bills of Lading

The Hague–Visby rules have been incorporated into the NBMC. In addition to their regular application, the Hague–Visby Rules are also of mandatory application to all carriage to and from a Belgian port. Conflicting provisions in the terms of carriage are to be disregarded.

3.2 Title to Sue on a Bill of Lading

Under the NBMC, both the receiver and the shipper have title to sue. However, it should be noted that the burden of proof of the damages suffered is different. A third-party receiver must only establish the damages and their extent, not that they suffered them. A shipper must also establish that they suffered the damages.

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

The carriers' liability and limitation of liability for cargo damages is as per the principles of the Hague–Visby Rules (with the SDR protocol). Depending on how the bills of lading or other transport documents are issued, the liability rests with the contractual carrier or the ship-owner, or both. This is always a factual matter.

3.4 Misdeclaration of Cargo

The carrier can claim against the shipper for misdeclared cargo. A misdeclaration is an error or omission and leads to liability. This is the normal application of the Hague–Visby Rules and its principles.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar for filing a claim for damaged or lost cargo (either for breach of contract or for liability in tort) in Belgium is one year from delivery, unless the protection given by the rules on carriage would not apply, in which case the contractual provisions in the terms of carriage could be applicable.

Once the time bar runs out, it can be extended. Great care should be taken to ensure that the appropriate wording is used when applying for an extension of the time bar; the wrong wording can often result in a refusal to extend. It is also important that the extension is obtained from the correct person(s) in favour of the correct person(s).

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

The applicable convention regarding the arrests of vessels is the International Convention on Arrest of Ships, 1952 (the 1952 Arrest Convention). Arrests are made either by application of the convention itself or by application of the NBMC, which incorporates the same rules.

Under Belgian law, there is a difference between maritime liens as in rem rights and maritime claims, which allows the arrest of a sea-going vessel.

The maritime claims for which a sea-going vessel can be arrested are listed in Article 1.1 of the 1952 Ship Arrest Convention. A "maritime claim" is one that relates to one or more of the following:

- damage caused by any ship, in a collision or otherwise;
- loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- salvage;
- an agreement relating to the use or hire of any ship, whether by charterparty or otherwise;
- an agreement relating to the carriage of goods in any ship, whether by charterparty or otherwise;
- loss of or damage to goods, including baggage carried in any ship;
- general average;
- bottomry;
- towage;
- pilotage;
- goods or materials, wherever supplied to a ship for her operation or maintenance;
- construction, repair or equipment of any ship or dock charges and dues;
- wages of Masters, officers or crew;
- Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- disputes as to the title to or ownership of any ship;
- disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
- the mortgage or hypothecation of any ship; and
- fines imposed by the Belgian authorities.

Interestingly, the NBMC provides that an arrest for other claims is possible for vessels under the flag of a country that did not ratify the 1952 Arrest Convention. There does not seem to be any case law on this point yet.

4.2 Maritime Liens

The flag of the vessel determines the in rem rights.

In principle, Belgian jurisdiction will apply the rules of the flag in respect of liens and mortgages. This means that Belgian law will almost never be applicable whenever issues concerning liens and mortgages arise. Indeed, most cases that require the application of liens and mortgages relate to foreign-flagged vessels.

Foreign-registered in rem rights on a vessel will be respected on the condition that the relevant ships registry, containing a minimum of information, is publicly consultable and extracts can be obtained.

Only Belgian-flagged vessels will be subject to Belgian law on liens and mortgages. Belgian law provides different categories of in rem rights on a sea-going vessel. The NBMC provides for "Ship Security Rights" and has created a new type of in rem right: the "Ship's Priority Rights", which have priority over "Privileged Claims". Those two types of in rem rights take priority over the "hypotheque" (the alternative for a mortgage).

"Ship's Priority Rights" cover the various types of costs made by or for account of the vessel from the last call into port up to the public sale. It includes the port costs, crewing costs, maintenance costs, etc.

