

New Argentinian Civil and Commercial Code



Silvia Mahringer
Claims Executive
+44 20 7398 5323
silvia.mahringer@ctplc.com

On 1 August 2015, the new Argentinian Civil and Commercial Code (the 'New Code') came into force. The New Code contains a chapter that covers the carriage of passengers and goods in general terms, without making a specific reference to the mode of transport, i.e. by sea, road or air. Below, we consider how the New Code might affect maritime law in Argentina and, in particular, shipowners' rights, defences and liabilities.

The Navigation Act

Shipping matters in Argentina are regulated by the Navigation Act (Law 20,094) of 1973 (the 'Navigation Act'), which incorporates the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the 'Hague Rules') into national law.

The Navigation Act establishes in its first section that all shipping issues will be regulated by its provisions, by complementary laws, by use and practice, and, finally, by general civil and commercial law. The relevant chapter of the New Code, in turn, sets out that the principles contained therein will only apply where 'special laws', such as the Navigation Act, are silent. It also expressly sets out that multimodal carriage will be regulated by special laws.

It therefore appears that the Navigation Act, being a 'special law', will continue to apply to the carriage of goods and passengers by sea.

Argentina is also a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974. Where the Navigation Act is silent and no other complementary laws or use and practice apply, the provisions of the new Civil and Commercial Code will apply.

Although it is unlikely that the New Code will apply to carriage by sea, members should be aware of the changes introduced by the New Code that may potentially affect their liability, limitation of liability and time bars.

Liability

According to the provisions of the New Code, the liability strictly lies with the carrier for any passengers or for loss of or damage to goods during carriage. This is the opposite of the Navigation Act, where liability is fault-based.

Limitation

Under the New Code, the carrier cannot limit its liability for carriage of goods and passengers, and any contractual clauses that purport to limit the carrier's liability will be deemed as never written.

Time bars

The time bar introduced by the New Code for contractual claims is two years as opposed to the one-year time bar in the Hague Rules and as per the Navigation Act. While the one-year time bar will continue to apply to maritime claims, it is yet to be seen whether a judge may decide to apply a more favourable time bar in case of dispute between the parties as to the applicable time bar.

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Conclusion

The provisions of the New Code on liability, limitation and time bars are more stringent for carriers than those of the Navigation Act. However, it appears that shipping matters will continue to be regulated by the Navigation Act, which incorporates the provisions of the Hague Rules, including all its rights and defences, into domestic law.

As the New Code has only recently come into force, it remains to be seen how the courts will interpret certain provisions, in particular, in relation to liability, limitation and time bars. We will continue to update members on any developments in this regard.

