

Latest developments in Chilean Shipping Law



Leslie Tomasello Weitz
Tomasello y Weitz
+56 (32) 2252555
ltomasello@tomasello.cl

Chilean maritime law is essentially contained in Book III of the Code of Commerce and in Decree Law N° 2,222 enacted on 31 May 1978 (the 'Law of Navigation'). Irrespective of the 2013 update, the whole body is in need of substantial reform.

An update to Chilean insurance law

Act N° 20,665, enacted on 9 May 2013, involved a major update in respect of Chilean insurance law. As far as maritime insurance is concerned, the most significant changes brought by the Act are:

- the reinforcement of the duty of utmost good faith;
- the inclusion of a reference to the principle of 'lost or not lost';
- the fact that a H&M policy will be presumed to be 'valued' simply because the parties have stated an insured amount;
- that the meaning of marine insurance now includes *'installations and machinery gear to perform loading, unloading and stevedoring operations and any other property that the parties believe is exposed to risks associated with marine risks'*;
- that the definition of 'constructive total loss' includes the word 'finally', which should mean that the abandonment of the vessel now has to be both reasonable and definitive;
- the fact that all disputes between the insured (or their beneficiary) and the insurer will be resolved by an arbitrator;

- a slight amendment to Article 1201, which continues to state that, in the case of marine liability insurance, there will be no direct action against the insurer unless the insurer has issued a guarantee (normally, an LOU) to cover the liability of the insured; and
- that the new Article 584 should be seen as a favourable development towards adopting English case law regarding the meaning of reinsurance clauses such as claims control/co-operation clauses, following the settlement clauses, aggregation of losses, etc.



The 'pay to be paid' rule continues to exist

The Act also eliminated the insured's obligation to pay compensation for damages to a third party in order to claim compensation and reimbursement of expenses incurred.

In other words, the new Article 1200 of the Code of Commerce eliminated the 'pay to be paid' rule, which lies at the heart of P&I insurance.

Despite this, the reality is that the Chilean marine insurance norms only apply in a suppletory capacity. As a result, provided the contract of marine insurance incorporates this 'pay to be paid' rule, then such rule will continue to exist among marine insurance contracts, especially in respect of P&I insurance.

Limits of liability for marine pollution under the CLC 92 have increased

Chile has been a state party to the 1992 Civil Liability Convention covering liability for marine pollution. However, very recently, Chile enacted the amendments of the limitation amounts adopted by the IMO on 18 October 2000, thereby amending Article 6 (1) of the 1992 CLC Protocol and increasing the limitation amounts in line with the amendment.

Conclusion

Chilean maritime law has not changed significantly and is in need of more substantial and internationally aligned reform, which raises questions about the possibility of comprehensively reviewing both Book III of the Code of Commerce and the Law of Navigation.