"Privileged Claims" are similar but not identical to those of the 1924 convention on liens and mortgages. In 2021, the NBMC was amended to remove cargo claims from the list of "Privileged Claims".

4.3 Liability in Personam for Owners or Demise Charterers

The vessel in respect of which the maritime claim arose can always be arrested, even if the owner (or demise charterer) is not liable in persona.

4.4 Unpaid Bunkers

A bunker supplier can arrest a vessel in connection with unpaid bunkers supplied to a vessel. In 2016, the Belgian Supreme Court ruled that, if an arrest is for deliveries (such as bunkers) made to the vessel, the claim must arise out of:

- a commitment entered into by the charterer or ship-owner; or
- an obligation that can be attributed to them under the doctrine of trust.

Case law since then seems generally to accept that, with deliveries (such as bunkers) to a vessel, there is an apparent authority from the owner or the charterer, so that unless the supplier explicitly indicates that they do not consider the owner or the charterer to be the debtor, the order is attributable to that owner or charterer and the vessel can consequently be arrested.

4.5 Arresting a Vessel

An authorisation to arrest is requested of the Arrest Judge by way of an ex parte application filed by an attorney on behalf of a client. The judge usually (especially in Antwerp, Ghent and Bruges) gives a decision on the bench. A court bailiff thereafter serves the decision to the Master of the vessel, and the vessel is then arrested.

No written power of attorney needs to be presented. In that application, all relevant information must be disclosed to the judge.

The court need not be provided with original documents; notarised and apostilled copies of the documents will suffice. Translation is needed only if the documents are in a language the judge does not understand. Documents in English do not need translation.

The statute law provides the possibility for the judge to impose a counter security. It is no longer customarily ordered unless the judge is of the opinion that the claim is doubtful, and the arrestor is from a country where enforcement of a judgment on appeal for costs would be difficult.

4.6 Arresting Bunkers and Freight

It is possible to arrest bunkers (arrest of movables) and freight (third-party garnishment).

The conditions and principles that are to apply in order to arrest those types of assets are different from those of a ship's arrest.

For the arrest of a sea-going vessel, it is sufficient to allege a claim, which is usually not too difficult a test.

For the arrest of any other assets, such as movables (bunkers), freight, bank accounts, etc, the arrestor must establish that certain conditions are present.

First, conditions in respect of the quality of the claim must be assessed; an arrest is possible if the claim is sufficiently:

- certain – ie, it must be a prima facie good claim;
- due – ie, it is payable immediately; and
- quantifiable – ie, the amount must be quantifiable.

Second, conditions in respect of the situation of the debtor (charterer) must be assessed. There must be urgency in order to secure the claim – eg, a debtor must be in financial difficulties.

4.7 Sister-Ship Arrest

Ships are "sisters" if they belong to the same physical or legal person, and can be arrested if someone has a maritime claim against that person.

The same beneficial ownership of ships does not make them sister-ships in the legal meaning and such beneficial ownership does not, on its own, allow an arrest.

In "alter ego" situations (the arrest of the assets of one for claims against another), it is necessary either to pierce the corporate veil, to prove collusion or to establish fraud. Belgian case law has arrived at such findings by applying standards that are similar to the "alter ego" relationship findings in US case law.

4.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrests, all other assets of the debtor can be arrested/attached, including movable assets (bunkers), freight, bank accounts, etc.

For the conditions necessary to be allowed to proceed with such an arrest or attachment, see **4.6 Arresting Bunkers and Freight**.

4.9 Releasing an Arrested Vessel

Once arrested, the vessel can only be released by agreement between the parties or by court order.

A court order ordering release usually means that the case was brought in court again, all parties to the conflict were heard and the judge ordered the release.

Arrest proceedings do not initiate the case on the merits itself. Separate proceedings in Belgium or elsewhere must be initiated to that effect.

The security in a proper wording must be issued by a first-class bank within the jurisdiction for the arrestor to be obliged to release the vessel from arrest. Parties may agree on an alternative. Any such alternative cannot be imposed on the arrestor.

The security is to guarantee the in personam claim. If that person is not the owner, the claim against that other person is to be secured. If the claim is against the charterer, the security is to guarantee that claim.

4.10 Procedure for the Judicial Sale of Arrested Ships

The procedure for the public sale of a vessel is a three or two-step judicial process:

- arrest of the vessel;
- first public auction with provisional adjudication; and
- second public auction if there is a higher bid within 15 days of the provisional adjudication. Recent statutory changes are resulting in some people doubting that a second public auction is still a possibility.

Alternatively, and after an arrest, a public sale can be organised by an online sales process, with only one auction running over a predetermined period of time.

In some circumstances, the court can allow a sale without this public process.

Also, if the loan agreement entitles the lender to take possession of the ship, specific proceedings can result in the public sale being avoided.

As regards maintenance and costs, as long as the vessel has not changed ownership the costs remain, in principle, for account of the previous owner. The arrestor or any other party who has an interest could ask the court (or the acting court bailiff) to make the costs of caretaking. Those costs would then be privileged on the price of adjudication.

The in rem rights will be determined as per the law of the flag. Foreign mortgages will be recognised if certain conditions in respect of publicity thereof are met.

For Belgian-flagged vessels, the hypotheque (Belgium does not know the concept of mortgages) comes after the ship's privileges.

4.11 Insolvency Laws Applied by Maritime Courts

In respect of insolvency, Belgium has to abide by the EU Insolvency Regulation, in common with the rest of the EU.

As in many countries, the conflict between maritime law and insolvency law is still ongoing. To date, courts have given priority to the obligations arising out of the 1952 Arrest Convention and, in doing so, have set the insolvency protection aside. This is still very much a debated issue.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

Courts are reluctant to condemn a party for wrongful arrest. A tort must have been committed. Losing the case on the merits or the arrest being lifted does not establish that a tort has been committed by the arrestor, as such.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

EU Regulations and the Athens Convention, as amended by the 2002 Protocol to protect passengers, apply in Belgium. Some Belgian legislation incorporates those provisions. Conflicting contractual agreements will be set aside.

The following apply:

- the NBMC (Article 2.6.2.34 and following);
- the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (the Athens Convention, or PAL 1974) and the 2002 Protocol to PAL 1974 (the PAL Protocol 2002);
- Regulation (EU) No 392/2009, of 23 April 2009, on the liability of carriers of passengers

by sea in the event of accidents – note that this Regulation reinforces the PAL Protocol 2002, which was already applicable;
- Regulation (EU) No 1177/2010, of 24 November 2010, concerning rights when travelling by sea and inland waterways, amending Regulation (EC) 2006/2004; and
- the Belgian Statute Law on Travel Contracts, of 21 November 2017 (the Travel Contracts Act).

Insofar as the PAL regime applies, the time bar is two years.

The limitations and exonerations are as per the PAL regime. These provisions have also been incorporated into the NBMC.

Insofar as the Travel Contracts Act applies, the time bar is also two years. There is no limitation or exoneration of liability.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

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

The NBMC is of mandatory application on this point of law, but there is not yet any known case law on whether courts in Belgium will recognise and enforce law and jurisdiction clauses stated in bills of lading.

Courts are expected to extend the existing case law, which denied the application of foreign jurisdiction or arbitration clauses whenever the claimant was a third-party holder of a negotiated bill of lading to all claims arising out of contracts of carriage irrespective of a bill of lading, a Seaway bill or another document of carriage having been issued. This is unless the carriage falls under the exceptions of the principles of the Hague–Visby Rules.

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

The NBMC is of mandatory application on this point of law, but there is not yet any known case law on whether courts in Belgium will recognise and enforce a law and arbitration clause of a charterparty incorporated into a bill of lading.

Historically, courts did not recognise foreign jurisdiction or arbitration clauses whenever the claimant was a third-party holder of a negotiated bill of lading. The underlying principle is that the third-party holder of a bill of lading is entitled to the minimum protection of the Hague–Visby rules, and that foreign jurisdiction or arbitration clauses could not guarantee such protection. Now, and under the NBMC, this protection is extended to all claims arising out of contracts of carriage, irrespective of a bill of lading, a Seaway bill or another document of carriage having been issued.

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

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Belgium.

Domestic law has incorporated the rules on arbitration into the Judicial Code.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

If the claim that is subject to a foreign arbitration and/or jurisdiction allows an arrest of the vessel, the fact that the merits of the case are to be heard abroad is no hindrance. The arrest is a protective measure. If the applicable law or agreements between the parties refer the case to another jurisdiction, an arrest is still possible. The security obtained by the arrest can be executed only once a foreign decision or award condemns the creditor.

6.5 Domestic Arbitration Institutes

There is no arbitration institute that deals solely with maritime matters.

Such matters can be arbitrated before the Belgian Centre for Arbitration and Mediation (CEPANI), which also deals with other, mostly commercial, matters. Within the CEPANI there are maritime arbitrators.

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

The authority of the Belgian court is to be contested as a first defence on the basis of the foreign jurisdiction or arbitration clause. Unless the clause is invalid or not opposable to the claimant, the court will respect it and declare itself without authority.

7. Ship-Owner's Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

The Principles

Under Belgian law, both the tonnage tax regime and the accelerated depreciation regime are available. They are alternatives and cannot be used together. Careful consideration must be made as to which one needs to be applied and when.

Also, reinvested capital gains can be exempt from taxes. In addition, a vessel that comes into Belgian possession for the first time can, under certain conditions, deduct 30% of the purchase price. Again, these are alternatives to the Tonnage Tax and cannot be used together with that Tonnage Tax.

Tonnage Tax – General

Within the EU, the guidelines to be respected by the individual member states are set by the EU Commission in its "Guidelines on State Aid to Maritime Transport". In November 2017, the EU Commission approved the Belgian support measures for maritime transport for another ten years. A few changes to the already existing Belgian rules had to be made in order to comply with those guidelines.

Interestingly, dividends paid by Belgian tonnage tax companies comply with the subject-to-tax condition.

Tonnage Tax – for Ships

A tonnage tax can be applied to shipping companies, core revenues from shipping activities and certain ancillary revenues that are closely connected to shipping activities (which are now capped at a maximum of 50% of a ship's operating revenues).

Tonnage Tax – for Towage and Dredging

On the condition that 50% of revenues from towage or dredging comes from the high seas, the tonnage tax can be applied.

Tonnage Tax – for Operators/Ship Managers

If certain conditions and minimum thresholds are met, ship-management activities and operating services could qualify for the Belgian tonnage tax regime.

8. Implications of the Coronavirus Pandemic, Environmental Legislation and Trade Sanctions

8.1 COVID-19-Related Restrictions on Maritime Activities

COVID-19 Measures in General

COVID-19 measures are changing regularly. General measures, such as masking, social distancing, limiting contacts, hand hygiene, etc, need to be followed by all, and must also be followed on the terminals.

COVID-19 and Sea-going Vessels

Insofar as maritime traffic is concerned, the Joint Nautical Authority has made an announcement covering the Scheldt Shipping Area regarding COVID-19 measures. They are subject to situational change.

At present, such measures include the following (Bass No 001-2022 and Bass No 002-2022):

- all incoming ships must submit a Maritime Declaration of Health (MDH) 24 hours before entering port;
- the ship's Master declares whether there are any cases of illness or suspected cases on board – the declaration must also include a list of the last ten ports of call; and
- all outgoing ships must submit an MDH if there has been any change in the health situation compared with the situation when entering port.

Furthermore, the authorities can inspect and take appropriate measures once an outbreak is found on board.

8.2 Non-performance of a Shipping Contract

The non-performance of a shipping contract due to the implications of the pandemic – such as late delivery, non-arrival of a chartered vessel, or slow ratio of loading or discharging – will, in itself, not be considered a force majeure event.

Force majeure is an insurmountable obstacle to the fulfilment of commitments (Court of Cassation). The doctrine of unattributable impossibility implies that there are three conditions for the existence of force majeure: the performance of an obligation has become impossible due to circumstances that are not due to a fault of the debtor and that were unforeseeable and insurmountable for them.

If an obligation has to be performed (eg, transport of goods) but is made impossible by an unforeseen COVID-19 measure, in some circumstances, depending on the factual circumstances, this could be considered as force majeure.

Force majeure will, in principle, not be accepted to avoid monetary obligations.

The Belgian courts have dealt with matters relating to the non-performance of contractual obligations (in relation to shipping contracts or any other commercial contract) due to the COVID-19 pandemic and rarely concluded that a force majeure event was present.

It is essential that each party fulfils its obligations, even if their performance became more onerous either because the cost of performance increased or because the value of the counter-prestation was reduced.

However, since 2022 new statute law provides that the debtor may ask the creditor to renegotiate the contract with a view to its amendment or termination, albeit only in certain circumstances. Circumstances must have changed to render the performance of the contract unduly onerous, to such an extent that its performance can no longer reasonably be demanded. Such change must have been unforeseeable at the conclusion of the contract and must not be imputable to the debtor; the debtor must not have accepted to take that risk for their account and neither the law nor the contract excludes the possibility of renegotiation. The parties are then obliged to renegotiate the contract. If no agreement can be reached, the President of the competent court will decide on the faith of the contract in urgency proceedings.

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

Belgium has implemented "IMO 2020" (Annex VI MARPOL), limiting the sulphur content of fuel oil used on board ships to 0.50% mass by mass (m/m), which came into force on 1 January 2020. PSC is responsible for the enforcement of the sulphur content limitation.

As the Port of Antwerp is an important place for bunkering, the new sulphur limits have led to significant litigation already. Enforcement actions are taken, and infringement is sanctioned. Time is of the essence when being confronted with "off-spec" bunkers, given the often very short time bars that bunker suppliers provide for in their General Terms and Conditions.

8.4 Trade Sanctions

In principle, Belgium will implement and enforce international trade sanctions if they are imposed by UN resolutions or EU regulations; it will not implement the law of the US, the UK or any other country in respect of trade sanctions. On the contrary, if any such trade sanctions would harm Belgian interests, the authorities could take protective action.

Still, the extra-territorial effect of some sanctions, such as the US Office of Foreign Assets Control and Specially Designated Nationals (OFAC SDN) sanctions list, results in Belgian entities being limited in what they are willing to do, even if such limitations do not exist under Belgian or EU law.

In respect of the Russia-Ukraine conflict, Belgium adheres to the EU's regulations and its far-reaching sanctions, especially Regulations (EU) No 833/2014 and (EU) No 269/2014 as adapted many times.

Under both EU Regulations, derogations can be obtained from the competent authority of a member state, including in Belgium.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The NBMC entered into force on 1 September 2020 and covers most relevant Belgian regulations regarding not only arrest, privileges and mortgages, but also carriage and chartering. It also focuses on the safety of shipping in accordance with the International Convention for the Safety of Life at Sea (SOLAS) regulations.

The NBMC has been changed numerous times already, so it is important to realise that knowledge acquired in 2021 may no longer be relevant in 2023.

In addition, the Belgian regions have enacted their own legislation since 2020 in the fields of law over which they have authority. In 2022, for example, the Flemish region enacted its Shipping Decree, which contains provisions regarding liability, limitation, wreck removal obligations, etc. All too often, local practitioners have to explain that there is more than just “Belgian law” in Belgium.

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